

**TOWN OF APEX
BOARD OF COMMISSIONER'S**

Minutes of Tuesday, January 15, 2002
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, January 15, 2002 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Jones
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

INTRODUCTION OF TOWN EMPLOYEES

Police Officer Greg Rhodes and Fire Fighter Howard Miles

APPRECIATION

Mayor Weatherly extended appreciation to Manager Radford for his excellent management during the recent weather situation and to the "Snow Crews" for the excellent performance in the snow removal, and for all the work behind the scenes during the recent snow. Manager Radford recognized Director of Public Works Donnelly, Police Chief Hearn, Fire Chief Echevarria, and Construction Management Director Jackson. He noted the compliments received from Town citizens.

CONSENT AGENDA

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

Commissioner Jensen asked Item 11 be considered separately regarding demolition.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to do so. Motion carried.



Consent Agenda Continued

Mayor Weatherly called for a motion to approve the consent agenda items with the exception of Item # 11 to be considered under new business as Item # 6.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda with the exception of Item #11. Motion carried.

1. Minutes of December 18, 2001 Board of Commissioner's Meeting.
2. Minutes of December 18, 2001 Board of Commissioner's Executive Session.
3. Annexation Petition #325, Paul A. & Anne H. Cain, owners/petitioners; petitioning to annex 4.43 acres including public rights-of-way, located off Olive Chapel Road (SR1162) and being known as Lot 18, Chapel Ridge Subdivision (1401 Barnside Lane); 1) Adopt Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and; 3) Adopt Resolution setting date of public hearing for February 5, 2002.
4. Annexation Petition #326, Canapex, LLC., owners/petitioners; petitioning to annex 0.709 acres including public rights-of-way, being known as Whitehall Manor Recreation, and fronting South Salem Street; 1) Adopt Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and; 3) Adopt Resolution setting date of public hearing for February 5, 2002.
5. Annual Certification of Firemen in accordance with GS58-86-25.
6. Award of Bid for Fire Truck: Lee Fire Equipment & Supplies, Inc. Total bid \$382,488.00 with certified bid tabulations attached. Fire Grant: \$315,000.00 with total out of pocket for Town being \$67,488.00. \$75,000.00 was budgeted for this item.
7. Site plan - Apex Elementary School Renovations, 700 Tingen Road, recommended by Planning Board and Planning Staff.
8. Adopt Resolution to approve Municipal Agreement - Town of Apex and NCDOT to inspect bridges.
9. Adopt Resolution to authorize Leslie Huegerich to enter properties of Town to search for relics.
10. Approve Agreement - Town of Apex and Henry V. Lineberger, Jr. and Mary J. Lineberger accepting Title of property.
11. **Ordinance directing Code Enforcement Officer to demolish structures located at 401 and 403 South Salem Street (Considered under New Business Item #6).**
12. Wake County Tax Report

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly will present the regular meeting agenda to be set as follows with the amendment to discussion Item #11 from the Consent Agenda. The agenda was set.

PUBLIC HEARINGS

Public Hearing # 1 – Pre-Budget Public Hearing

Mayor Weatherly opened a public Hearing to receive citizen input regarding the formulation of the Fiscal Year 2002-2003 Annual Budget at 7:00 p.m.

Art Clem, President of the Beckett Crossing homeowners association asked Board to focus on the intersection of NC55 and Olive Chapel Road, due to increased traffic and the difficulty of getting through this traffic signal. He asked to renew yard waste service, find a way to cover the expense, mulch and compost doesn't work. Feels both projects are needed for people who pay taxes. Mayor Weatherly responded yard waste would be revisited at the retreat and town was continuously working on intersection improvements.

Ilona Kusa, asked to mark the property across from Town Campus for a park and consideration be given for a cross walk across Old Raleigh Road to get the Library, etc. due to speed of traffic along this road and that staff use more "brain power" when it comes to humps (Eckerds on NC55/Hunter Street), and spend more time on access - making them further away from intersections when development occurs. Mayor Weatherly informed the property in question for a park was tied into an estate, with the owner not wanting to sell.

The hearing was closed at 7:25 p.m.

End of public hearing # 1

Public Hearing # 2 – Site Plan – Apex Cabinet Company

Director of Planning stated the petitioner had asked this public hearing regarding site plan for Apex Cabinet Company located on Schieffelin Road near Center Street be continued to February 5 meeting to allow more time to negotiate regarding property.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to continue the hearing as requested. Motion carried.

End of public hearing # 2

Public hearings continued



Public Hearing # 3 – Rezoning Case #01RZ07

Public hearing regarding rezoning Case #01RZ07, Flea Market & Convenience Store, Midrock Properties, petitioner, seeking to rezone from Light Industrial & Neighborhood Business District to Planned Unit Development, being located at 805 Center Street (currently Apex Electric); possible motion regarding rezoning.

Director of Planning advised: Rezoning request was for a non-residential Planned Unit Development at the former Carolina Plywood site (currently Apex Electric, now moving to new site on SR1010) and noted the adjacent zoning and land uses, and proximity to the Peakway that continues to Old Raleigh Road. An area photo showed the planned layout of the flea market, convenience store, carwash facility and (fast food) restaurant on the 5.75 acres. Flea market hours of operation would be Friday 2-9 p.m., Saturday and Sunday 7 a.m. to 6 p.m. and closed weekdays; no outdoor displays would be allowed and storage would be contained inside the building. Detention pond is designed for water quality and quantity, sized to hold a 10 year storm; street access on SR1010 and right-in/right-out on the Peakway; project calls for widening of SR1010 with sidewalks on the perimeter of the project; there's more parking than required with provision for handicapped. Phase I will be the new development of the store, carwash and canopy; Phase II will be the flea market with parking.

Planning Board recommends approval with conditions:

- Applicant install vine-like planting material along 6' chain link fence (type and plant be submitted with construction drawings and approved by Planning Department) to create buffer between buildings and residential development.
- There will be no outside displays (applicant agrees)
- Architectural features and colors will correspond on all structures.

Building elevations indicate rework of front and side of plant to match store and restaurant with water mark brick and gray plank siding to match old plant – asphalt style roof matches plant that exists now. Handicap ramp – same brick as used on store; canopies – brick column with same brick as on store. Carwash – same brick and singles.

Rezoning and development is consistent with the land use plan which designates this property for commercial use and complies with the UDO. If approved, the motion should be to approve the rezoning and the planned unit development which complies with the standards of the UDO.

Commissioner Jensen asked if taller plantings could be placed along the fence as the building was tall and backed to residential. (a 60' buffer and the type plants there will get taller and thicker and has existing pines and plantings); noted the gas line inside the fence limits the plantings.

Commissioner Grimes asked the time frame for this project. (Phase I will begin this year). Clarified Town would install entire length of Peakway with applicant paying transportation impact fees. Traffic study justifies road improvements and should traffic warrant such, a traffic signal may be located at the Peakway and SR1010.

Commissioner Meckes envisions an indoor market like the fairgrounds (some permanent tenants and some weekend vendors). Clarified two buildings are not connected with one used for storage. Improvements to inside will bring the building up to code (handicap and sprinklers).



Public hearing #3 continued

Commissioner Schulze discussed the loading zone (located at the far end of the buildings with existing road and loading dock).

Commissioner Jensen discussed the 10 year storm run-off (pre and post) with the engineer stating it is built to the 10 year state standard with water quality sized for 100 years.

Mayor Weatherly opened the public hearing at 7:45 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Commissioner Grimes clarified the reason for the PUD vs. a basic plan (property was zoned industrial and could be rezoned according to the UDO with inclusion of site plan, allowing it to move more quickly, and allowing flexibility to the old property site that meets uses in PUD; site could allow for another permitted use in the future.

Commissioner Meckes noted his concerns with residential next to industrial has been resolved by the petitioner and saw this project was good for the community - people come to town to the flea market and would visit the downtown as well.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the PUD and the rezoning as it complies with the language of the UDO. Motion carried.

End of public hearing # 3

Public Hearing # 4 – Annexation Petition # 324

Public hearing concerning Annexation Petition # 324, Beckett Crossing Phase IIIB, Comstock Homes of NC, LLC, owner(s)/petitioners; petitioning to annex 11.4689 acres including public rights-of-way; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning oriented to the location of the property, which was the completion of the Beckett Crossing Subdivision that was approved under the original plan and included in the wastewater allocation plan. Streets will connect to Carriage Dows and to Zeno Road.

Mayor Weatherly opened the public hearing at 7:50 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve annexation petition # 324 by adoption of an ordinance to extend the corporate limits to include the 11.4689 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.



PUBLIC COMMENT

**Public comment is welcome. Anyone may address the Board concerning any item.
Mayor Weatherly will recognize those wishing to speak at the appropriate time.
Please limit your comments to 3 minutes to allow others to speak.**

John Sparath complimented town on outstanding job in handling the snow. He's anxious to shop the flea market.
End of public comment

NEW BUSINESS

Item # 1 – Swift Creek Incorporation

Presentation by Tom Vass and William R. Miller, representatives from Swift Creek Incorporation; possible motion regarding incorporation.

Swift Creek representatives displayed a map of 8,000 acres in the Swift Creek area (approximately 5000 developed - 7000 people) proposed for incorporation, 65% of the citizens had rallied and desire to assume the responsibility of self-government to protect the watershed and preserve quality of life. A formal referendum in November 2000 accounted for 58% of the voters who petitioned the General Assembly for approval; now, they are asking support from the neighboring towns. Attention was drawn to the fact neighboring towns had adopted the 1992 Swift Creek Land Management Plan in order to preserve the watershed, which was designed for low density development of the residential area, in which wells and septic systems are maintained by individual residents; there is some pressure to put water and sewer there and most residents feel it's in the best interest to protect the watershed and see no way to prevent this except by incorporation. Miller noted individual land owners have made investment and is their responsibility to maintain their own wells and septic and their feeling is government would provide services for the people that they expected and the way it was projected when they came there and they would not be forced into other community types of services. They asked the town adopt a resolution in support of incorporation; it was noted the town would loose a small amount of sales tax revenue that these 7000 people share (estimate loose for Apex \$25,000).

Commissioner Grimes asked if there were precedence for municipal water and sewer. Representatives advised this is done by design with a number of towns operating fine without municipal water and sewer; this area has suitable soil to handle wells and septic systems.

Commissioner Grimes questioned the number of residents that didn't want incorporation. Miller explained some didn't understand the objective to preserve the area as is. Vass stated some sentiment was they didn't want government at all.

Commissioner Jones clarified the surrounding town boundaries (Garner, Cary, and Raleigh) and that there was no municipal water and sewer except Yates Elementary School, Yates Mill Road which was on Raleigh sewer (grants were used for this); there are a number of community wells; streets are plumbed for municipal water.



New business # 1 continued

Mayor Weatherly felt there was some fear of annexation. Miller explained if policies were changed and annexation occurred, it would violate the Swift Creek Land Management Plan, already agreed to, that decides the way Swift Creek area would be developed.

Wake County ordinance allows for cluster subdivisions, and several attempts had been made for such, but had not happened; felt incorporation would allow for services that would provide ability to monitor wells. County doesn't test wells and if incorporated, they could maintain the intensity of their water supply and govern the land use above the wells and further provide clean water; even if not incorporated, the same thing will happen.

Mayor Weatherly stated should systems fail; owners would seek services from neighboring municipalities and made reference to the Castlewood Subdivision in Town. Miller noted it was not the same kind of system. Mayor Weatherly continued if wells became contaminated, there would have to be another water supply. Miller stated incorporated or not they would have to address contamination, but if incorporated the process would be more organized; when wells fail, the individual responds to his own needs, different than surrounding towns.

Commissioner Schulze questioned opposition to the incorporation and didn't feel 58% in favor was enough to decide, and didn't feel he had enough information. Miller advised there were 4 or 5 vocally opposed, but had attended the meetings. Reasons were development of the area – commercial vs. residential, and can't develop as commercial in the watershed. A former development was approved and asked for Cary water and sewer, but didn't happen. Build out was 2/3 of the area and could grow to 10,000. Vass continued the incorporation was selfish interest and due to environmental issues wanting to protect the watershed; keeping ground water clean was most important for the citizens. Miller asked support of the resolution to incorporate, that would benefit people who live here and Wake County. The bill didn't pass didn't pass either session, but is still alive in the Finance Committee.

Commissioner Meckes didn't feel he had enough information to agree or to oppose. He did recall the Board on record about three years ago being opposed to incorporations of both Swift Creek and Green Level – with neither one being successful. Commissioner Meckes would like to discuss this further.

Commissioner Jensen clarified there were no failed septic systems. Miller further responded those who were opposed could be excluded from the incorporation, but cutting out defeated the purpose of protecting the watershed, but it could be done.

Mayor Weatherly felt this was an attempt to ward off annexation from Cary and saw no enhancement to the level of services, still served by County services for police, fire, garbage, other than test of well and taxes.

Manager Radford advised the NC League of Municipalities had taken the position to oppose new incorporations which are primarily for the purpose of preventing annexation by an existing municipality. Such incorporation divides governing bodies, and the Apex share of tax (\$25,000) is estimated by population and each year would grow.

**New business # 1 continued**

Commissioner Jensen compared the 8500 areas to the size of Apex, with Miller noting it's completely surrounded on all sides. Commissioner Jones looked at revenue long term with a 10,000 population not being a huge amount of money, but if not incorporated, they would be gobbled up by Cary and Raleigh, and it would mean not getting the money.

Mayor Weatherly didn't feel there was a threat for involuntary annexation by Cary. He called attention to a resolution in the agenda packet opposing the incorporation.

Commissioner Grimes wanted to compare the resolution in support, fully supporting the protection of the watershed, but a bit confused by the benefits, and indicating it maybe best not to do anything.

Mayor Weatherly continued Apex was party to the plan and he wasn't opposed to the renewal. The General Assembly had adopted it as state law in 2000 and in 2003 it would no longer be state law but a gentlemen's agreement, and there was no intent to violate it - he would support renewal of the agreement.

Commissioner Jensen hoped others would live up to it as well, but felt we should protect ourselves. Commissioner Meckes noted the high density was missed by one vote. Commissioner Jensen asked how the lot size would be kept low density. Miller preferred it be proposed in the charter, and if not through municipal management. With no water and sewer, there would be no high density development and would keep the lots larger.

Commissioner Schulze had mixed feelings - seeing the referendum as 65% for and 35% against. He had heard only one side of the story and was not comfortable to vote based on the previous position taken.

Mayor Weatherly stated this could be deferred, since the legislators didn't go in session again until May and could be considered before then. Commissioner Jensen wanted to see the resolution in support. Mayor Weatherly stated one was in support and one opposed. Commissioner Jensen indicated he was hard pressed to vote against it.

No further action was taken.

End of new business # 1**Item # 2 - Clean Water Management Trust Fund Grant**

Possible motion of formal acceptance of the Clean Water Management Trust Fund (CWMTF) Grant award for the Wastewater Re-use Project.

Dan LaMontagne, Town Engineer, presented a Clean Water Management Trust Fund Grant Agreement, and asked formal acceptance of it to allow for re-use of wastewater. He noted this important due to the increasing larger industrial base and saw this as an excellent alternative for industrial process water and for irrigation - allowing new business and industry to design their facilities to use re-use water instead of treated drinking water for processes that do not need high quality water. Total estimated project cost is \$770,000 - grant \$166,200 - remaining town cost \$603,800. Line would run along Pristine Water Drive and Lufkin Road. There are already commitments and hopes for more as it's very cost effective and would preserve drinking water and reduce discharge into Middle Creek. Manager Radford advised money is available. The Board of Education has not committed, staff will contact them and are hopeful for a commitment.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to formally accept the grant as recommended. Motion carried.

End of new business item # 2



New business continued

Item # 3 - Resolution - I-540 "Outer Loop"

Possible motion to adopt a Resolution in support of the complete I-540 "Outer Loop".

Mayor Weatherly called attention to much conversation regarding renew or delay of sections of I-540. TAC began discussion and felt Town should be on record in support of the continued plan to complete the loop as quickly as possible. Commissioner Grimes agreed to adopt the resolution and without delay. Mayor Weatherly indicated wording should say expedite with all due haste. He indicated the Raleigh portions were complete or soon would be and to delay would prevent this from happening for others, and to widen NC55, a local road, was not a solution to the volume of traffic, and he didn't want the alternative to be to accommodate a 5-lane freeway through Apex. In the conversations regarding allocation of money, he noted these were Raleigh projects, not even our own projects.

Commissioner Meckes felt money was better spent on thoroughfares rather than later on bypass and better use of taxpayers money, as costs would be bumped to a greater expense by deferring larger costs than less smaller items; this would not only impact Apex, Fuquay, but Harnett and Johnson counties – as there a solid stream of cars in the morning and afternoons that would travel the five lanes.

Commissioner Jensen felt if traffic were shuttled around Apex, it would be much nicer town. He wanted to see the language ...further regional cooperation, trust and basic equity... changed to ...regional equity. Mayor Weatherly was comfortable as it was worded, since this Board was not consulted and noted we strive for regional cooperation.

Action: Motion by Commissioner Jensen to change the wording. Motion failed due to lack of a second.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to adopt the resolution with the modification to include wording to expedite same with all due haste.

Vote on the motion to adopt the resolution with modification was unanimous. Motion carried.

End of New Business Item # 3**Item # 4– Citizen Advisory Committee on Education (continued from 12/18/01)**

Request from Commissioner Jensen regarding Citizen Advisory Committee on Education.

Commissioner Jensen had spoken with Ellen Kosh, Cat Kearns, and Jim Hearst who volunteered to get things started. He felt this committee would make a statement to the Board of Education and wanted to move quickly on this.

Commissioner Jones spoke in favor of a committee, but indicated the Apex Education Foundation had taken a lead role and had been advocate for the community in regard to the school system for a long time and had given support to the PTA, principles, etc. and from time to time had requested contributions. He requested a presentation from them and possibly could generate or enhance support to them.

Commissioner Jensen felt the citizen committee was a step away form the business community. He reviewed projects he felt the committee could help with and possibly fill holes (attached). Commissioner Schulze felt we may be able to mold what we have to meet our needs and to get things accomplished.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to have the Apex Education Foundation for a presentation and to refer this item to the Planning Committee. Motion carried.

End of New Business # 4



New business continued

Item # 5- Downtown Steering Committee (continued from 12/18/01)

Mayor Weatherly recommended the following appointments to the Downtown Steering Committee:

Bill O'Neal (Anytime Wines) Cheryl Bynum (Apex Chamber) Eb Bailey (Appearance Commission) Tim Carley (Carley's Restaurant) and Laura Grimes (Downtown Resident).

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the appointments. Motion carried.

Comments by the Manager:

Manager Radford commented Clear Scapes had designed a parking strategy and a Cultural Arts Building. The latest plan will consist of 128 parking spaces vs. the current 30 on the east side of Salem Street. Plans will be available for viewing on January 22, 2002 at 7:00 p.m. in the Police Department, 205 Saunders Street. Manager Radford continued, it was an expensive project, but felt there was a way to afford it and should expedite it.

New Business Item #6 (moved from Consent Agenda Item # 11)

Ordinance directing Code Enforcement Officer to demolish structures located at 401 and 403 South Salem Street.

Director of Construction Management presented a brief slide presentation showing the structures in question located at the NC55 intersection. Manager Radford indicated there had been illicit activity at these locations and people had been asked to leave and felt their existence was a detriment to the community and the best advantage to not have them there. The owner of the property has an interest party who would like to purchase the property and would like to get rid of the structures. There are options to consider regarding recovery costs of demolition. The next step would be to set a public hearing and adopt the ordinance – public hearing set for February 5.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to start the process. Motion carried.

End of New Business Items**EXECUTIVE SESSION**

Attorney Kaus advised the purpose of Executive Session was to discuss pending litigation with Haddon Hall and Apex Properties, LLC.

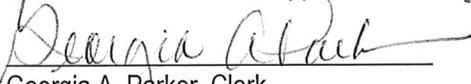
Action: Motion by Commissioner Meckes and second by Commissioner Grimes to enter into Executive Session to consult with Town Attorney regarding the above issues at 9:30 p.m. Motion carried. Minutes are recorded separately.

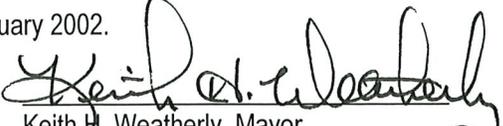
Action: Motion by Commissioner Schulze and second by Commissioner Grimes to move back into regular session at 9:36 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jones and a second by Commissioner Grimes to adjourn at 9:37 p.m. Motion carried.

The above minutes were approved on the 5th day of February 2002.


Georgia A. Parker, Clerk


Keith M. Weatherly, Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, February 5, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
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Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, February 5, 2002 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street.

Invocation by Commissioner Grimes
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

CONSENT AGENDA

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

Action: Motion by Commissioner Grimes and second by Commissioner Jones to approve the consent agenda as presented. Motion carried.

1. Minutes of January 15, 2002 Board of Commissioner's Meeting.
2. Minutes of January 15, 2002 Board of Commissioner's Executive Session (separate cover).
3. Budget Ordinance Amendment No. 5 – appropriates \$322,000 of GF balance to pay remaining amount of contract for improvements at Hunter Street crossing and also recognizes a \$315,000 federal grant from FEMA for purchase of a fire truck. Previously budgeted \$225,000 for fire truck is being moved from capital outlay and transferred to Fire Station Project Fund.
4. Capital Project Ordinance Amendment – recognizes transfer of \$625,000 from GF and appropriates to complete construction of Fire Station.

Continued on page 2



Consent Agenda continued

5. Ordinance Amending Official Zoning District Map regarding rezoning permit # 01RZ07, Midrock Properties, 805 Center Street, from Light Industrial and Business I Conditional Use to Planned Unit Development, 5.75 acres, more or less.
6. Award of the R-01-2 Hunter Street Rehabilitation Construction Contract to Pacos Construction Company, lowest responsible bidder, for a bid of \$91,629 (tabulation attached).
7. General Release "Town of Apex vs. McConnell, et.al. – previously-approved settlement. No. 99 CVS 9620 (Wake County).
8. Resolution accepting dedications of Public Rights-of-Way and Easements for construction of the Apex Peak Way – George C. Atkins and wife Betty Ann C. Atkins and Pinnacle Towers, Inc.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows. Commissioner Jensen asked to amend the agenda to allow Mr. George Wait, District B Advisory Board to Wake County Schools to speak.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to amend the agenda as requested. Motion carried.

The regular meeting agenda was set as amended.

Manager Radford asked permission to introduce a newly hired Town of Apex employee - Director of Planning David Rowland introduced Greg Wilcox, Zoning Code Enforcement Officer.

PUBLIC HEARINGS

Public Hearing # 1 – Expiration of Building Permits (Director of Construction Management)

Public hearing and possible motion regarding an ordinance to amend the expiration period for building permits.

Kent Jackson, Director of Construction Management, reviewed the proposed language to amend Apex Code of Ordinances Section 5-24 (a) and (b) in regard to expiration of building permits and being consistent with North Carolina Building Code governing time limitations for building permits - (a) commencement of construction within 6 months from date of issuance of permit, and (b) if commencement of work is discontinued for a period of 12 months, permit expires immediately with no further work being performed until new permit is issued.



Public hearing # 1 continued

Mayor Weatherly opened the public hearing at 7:08 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Meckes and Commissioner Grimes to ~~adjourn at 7:09 p.m.~~ ^{adopt the ordinance.}
MOTION CARRIED.

End of public hearing # 1

Public Hearing # 2 – Demolition of Structures (Director of Construction Management)

Public hearing and possible motion regarding an ordinance directing Code Enforcement Officer to demolish structures located at 401 and 403 South Salem Street.

Kent Jackson, Director of Construction Management, asked the Board to approve an ordinance for demolition of properties at 401 and 403 South Salem Street. Action would be in accordance with Chapter 5, Division 3 of the Town Code of Ordinances. Subject structures were determined to be dilapidated and unfit for human habitation. He indicated the property owner had assured voluntary compliance and has talked with a grading contractor regarding the demolition.

Mayor Weatherly opened the public hearing at 7:10 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the ordinances approving the demolition.

Manager Radford asked for a 90 day window to allow the property owner time to voluntarily clean-up the area, and at the end of that time, the Town would begin in-voluntary clean-up of the site.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to amend the motion to allow for the 90 day window and at the end of this time, proceed with involuntary clean-up of the site.

Vote on the amended motion carried.

Vote on the original motion carried.

End of Public Hearing # 2



Public hearings continued

Public Hearing # 3 – Annexation Petition #325 (Director of Planning)

Public hearing regarding annexation Petition #325, Paul A. & Anne H. Cain, owners/petitioners; petitioning to annex 4.43 acres including public rights-of-way, located off Olive Chapel Road (SR1162) and being known as Lot 1B, Chapel Ridge Subdivision (1401 Barnside Lane); possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning indicated on a map the 4.43 acres including public rights-of-way, off Olive Chapel Road in the Chapel Ridge Subdivision. Property owner would like to develop the property for a single family dwelling. The purpose of annexation is to allow the owner to connect to Town water; a line is available along Olive Chapel Road for access. The entrance to the property is within the Chapel Ridge Subdivision. There are covenants on this property that restricts house size.

Mayor Weatherly opened the public hearing at 7:14 p.m.

Anne Cain, owner, spoke in favor of the annexation and advising construction has begun and request for annexation was due to the scarcity of the well water in this area. Other neighbors have the same problems with well systems and some have connected to Town water.

With no one speaking in opposition, the hearing was closed at 7:15 p.m.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to adopt the ordinance to extend the corporate limits by the 4.43 acres. Motion carried.

End of public hearing # 3

Public Hearing # 4 – Rezoning Case #01RZ13 (Director of Planning)

Public hearing regarding rezoning case #01RZ13, Paul & Anne Cain, applicants, seeking to rezone from Wake County Designation to Rural Residential, property located at 1401 Barnside Lane, Chapel Ridge Subdivision, containing 4.01 acres; possible motion to adopt an ordinance rezoning the property.

Director of Planning indicated the 4.43 acres would now need to be rezoned from a County designation to a Town of Apex designation to Rural Residential and being known as 1401 Barnside Lane. Planning Board has recommended approval of the rezoning designation.

Mayor Weatherly asked the reason for discrepancy in the annexation acreage of 4.43 and the rezoning acreage of 4.01. Town Clerk advised the discrepancy was 0.42 acres that was located in the public rights-of-way; with annexations, those rights-of-way are included; in the rezoning, they are not.



Public hearing # 4 continued

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

Petitioner and owner Anne Cain gave her support for the rezoning designation.

With no one speaking in opposition, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve rezoning case # 01RZ13 for change to Town of Apex designation of Rural Residential. Motion carried.

End of public hearing # 4

Public Hearing # 5 – Annexation Petition #326 (Director of Planning)

Public Hearing regarding Annexation Petition #326, Canapex, LLC., owners/petitioners; petitioning to annex 0.709 acres including public rights-of-way, and being known as Whitehall Manor Recreation, and fronting South Salem Street; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning noted this petition completes the annexation of Whitehall Manor; the 0.709 acres including public rights-of-way is the recreation site fronting on South Salem Street.

Mayor Weatherly opened the public hearing at 7:20 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt an ordinance to extend the corporate limits by the 0.709 acres. Motion carried.

End of public hearing # 5

Continuation of Public Hearing # 6 – Site Plan Apex Cabinet (Director of Planning)

Applicant for Apex Cabinet site plan has requested another continuation of the public hearing until February 19, 2002 – previously continued from the February 5, 2002 meeting.

Director of Planning noted the petitioner's request for continuation of this hearing to the February 19, 2002 meeting.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to continue the hearing as requested to February 19, 2002 meeting of the Board of Commissioners. Motion carried.

End of Public Hearings



OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

Richard Kalp, Summit Lake Drive, is a former Mayor of Victor, New York. He walks or runs the asphalt path around the Town's park-lake and notes there are lots of people who traffic that park, roller bladders, skaters, walkers, bikers, etc. He has witnessed an accident with one person being hurt, unfortunate, but not serious. He indicated with all this traffic moving in all directions, there were accidents waiting to happen and asked the Town to take a look at directional movement.

Mayor Weatherly noted there are conflicts of uses, in the pedestrian traffic areas.

Lois Allen, Swift Creek, noted pressure for high density development in the Swift Creek community. She feels lose of sales tax would be off-set over time, if there was prevention of development that would continue to protect the water supply. She noted 60%+ voted for incorporation and there is pressure to delay it. She asked Apex to give support to the incorporation to allow for the community to be their own representation.

Linda Anderson lives in the downtown area known as West Moore Street in the Historic District by the Town Cemetery, with the rural look. Her neighbors have livestock animals on their property and are breeding goats. She noted there are no restrictions on the number of livestock animals you can have in town. She is interested in placing restrictions in this area, but not on farms in Town. Her problems have been with smell, flies, and mosquitoes, and that there are too many animals being harbored on such a small, less than one-third acre lot; indicated the property owner does have a farm outside of town. She has erected a fence to protect the visual but it doesn't stop the odor or the noise. She stated the animals are left for extended periods of time without anyone attending to them; there is no humane officer and these concerns go beyond the animal control officers, since they can't monitor the site. She stated the Police Department had been excellent to respond to the animal calls, but this is placing her in an awkward position to call them, and the conditions are worsening. She likes animals, but doesn't appreciate the breeding of these livestock animals, particularly in the Historic District. She asked the Board to look at and impose some restrictions. C

Public comment continued



Public comment continued

Tom Vass, Swift Creek Community, attended the meeting to see if the Board had further questions or concerns or desired an update with the proposed incorporation of Swift Creek. There were none.

George Gasperson, Yates Mill Pond Road, addressed the Swift Creek Incorporation, and noted those for incorporation were desiring to protect the watershed. He doesn't fear annexation by Cary, thinking Cary doesn't want the land with no sewer or water on it. He noted all services to the community were provided by the citizens living there. He desires to leave the area un-incorporated and strengthen land management; in the future, allow Towns to annex.

Herm Jaffee indicated he had followed the Shearon Harris Plant for three years and shared a press release that indicated potassium tablets were being distributed to residents as a preventative for cancer. He distributed literature regarding this and asked the Town to store these tablets for the public. Commissioner Schulze assured him these tablets were for the prevention of thyroid cancer not other types of cancer; he didn't want misconception. Jaffee responded cancer comes from the sun and the thyroid glands.

End of public comment

NEW BUSINESS

Item # 1A – George Wait, Chair District 8, Wake County Schools

Commissioner Jensen had invited Wait to address the Board regarding advisory counsels to the Wake County School Board. Wait indicated the advisory boards meet with the school board and address issues such as school attendance, change in schools, etc. He feels due to extreme growth and the impact on the existing school base, there should be plans made to assure all plans are the same. Review of the annual report indicated their desire to help parents solve school issues such as reassignment and bus transportation issues; school capacity, repair of schools and the opening of new schools. He indicated PTA members are represented as well and the desire is for a community based school concept where children will attend schools in the area they live in and not be bused. He indicated parents as well as children want to be represented in their own schools near their residences and desire to help to develop ideas where they do not have to move but keep in tack with their schools. He asked the Board to further look into this now and give help. Their next meeting will be February 25 at 5:30 at the Lufkin Middle School; he indicated they have a website as well.

End of new business item # 1A

New business continued



New Business continued

Item # 1 - Financial Summary (Finance Director)

Director of Finance gave a review of the 2nd Quarter FY01-02 Financial Summary, indicating from the attached summary, at this point the Town was in good condition. Manager Radford noted the announcement of the Governor, regarding budget restraints on local governments and noted that we are where we were one year ago in a budget shortfall with municipal and county revenues. He indicated last year's shortfalls and this years are about the same, and sees no difficulty in covering it; there being a cushion between expenditures and revenues.

End of new business item # 1

Item # 2 - Traffic Calming – (Robin Oke)

Robin Oke, Surrey Meadows Home Owners Association President, spoke regarding the Traffic Calming Ordinance, and indicating the qualifications are not being met and asked there be a reduction in costs for implementation or have the police better see where calms would be of benefit to reduce traffic speeding. She thanked the police for their support, but desires the issue of eligibility of the speed requirement be examined, and feels 50% exceed 7 mph was too much, and should keep the speed as low as possible.

Police Chief Hearn responded to Commissioner Schulze's question regarding the weight and how it was measured. He explained the traffic surveys for this area indicated a larger volume of traffic in the morning than afternoons. He reported on the statistics and the former study by Kimley-Horn regarding cost estimates of \$1500 to \$1600 each. Comparisons were made with Charlotte and Cary policies: Cary – 85% at 10 mph and Charlotte - 15% at 5 mph. His call is that 50% at 7 mph was reasonable and fair. He has discussed this with the District Attorney's office and they agree the public has a more fair shake at 10 mph and less than 7 mph is more appropriate. He feels there may be opportunity to tweak this requirement.

Director of Construction Management Jackson responded to Commissioner Meckes' comment regarding completion of another leg of the Peak Way, thereby eliminating cut-through traffic; schedule: bids would go out on 02/26/02 with award 03/05/02 and at least 9 months of construction.

Oke agreed the Peak Way would eliminate some of the traffic, but creatures of habit would continue to cut through the neighborhood.

Commissioner Jones commented on the Farmington Woods stops, in that you would seek different direction to travel; and that the only criteria in the Town's policy had not been met; felt there should be more discussion and input from Police and Fire with no decision being made at this meeting.



New Business

Item 2 Traffic Calming continued

Chief Hearn noted pros and cons had been developed by Town Engineer Gron; he indicated more speeders are moving upgrade than down; he does site speeders, and that the recommended stops had helped with the speeding problem, but sometimes creates more problems.

Commissioner Meckes suggested vacated parked police vehicles to deter speeders. Oke insured there was neighborhood support for calming devices with only one neighbor refusing to sign, all Vintage Grove homes signed. Commissioner Meckes reminded her that the Board was blasted for placing the stop signs in the neighborhood.

Chief Hearn noted this was the only neighborhood that had responded to the policy; and no other surveys were returned. He continued this was experimental; he had met with Clark Pavement Markings and advised there is a plastic adhesive strip that could be placed on roadways that may cause vibration and with display of "slow" signage could deter speeders; other alternatives could be considered; he was advised these humps could cause damage to asphalt. Commissioner Jones asked if simple painting could give the impression to slow speeders (may to begin with).

Commissioner Grimes seemed to think that in meeting the criteria, 50% threshold was on the high side; asking if the humps were effective or just gets their attention.

Mayor Weatherly asked if this could be referred to the Planning Committee. Chief Hearn responded to Commissioner Jensen's question, if he recommended humps – he does have concerns, studies have been done and the speed is not there to support the concerns and are they legitimate to meet the policy criteria; he continued Kimley Horne are the professionals and this is what they do!

The Planning Committee will review these concerns and will bring a recommendation of their findings back to the Board.

End of new business item # 2



New Business continued

Item # 3 – Fire Protection Services Agreement – (Town Manager)

Possible motion concerning Fire Protection Services Agreement with Apex Volunteer Fire Department.

Mayor Weatherly expressed appreciation to the Manager and President Brian Yates, of the AVFD and the volunteers that have worked to enhance the superior services given by the AVFD over the years; and the Town couldn't have provided those services without the volunteers nor sees such in the future; stating they have been amicable and agreeable in the best interests for the community.

Manager Radford commented on the continued efforts with the Fire Chief and the AVFD to reach a common ground with a goal to put out fires and provide for a high level of fire protection service inside and outside the Town. The first meetings were held to discuss issues, some being from the past. The AVFD and the Town realizing there are benefits to consolidation and hashed out the differences. At the second meeting there was discussion of what could be done together and leaving out previous issues. He expressed his appreciation to the AVFD for putting all personal feelings aside to reach an agreement.

The proposed agreement has been reviewed by the Fire and EMS Services Committee, and has given approval. The AVFD Board and membership met with their legal counsel, Fire Chief and Manager on the prior evening and gave approval with their full understanding of the proposed agreement with a vote of 28 in favor and 4 being opposed. There were two minor changes proposed: 1) Attachment A – be provided listing equipment, vehicles, property, etc. to be transferred to Town and inclusive to be "received as is"; 2) section discussing ...AVFD Chief making appointments to the Fire Advisory Board ... be addressed and inclusive knowing there is no AVFD Chief, but read AVFD President.

Major Highlights:

- conveyance of assets, equipment, apparatus, vehicles, real and personal property, etc - \$2,634,784
- purchase/replacement of two fire vehicles by volunteers up to \$200,000 from AVFD fund balance (Chief Echevarria responded to Commissioner Grimes question: reason for the volunteers making purchases – in that, provision was for equipment vs. cash; AVFD will attempt to sell older vehicles as used; will discuss what to do with revenues when sell is complete. President Yates noted timing is the issue: one vehicle may be remounted and not sold and could be placed on the Town's list with preference Town sell same.)
- retainage of \$25,000 by the AVFD, with no concern to the Town as to its use
- Town accepts debt service related to principal balance of Rescue 1 and new Hill Fire Station
- volunteers are benefits eligible : workers compensation, training, etc as listed; increase pay-per-call from \$3 to \$10 (paid directly to AVFD for their distribution as to how much to pay to individual members – becomes a regular revenue to the AVFD); attendance at annual town employee recognition events/service awards; longevity pay at a full-time equivalency ratio of 3 years of volunteer service = 1 year of full-time service



New Business Item 3 continued

- contract with Wake County for fire protection services, emergency, medical services outside the Hipex Fire District
- initial term of agreement will be for (20) years with renewal opportunities
- creation of Fire Advisory Board (Mayor has authority to appoint three members to serve in advisory capacity like other existing advisory boards)
- participation in NC Firemen's Relief Fund program) Town help administer
- Town agrees 1936 Fire Station # 1 remain a fire services facility for a ten-year period.

Manager Radford completed review of the proposed agreement, stating it had been a pleasure to deal with the AVFD to reach an agreement, with the goal being the same, to provide fire services. Fire and EMS Services Committee met on February 4, 2002 and recommends approval contingent upon acceptance by the AVFD. He recognized acceptance by the AVFD and further asked delay of signatures until "Attachment A" has been completed and reviewed.

Commissioner Meckes expressed excitement in reaching the agreement and in the way it had been handled with "hats off to the guys". Commissioner Jones noted President Brian Yates as being a third generation firemen and appreciated his determination in getting this done. He further felt with this commitment, recruitment would be easier and was in the best interest.

Mayor Weatherly knew the Town would continue to be well served and doesn't envision the department without volunteers; their dedicated commitment will enhance standards that already exist.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to approve the agreement as presented, with delay in the signatures until receipt of Attachment A has been completed and reviewed. Motion carried.

End of New Business Items

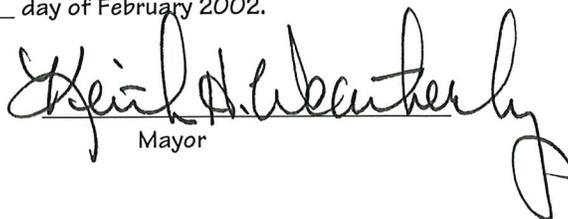
Comments by Mayor Weatherly: With deep regret, he advised the Manager had accepted the resignation of Fire Chief Ray Echevarria. He was disappointed to lose him, as he would be returning to Wake County as Fire Marshall. He complimented him on his "substantial" accomplishments during his brief tenure with the Town.

ADJOURNMENT

With no further business to come before the Board, motion by Commissioner Jones and second by Commissioner Grimes to adjourn at 8:45 p.m. Motion carried.

The above minutes were approved on the 19th day of February 2002.


Town Clerk


Mayor



TOWN OF APEX, NORTH CAROLINA
Minutes of the Board of Commissioners
Annual Retreat 2002

The Town of Apex Board of Commissioners held their annual retreat on Friday, February 15, 2002 at the Town Campus Community Center, 73 Hunter Street. Mayor Weatherly called the meeting in session at 8:30 a.m. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Manager Radford and staff members gave an overview of the agenda (attached). Issues were those of today and the future. The Board was to help establish priorities and set goals in the best interest of the community.

Director of Planning

David Rowland reviewed population projections based on 4% growth rate; with inclusion of 1.0 MGD wastewater being on line, and indicating potential for a sharp growth rate and need for new wastewater source. Discussion: Build-out of previously approved residential units by 2004 – Wastewater allocation plan; population growth (40,000+); wastewater reserve for commercial construction (harder to allocate larger water user industry); additional 1.0 MGD wastewater capacity; balance of commercial and residential development; NC55 corridor plan (potential for major employment centers/office park - sizable amount of property behind Days Inn); antiquated RTP plan not fitting today's technology (more office type development closer to residential development).

Director of Construction Management

Kent Jackson noted suspension limitations (wastewater allocation ordinance) has worked well and potential for renewal. Anticipates construction of office and flex space to slow down due to supply and vacancy rate for lease space; projects larger than normal construction: school systems and non-profit organizations – will help with balance of commercial construction. Overall: 2002 Projections for building should be similar to 2001 (residential construction continued due to aggressive interest rate reductions and incentives by builders).

Finance Director

Lee Smiley advised sales tax distribution had been received for second quarter and down by 7% from one year ago (approximately same amount of money from last year due to the census evaluation).

Reimbursements that may be held by State: Intangibles tax: \$150,000 - Utility Franchise tax: \$500,000 to \$600,000 (Franchise/local tax: state is holding two of 4 payments – same with sales tax) Powell bill: – issued in October - Beer & Wine Tax: \$75,000 or \$80,000 - Homestead tax Exemption: \$2,000.

Discussion: Mixed truths concerning reimbursement information (State administers funds on behalf of local governments and has authority to impound them - State levies tax and sets up allocation for distribution - June 30 promises better picture regarding distribution); reimbursements do not impact current year budget but makes it difficult to budget for next year.

Available for FY2002-03

General Fund: \$4.2 million available -

Reserves: Surplus: \$100,000

Electric has little surplus;

Water/sewer: paid Raleigh and paid for water tank
(reserve for future wastewater facility)

Recreation, Historic Building and Library: no accumulation

Capital Project Funds:

Campus: some excess money to finish jobs -

Peakway: Not bid yet -

Other Funds: Cash on hand committed to finish projects.

Discussion: Park Bond - cash on hand \$160,000 - (potential park bond in upcoming election).

Director of Construction Management

Kent Jackson reviewed Current Capital projects:

1) Apex Peakway: Center Street to Old Raleigh Road - Design complete; bids open February 26; begin construction April - November (Peakway build-out: 2 lane, divided median and landscape - bike lanes; 90' right-of-way). NCDOT will evaluate signals.

2) Hunter Street Rehab: Extension of Campus Project - CSX railroad improvements - Second phase: roadwork, sidewalk, and storm drains - bid January - begin construction February - June. Paid to date: \$180,000 to CSX - awaiting final invoice (breakout of equipment and man hours). Discussion: DOT receives more reasonable rates and concerns with costs to town. Sidewalk connection between Town Campus and Salem Street will be completed with this project.

3) Mason Street Rehab: Project in design phase; bid in May; construction July - November; traffic study of Center Street indicates need for left turn lane on Mason for traffic westbound on Center - NCDOT will do signal adjustment. Stripping will be done on Mason turning left entering Campus with little stacking.

4) Olive Chapel Sidewalks: First phase complete: Pearson Farms to Olive Chapel School - Second phase: Greenbrier to Olive Chapel School - construction May - July, 2002

Gaps in sidewalk include segments: NC 55 to Holland Crossing - combinations were complete to fit money source - school area being most critical - 2 sections will be installed in spring - improvements to intersection on west side of Kelly will be widened with sidewalks (apartments will be constructed at same location).

Discussion: Stormwater control Shepherd's Vineyard Peakway – (Small basins with one large pipe during construction period, with what necessitates after construction – meets state requirements); Williams Creek Basin - study "25 year flood storms"; interest in Town taking lead in storm drainage.

Current Capital Projects

Director of Public Works Tim Donnelly reviewed the following projects:

Water System Projects:

- 1) Cary/Apex Water plant expansion complete April 2002 – Cost \$70 million - (Apex share \$16 million)
- 2) Lufkin Road waterline replacement – design complete – construction begins May 2002 – cost \$150,000 (water reuse project follows same area – cost savings to Town)
- 3) Meter-Vault and Pressure Reducing Valves – utilizes 9.2 million gallons – cost \$500,000 construction late 2002.
- 4) New Finished Water Supply Line proposed from Kelly Road has been initiated – Cost \$900,000 – construction late 2002
- 5) Construction has begun on the 1.5 Million Gallon Elevated Storage Tank at Tingen Road and Salem Street – completion of the \$1.95 million dollar project due November 2002

Sewer System Projects:

- 1) Wastewater Reuse Project - secured grants totaling \$221,000 – Project cost \$770,000 – design underway with construction to begin November 2002 (hopes to lose no funding) – Board to accept \$55,000 grant from Lower Neuse Basin – Opportunity for schools participation - proven technology.
- 2) Beaver Creek Basin Sewage Collection Upgrade – Kelly Road pumping station repairs \$130,000 – air scrubbing system ordered to reduce odors emanating from station (used where chemicals doesn't do the job) – station running at 78% capacity – cost study for future alternatives (\$25,000) with potential for added growth (initial design seemed to create problems).
- 3) Sludge Holding Facilities – design complete – bids in March – estimated cost \$950,000 (recycle all bio-solids on farmlands – not enough tank capacity when fields are wet in the winter)

Other Public Works projects:

- 1) PW & Utilities Shelter – complete
- 2) Renovations PW - \$50,000 – start in May
- 3) Powell Bill Street Repairs – most repairs to culvert at Olive Street and Carriage Ridge Way and to railroad crossings on Hunter in front of Town Hall. There are more street repairs than money – streets are stronger with curb and gutter (Mason Street with sidewalks).
- 4) 5 Th Circuit and Electric Distribution – complete by June 2002 – final cost \$275,000.

Current Capital Projects Review Parks, Recreation & Cultural Resources

Director of PR&CR John Brown reviewed the most significant projects:

- 1) Kelly Road Park, Phase II completed, most utilized in system
- 2) Community Center – open May 2001 - most significant
- 3) Greenways – worked with Haddon Hall & Pearson Farms homeowners associations to improve public greenways alignment and drainage - \$14,000 (maintenance is homeowners responsibility) - other associations have declined to participate at this time.
- 4) West Street Park Phase I – oldest park - \$11,000 spent for fencing, grading and drainage - Phase II playground equipment and replace picnic shelter, landscape and lighting.
- 5) Salem Elementary Park has lighting of ball fields complete – joint use improvements with Wake County is mutually beneficial (no land or development costs to Town) Town has 10-year agreement with schools and hopes to include use of the Salem School and Lufkin Road School and good through 2007 – Town doesn't anticipate not being able to use school sites but does expect on-going fee changes – will look into the possibility of charging schools fees for use of Town facilities - town pays for utilities and capital costs to install lighting (no credit for lighting – some have been declared surplus to the school for purchase).
- 6) Irrigation - Project removed 4 ball fields from Town's water system to irrigate from Town Lake – water conservation measure (re-use water will help fields in schools sites).
- 7) Master Plan – Renovate Town Hall – Software program for registration, web-page update, and review of existing policies/procedures.

Various other projects: completed Master Plan; study of Renovation Old Town Hall; Software for registration; expand website; review existing policies and procedures.

PROPOSED CAPITAL IMPROVEMENT PROGRAM

Director of Construction Management

Kent Jackson reviewed Capital Improvements Projects: Water/Wastewater System, Street/Sidewalks, Electric System, Public Facilities, and Community Appearance.

Plans for completion of Olive Chapel Road sidewalks; downtown loop of sidewalks in conjunction with Town Campus (Hunter to Salem and Chatham Street – Mason and Elm). Peak Way plans for completion N. Salem – NC55 to Hillcrest Road (part of Haddon Hall development) - 5.9 miles.

Discussion: tradeoff of Peak Way with intersection improvements (Olive Chapel Road/NC55 – year 2003 – (intense development on Olive Chapel side with widening and curb between Lowe's Foods and gas station - help erosion and traffic) – work with NCDOT on other intersections (Lake Pine) – possible use of other funding sources for improvements – (Kelly/Olive Chapel Roads on NCDOT's safety list and has potential for assistance in signalization – plans for US64 and Kelly Road will help with geometry of this intersection.)

Others: resurface program – (discussed bikeway along Old Raleigh Road).

Kent Jackson

Fire Station: proposed future sites designed with a one and one-half mile response radius – (1) Kelly Road (2) NC55 towards Holly Springs. Strategy: break up process into years: land, design, construction. Kelly Road – (land dedication ordinance amended to allow public safety facilities). Future fire facilities means more operating costs, trucks, and firefighters – (recently approved fire services agreement may delay need for more fulltime staff, but inevitable that future facilities will need fulltime fire fighters).

Appearance Projects: Manager Radford

Cultural Arts Center – Clear Scapes design greatly received - project could proceed in the future - creates need for Parks & Recreation staff to relocate from Old Town Hall on Salem Street.

Downtown Parking - Priority project - greatly received - Historic Commission addressed concerns with enhancements to people space (no less parking) - \$500,000 + .

Municipal Campus – third floor – looking at nominal fee long-term leases – not ready to up-fit at this time (looking at 2 years – most design concepts can be completed by staff).

Tim Donnelly

Salem Street - \$250,000 design and construction part of streetscape project – 2 gaps Hunter to Center (begin 2003) and Chatham to NC55. Completed Salem Street (town received a good price to upgrade as power lines were in backs of buildings – rest in fronts with overhead service and phone lines -town would have to pay to move all services, even phone lines) - money shown does not finish the projects.

Water Improvements/wastewater:

Creation of a loop in water lines provides better water flow (12" and 8" line in the Salem Church Area) - coating of elevated storage tanks (2003) – improvements to wastewater includes pump station repairs and Raleigh force main upgrade, and the wastewater re-use project.

Electric System:

Routine includes more circuits (bigger lines or aged out) – spare substation equipment (voltage regulators, reclosures and breakers)

Streets/sidewalks: some have been discussed – others would be coordinated through maintenance.

PARKS & RECREATION PRIORTIES

Manager Radford noted completion of the \$22 million Master Plan proposes parks, recreation and open space opportunities:

John Brown noted 4 recommended priorities for immediate future, all being were unanimously recommended by the Advisory Commission. Options: nothing could be done, could pay as you go to implement, or alternate funding (potential for bond).

- 1) Acquire 42 acres south of Holland's Crossing to create a nature park (preserves wildlife and water quality) - # 1 priority - plans to purchase additional land - Town submitted clean water grant application and pursuing other grants. Sig Hutchins, Chair Wake County Open Space Commission, supports Town's efforts - Town used \$20,000 from Wake County's Open Space Bond to help development master plan. Area noted as most important for preservation within the watershed and extending to the American Tobacco Trail and within 3 miles of Jordan Lake. Property owners wish to sell entire tract of land - not just wetlands (property subject to flooding) - total proposed acreage 138 - (current access through subdivision - roadway would have to be built through wetlands unless entry is made through Holland's Crossing). Total Appraisal value: 36 acres \$495,000, 46 acres 660,000 = \$1,155,000 (grant \$387,185) - estate lots could be considered overlooking wetlands area - encourage any potential development to be pushed elsewhere. Discussion: Resale of good land. Note: conservations funds must be used for park property or facilities with restrictions and would not be for re-sale.
- 2) Greenway connections - high priority to connect sidewalks and greenways (Kelly Road Park to American Tobacco Trail; Dogwood Ridge to Jaycee Park and tying into downtown and discuss other connectivity efforts).
- 3) Second Gym for Community Center - # 1 priority - to accommodate programs and participants and due to increase in school user fees and lack of school space available.
- 4) Acquire additional future park land - areas identified on master plan (SR1010 and Walden Creek)

Note: plan provides opportunities for future years to come. Provides possibility of a successful bond issue - land not becoming any cheaper - Discussed: economic position and options for financing.

Finance Update: Finance Director noted projects for 2002 are completely funded and having available to spend in General Fund \$4.2 million and \$1.2 million in transportation and recreation - the problem would be in the upcoming year.

E-government/website –

Information Services Director Pete LaPiana, gave update regarding:

E-government: research indicates not many cities have E-government – would be new to Town and at a price – to continue with HTE would amount to about the same costs. Should Town pursue E-government, Town would be first municipality in Wake County.

Commissioner Schulze noted this above what he envisioned. He views web-page as a valuable tool and much improved, but would like an effort to provide more information, and with approval of the Manager, see more photo's and potential to provide more information for feedback, surveys, etc. Pete noted there are limitations, but site is kept current; some consider more as clutter and problems. Pete advised staff committee reviews information regularly and receives positive feedback. Assistant Manager Wilson noted: Chamber of Commerce provides extensive information and Town system links to theirs and sees no need for duplication.

Transportation Issues –

Director of Construction Management Kent Jackson advised the designed 6 mile Peak Way has 2 and one-half miles complete - construction cost estimated at \$2.5 million per mile for a total completion cost of \$15 million. Some design is being done for another portion of the Peak Way by Smith & Smith; staff is not aware of other development.

- 1) NC 55 widening - David Rowland indicated proposed Jessie Drive Extension would combine western leg of Peak Way as a bypass for through traffic around Town and provides an alternate to avoid widening NC55 through Town (creates a clover-leaf interchange). NC55 could become down-graded for streetscape section (angle parking, sidewalks, landscape and pedestrian amenities) – There are plans to widen NC55 and remove the bridge - and/or it would become a bottleneck situation with the road widening. Peak Way would provide a bypass around Town and avoid intrusion of NC55; staff has not discussed this idea with NCDOT.

Manager Radford noted NCDOT would not allow for any more at-grade crossings on the Peak Way, but could possibly close one for another (trains and traffic continue to move).

- 2) Conversion of US64 to a Freeway - NCDOT considers converting US64/NC49 to Charlotte a "relief corridor" (ex: Pittsboro By-pass). Conversion would mean Lake Pine Drive and Laura Duncan Road would become significant interchanges, taking homes and property and businesses. Staff would like to relate concerns with NCDOT suggesting control access freeway begin with and extend west of the proposed I-540 / US64 interchange, sparing the already developed US64 corridor. Discussion continued on the impact of Zeno Road and the I-540/US64 interchange.
- 3) Additional Access US64/NC55 – Potential for more Commercial development at this interchange); staff wants to avoid a Crossroads area, having only one way in/out. Site shows primary access off NC55 with secondary from Zeno Road - staff believes second access should be from US64 (NCDOT does not want more access off US64). Kimley Horne is conducting study for access alternatives for NCDOT to consider along with different configurations to connect (service road being considered for future development).

Manager Radford with Commissioner Jensen approached NCDOT regarding signal light at Green Level Church Road, but was not encouraged, but consideration will be given for a right-in/right-out approach on Zeno Road side. Staff asked for temporary access with light, to allow for a joint plan, in an effort to lead towards reserving property for an interchange. Manager notes development of the property would occur and Apex desires to work with NCDOT to make access happen.

Environmental Issues –

Tim Donnelly reviewed the history behind irrigation meters and reviewed pros and cons; notes meters require a substantial amount of water capacity and use of potable water is encouraged (typical home requires 1.6 times more WTP capacity as compared to non-irrigation metered home).

Staff recommends: Adopt capacity fees for all new irrigation meters installed (customer pays their own way for services they desire). Program would encourage smaller meters and longer run times, and reducing peaks. Plant capacity costs would be paid by those creating a non-essential demand. Proposed existing residential customer: \$1500 – Commercial: based on meter size - \$3,750 to \$14,812 - Future water costs: adjust capacity fees from time to time.

Discussion: convenience vs. need; master switch to turn-off use of meters during emergency (such as depletion of water storage tanks); irrigate can be done from regular meters with no way no way to prevent it; no meters can be supplied to subdivision entrances. Mayor Weatherly reminded: this issue occurred when water sources were becoming depleted, and now with additional capacity, it's ok. Commissioner Meckes desires to encourage no intensive maintenance plants.

SOLID WASTE COLLECTION –

Dan LaMontagne, Public Works, reviewed town collection services (waste oil, chipping, leaves, etc.) - funding based on customer fees accounting for \$1.4 million in revenues last fiscal year. Grass clippings were suspended from pick-up – options follow:

Grass collections: Option 1) town collect – purchase 2 trucks requiring one operator per truck to canvas streets once per week – clippings raked curbside – cost \$0.97 per household or Option 2) Contract collection with Waste Industries – 65 gallon container provided per home – Cost \$4.78 month – disposal at Town's expense.

Disposal options: 1) Griffin Brothers – no cost to town or
2) Currin Brothers – Cost \$90 per load (estimate 6 loads daily) - \$1.34 mo. per household.

Staff recommends: Town collection (collection truck can also collect leaves and clean storm water catch basins); employees can be re-assigned to other areas; homes not limited to 65 gallon containers.

Staff recommends: Griffin Bros (C&D Landfill) for disposal at no costs to town; 5 year contract. (Would like to work out specifics of extending water and sewer service to their facility).

Discussion: assured there is no irritant to Holly Springs – could provide mulch days for citizens; staff continues to view options, but not travel outside town to dispose.

Staff recommends: purchase one truck as soon as possible to allow sufficient time for truck to be assembled and delivered to Town by upcoming growing season commencing in May 2002, and approval for hiring an operator, with second truck and driver added 2003 and 2004. Further recommends: increase fee for recycling by \$2.00 to defray costs and reduce general fund revenues.

Discussion: only charge users (stickers or bags); notes other services for leaf collection and catch basins are included with this service. Mayor Weatherly felt as a pilot program, this could be evaluated at the end of one year to see if it were successful. Note by staff: leaf pickup was very successful and in its second year.

FLOOD EVENTS IN WILLIAMS CREEK BASIN

Tim Donnelly notes: West Sterlington Culvert is partially blocked with sediment and need for clean out – costs: \$40,000+. (design of the culvert accumulates sediment as culvert narrows).

Options and costs discussed –

Staff recommends: holding projects in abeyance until completion of field-verified flood study. 1995 study revealed roads within the basin that would overtop during rain events exceeding 25-year storm with existing homes in these areas at risk for flooding.

Staff recommends: Study at cost of \$50,000.

Discussion: checking flood levels of existing homes; survey work on unique ways to transfer water; criteria of surveys; minimize location of properties in flood areas; intensity of storms and delivery down stream from run-off of impervious surfaces (roads, parking lots, and subdivisions – put cost on developers vs. public dollars is traditional). Note: Town stands at the headwaters of Swift Creek (dividing line at the railroad tracks).

Allocating Future Wastewater Capacity -

Manager Radford noted need to establish smart growth criteria to determine what the Town wants to see in terms of growth. Components of smart growth: build walkable communities, invest in existing neighborhoods/appropriate landfill, transportation choices, preserve local heritage and economy, protect green space, affordable living, promote regional cooperation, and build disaster-resilient communities.

Growth Management plan calls for 4% annual growth rate, and is also considered in the wastewater allocation plan. He noted mixed use development has been at the forefront here, keeping folks closer to home, and a trend for "TND's.

Design standards: Town Center development, variety residential, shops and offices, schools/churches, narrow streets (concerns with traffic congestion), recreational opportunities (major component), mixed uses within buildings, prominent civic sites, pedestrian and bike connectivity and greenway, public transportation, preserve natural features, open space, public facilities.

Environmental standards: build outside flood areas and providing for best stormwater quality management. Suggested monuments are of no benefit after the fact but good for future development. Parks, greenways and open space continue to be a priority and there is continued need for affordable housing and need for public utilities due to development.

How to get there: Richard Ducker, Institute of Government, thinks smart growth initiative is on the right track and even better to expand on that criteria. Suggests getting this to the land use plan and having development follow certain criteria that provides for a better quality of life for town folk. *How do you involve groups:* developers, Planning Board, Board of Commissioners, general population (those for and opposed) all working for a common ground to pursue alternatives and proceed with development and enhance the character.

Manager Radford recommends: development of a focus group, working with certain criteria (developers, environmentalists, homeowners associations and Board of Commissioners), and within the next three months have some approved written criteria; setting a guide on time and principles in order for developers to understand, so they can take advantage of their processes.

Mayor Weatherly responded the same process was used to develop the UDO and was an institute to this process, to get everyone on the same track and interests headed in the same way. Views this as a standard above the UDO, and just being in compliance is no longer the case; select criteria would be escalated above our town standards and beneficial to the quality of life issues, and working collectively and with staff providing technical expertise, Board would make the decisions.

Commissioner Meckes agreed this should be in place before development expands; as things are not the same as the past in terms of development, unless there's plenty of water and sewer. Commissioner Jensen suggested a gating type process (developers are not spending money to the end).

Manager Radford indicated the first come first serve development, doesn't mean it may be the development the town wants. Commissioner Jones agreed that just meeting criteria doesn't mean they are approved, and made reference to the allocation process. Mayor Weatherly commented if developments barely meet criteria, we may not be chosen; maybe have a provision where it's lawful to deny.

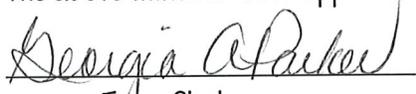
Manager Radford continued this would contribute to the overall quality of the future development, and each time reviewed, a level of competition would be enhanced, and developers may want to assure their work is of the quality, we wouldn't want to turn it down; might be unlike anyone else, putting Apex in the forefront with this type criteria.

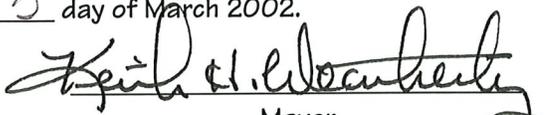
Manager Radford expressed appreciation for the time placed into the retreat.

Mayor Weatherly noted items staff recommends to proceed with will be on the forthcoming agenda for consideration. Capital items will be prioritized and submitted for feedback from Board's priority list. Purchase of grass truck will be on next agenda (requires budget amendment).

With no further discussion there was a motion by Commissioner Meckes and second by Commissioner Schulze to adjourn the meeting at 2:56 p.m. Motion carried.

The above minutes were approved on the 5 day of March 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of February 19, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, February 19, 2002, at 7:00 p.m. in the Board Room of the Apex Town Campus, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Meckes
Pledge of Allegiance led by Mayor Weatherly; Welcome by Mayor Weatherly

INTRODUCTION OF TOWN EMPLOYEES

Introduction of Police Officer David Carter and Telecommunications Officer Phillip Chapman.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Manager Radford asked item #6 be removed, and consider it at a future meeting.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to remove item # 6 from the consent agenda. Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda excluding item # 6. Motion carried.

1. Minutes of February 5, 2002 Board of Commissioner's Meeting.
2. Minutes of February 4, 2002 Fire & EMS Services Committee.
3. Site plan - Request by Tony M. Tate Landscaping Architecture, for an electrical contractor's office for 1120 Burma Drive, Pinnacle Park (approved by Planning Board).
4. Site plan - Apex Gymnastics, 1013 Investment Boulevard (approved by Planning Board).
5. Adopt Resolution accepting dedications of public rights-of-way and easements for Construction of the Apex Peak Way.
6. Set date of public hearing for purpose of soliciting comments relative to suspending for one year the limit on the number of dwelling units authorized by building permits issued with respect to Qualifying Residential Developments under the "Ordinance to Provide for a Temporary Allocation Mechanism for Residential Utilization of Wastewater Treatment Capacity."
7. Revert unpaid lots and plots in Apex Town Cemetery back to Town for resale.
8. Wake County Tax Report.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set.

Commissioner Schulze asked to include consideration of a budget ordinance amendment for purchase of a vacuum truck to resume collection of grass clippings.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to add this item to the agenda. Motion carried.

Commissioner Jensen asked to allow Mr. Kurt Kennedy, President of the Apex Education Foundation to address the Board.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to do so. Motion carried.

The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 1 - Continued - Site Plan - Apex Cabinet Company (Planner Keith Lankford)

Public hearing continued from January 15, 2002 regarding site plan request from Cross Engineering for proposed Apex Cabinet facility located on Schieffelin Road; possible motion regarding same.

Staff Planner Keith Lankford gave a review of the proposed Apex Cabinet Company facility, requested by (Cross Engineering), which was a continuation from the January 15, 2002 meeting.

Proposed facility site is located near the intersection of Schieffelin Road and Center Street. Applicant had requested a variance on buffer regarding the 60 foot type A buffer with vehicle access off Center Street. Due to concerns from residents, the request was retracted and plans reworked for an internal turn around and no access off Center Street. Building description is detailed on the attached staff report; site perimeter buffers equal 61, 119 square feet (14.7% of the site area) which is less than the RCA requirement of 25% of the site; project exceeds the watershed standards; proposed retention pond; site will be served with Town utilities; site will have one drive access point onto Schieffelin Road; traffic generation didn't warrant a detailed traffic study (less than 1000 vehicle trips daily); lighting is detailed in staff report. Site plan complies with UDO and 2010 Land Use Plan to allow industrial use in this area of town. Plan complies with town's thoroughfare plan and in proximity to the proposed Peak Way alignment (road improvements will be consistent with the thoroughfare plan – on both Schieffelin and Center with plans reflecting reservation of an additional rights-of-way in case it's needed and detailed on staff report) – developer will make payment in lieu of actual construction of improvements on Schieffelin and on Center. Facility replaces the current facility on US64. Planning Board and staff recommends approval.



Mayor Weatherly opened the public hearing at 7:15 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Commissioner Meckes is hoping for a better use of the current site on US64; staff noted it would probably change to commercial zoning.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the site plan as recommended. Motion carried.

End of public hearing # 1

Public Hearing # 2 – Exchange of Properties (Attorney Jason Kaus)

Public hearing regarding Town's intention to authorize exchange of certain real property owned by Town for certain real property owned by Public Service Company of NC, Inc. (PSNC Energy); possible motion to adopt a resolution approving the exchange.

Attorney Kaus noted this hearing was regarding exchange in property between the Town and PSNC; Resolution formalizes the exchange and authorizes execution and recording of the Cross Deed and other necessary documents.

Mayor Weatherly opened the public hearing at 7:15 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to adopt the resolution as requested. Motion carried.

End of public hearing # 2

Public Hearing # 3 – Time Warner Cable (Assistant Manager Mike Wilson)

Public hearing and possible motion to approve a Report and adopt an Order regarding Time Warner's (1) maximum permitted cable television Basic Service Tier rate, and (2) its Hourly Service Rate (HSC) for Equipment and Installation Services for 2002.

Assistant Manager Wilson noted it time to review Time Warner proposed annual adjustment in the Basic Service Tier and adjustment of Hourly Service Rate for Equipment and installation services. Cable consultant review of BST rate finds it to be within FCC guidelines (from \$10.31 to \$10.61). The add-on Network Upgrade Charge would remain \$1.89 and together BST rate (from \$12.20 to \$12.50).

HSC is proposed to increase by 26% (\$28.39 to \$35.83); methodology is changed by applying an average aggregated national rate instead of a regional rate. This may be allowed by FCC, but Time Warner has not provided rate data to justify proposed increase. Cable Consultant suggests possibly turning down this increase, and appealing to FCC.



Wilson noted normally he would recommend approving report and adopting rate order. Time Warner disagrees with consultant and if appeal process does occur, Time Warner indicates if the appeal is reversed and Time Warner does win, plans are to seek recovery of all legal fees and costs regarding the appeal (may be \$100,000 or so). There are other municipalities who have disapproved.

Wilson recommends delay on approving the report and adopting the order until more information is received. Discussion was heard regarding methodology and FCC ruling regarding justification.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to continue this hearing to the March 5 meeting. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

Herman Jaffee asked the board to write Governor Easley requesting the federal government supply the Town with potassium iodide tablets for the citizens. He noted over 500 people in Apex who have signed the nuclear safety resolution for the risk reduction plan to stop the unsafe transportation of spent radioactive waste to Harris Plant, to take it out of waste pools to store it on site in casks. He asked the Board why they hadn't sent the letter from his previous request. Cross dialogue between Jaffee and the Board continued. Commissioner Meckes and Commissioner Grimes will get together to report on their findings regarding the Harris Plant issues and bring back to the Board.

Dr. Roseanne Edenhart-Pepe agreed with Jaffee's remarks speaking in support of the potassium iodide tablets for distribution, and needed for back-up protection during evacuation, should an event occur at the plant; noting pills are free. She encouraged the Board to take a stand on this issue and being located within 10 miles of the plant, especially for the safety of the children.

Discussion continued regarding revisiting information available regarding waste storage and iodide tablets.

End of public comment



NEW BUSINESS

Item # 1 - Kurt Kennedy, Apex Educational Foundation, reported that volunteers coordinates business and educational efforts to promote, encourage, and assist educational activities of the schools in Apex. He noted all moneys are tax deductible and a way to give back to the schools. He advised there are seminars for parents and their web address: www.apexed.org

He noted the Board could help by being a volunteer and always in need of financial support – noting Parks & Recreation was most helpful (i.e. Kidswalk – biggest fund raiser in the county school system). He asked for a link on the Apex website to allow Apex citizens to connect and give support to Apex. Manager Radford will contact him regarding the link to the website.

He advised AEF is non-political and takes no stand in school assignment process. He advised Manager Radford and Board he would be willing to advise them regarding any issue, but could not take a political stand, but was willing to do periodic briefings; he and George Wait are linked together.

End of presentation by Kennedy

Item # 2 - Budget Ordinance Amendment

Commissioner Schulze reminded the Board of the retreat discussion regarding resuming collection of grass clippings and efforts to assist in waste collections. Staff recommended purchase of a collection truck and it be ordered as soon as possible. Cost: \$120,000

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to adopt Budget Ordinance Amendment #6 increasing Capital Outlay – Sanitation by the \$120,000 for purchase of the vehicle as recommended. Commissioner Jensen asked if an attachment could be purchased to use on the leaf vacuum trucks, but Manager Radford noted the venting is different and would not work. Motion carried.

End of item # 2

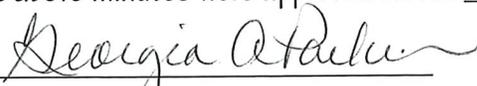
CLOSED SESSION

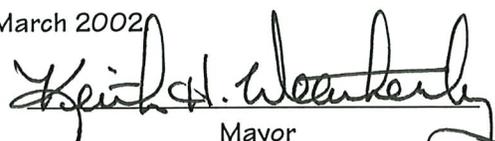
There were No Closed Session Items to consider.

ADJOURNMENT

With no further business to be discussed, motion was made by Commissioner Grimes and second by Commissioner Jones to adjourn at 8:12 p.m.

The above minutes were approved on the 5 day of March 2002


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of the Meeting of Tuesday, March 05, 2002
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly call the regular meeting of the Town of Apex Board of Commissioners meeting to order on Tuesday, March 5, 2002 at 7:00 p.m. in the Board Room of the Apex Town Campus, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Mayor Weatherly; Pledge of Allegiance led by Mayor Weatherly; Welcome by Mayor Weatherly

INTRODUCTION OF TOWN EMPLOYEES

Corey Crabtree - Parks, Recreation & Cultural Resources

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set asked for a call for action. Manager Radford asked Item # 7 be pulled for consideration at a future date.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to delete this item.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to approve the consent agenda with the deletion of Item # 7. Motion carried.

1. Minutes of February 19, 2002 Board of Commissioner's Meeting.
2. Minutes of February 15, 2002 Board of Commissioner's Annual Retreat.
3. Capital Project Ordinance Amendment (Park Bonds Capital Project Fund).
4. Resolution authorizing Director or designee of Parks, Recreation & Cultural Resources to sign contracts and agreements relative to certain recreation programs and activities.
5. Street closings for Peak Week and Today & Yester Year Festivals for 2002.
6. Resolution approving Supplemental Municipal Agreement between NCDOT and Town of Apex, Project R-2905 Improvements to NC55 from proposed Holly Springs Bypass to north of US1.
7. Adopt Ordinance creating a Fire Advisory Board (deleted).
8. Authorize execution of Certificate of Satisfaction regarding CDBG funding canceling certain deeds of trust for Mozelle Brown properties as part of the housing rehab project in early 1980's.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows. With no amendments, the meeting agenda was set as presented.

PUBLIC HEARINGS

Public Hearing # 1 – Rezoning Case #01 RZ 11 (Planning Board recommends denial)

Public hearing regarding rezoning Case #01 RZ 11, Jones & Cnossen, applicant, seeking to rezone from Residential Agricultural and Planned Commercial District classification to Planned Unit Development, located on E. Williams Street between James and S. Hughes Streets, containing 15.94 acres; possible motion regarding same.

Director of Planning David Rowland noted the rezoning request of 15.94 acres along NC55, from commercial to planned unit development (PUD) and oriented to the location of the site - NC55, and noted Perry Road extension going through this property and its alignment to NC55 near Dallas Restaurant and former Popeye's Restaurant and extending into a vacant parcel of land - potential for proposed shopping center (aerial photo of area and copy of plan).

The non-residential PUD is proposed for O&I and Commercial use. A tree save area buffers and protects the stream along the rear of the property and is designated as the RCA (photo) and meets Neuse buffer standards.

Use of non-residential PUD vs. already zoned Commercial: Allows varying of setbacks, RCA and buffer; a unique plan allowing flexibility on some things (buffers and streetscapes) and more strict compliance on others (requires post development run-off not exceed pre development run-off).

Difference from former approved PUD (flea market): knew what would be on site and submitted a proposed subdivision (layout and setbacks, and elevations for building).

Proposed PUD: does not have users established – does not have building elevations (if property is approved for the rezoning – would require individual site plans for each parcel within this property). Each parcel would have uniform architecture, landscape and signage if built under the PUD plan).

Recommendation: Rezoning not be approved because the plan doesn't comply with Sec. 2.3.4(G)(e)(iv)(c) ; a unique strict requirement to the PUD that doesn't allow direct access from individual lots to a major road .

Note: Since Planning Board met, applicant has removed access point at lots 3 and 4 with right-in and right-out access at lots 1 and 2 remaining. Staff feels this is in direct conflict with the ordinance (wants to cut down on access not only on NC55 but all major thoroughfares). Commissioners, in the past, have been concerned with creation of additional drive-cuts along NC55. Petitioner doesn't agree with staff interpretation of this provision (stressed this requirement is unique to the PUD zoning classification. In exchange for varying standards, the PUD provision keeps an intense development such as this from having direct access on major thoroughfares which are designed to carry traffic rather than access property.)



Staff: maintains access should be off Perry Road to serve these parcels, so the project is accessible; indicated other parcels with access off Perry Road – noting project is accessible and consistent with past and planned unit development.

Staff opened the floor for questions:

Commissioner Meckes asked: if not a PUD but a subdivided plan? Staff would review this at site plan process and encourage other access.

Asked: if applicant had hurt themselves by asking for PUD instead of having access for each lot off NC55? Staff: LUP states - should eliminate access points along major thoroughfares – staff would not encourage creation of individual access points for individual lots and would probably recommend to deny.

Asked: if there were worse alternatives, as past lots were granted access along NC55? Staff: these lots were subdivided years ago.

Commissioner Grimes asked: are there individual lots currently on this property? Staff: no, only one lot.

Commissioner Schulze asked: distance between Perry Road and proposed access? Staff: 180 feet.

Commissioner Jones asked: number of DOT approved access points? Staff: 2 besides Perry Road.

Commissioner Jensen asked: if there were a right-in and right-out, how detrimental would this be to the flow of traffic? Staff: not as bad as a full service access, but anytime additional points are introduced - friction points slow down traffic; thoroughfares are designed to carry traffic; doesn't meet what PUD requires. The one access remaining is right-in and right-out.

Commissioner Meckes asked: what was the triangle parcel of land shown? Staff: apartments are located there with retail on the first floor – currently two access points due to past development; now trying to avoid this.

Mayor Weatherly reminded in discussing access points in the UDO, projects have almost been denied in the past due to access points being considered "excessive access" on NC55 and noting one project overloaded with curb cuts, discussed not too long ago. He thought intent was consistent with what our fore-knowledge was when the UDO was passed pertaining to accessibility onto NC55.

Commissioner Grimes referred to the comment, ...could be flexible on some things, but not on others... and wondered if one could pick and choose what was wanted regarding flexibility? Staff: PUD requires meeting the criteria in the RCA, but doesn't say you have to meet a certain amount (can vary). In another zoning district and in a non-residential development, would have to meet at least 25% of the site. Applicant is proposing a 20' streetscape buffer along NC55; regular development would require 30 foot. Variables: RCA, buffer and setbacks – specific: post development run-off and the access issue (unique to PUD and not other zoning areas) -a give and take.

Commissioner Grimes asked: if there were no give to this? Staff: interpretation is no access onto a major thoroughfare – access should be from Perry Road; read aloud section regarding access.... Where a PUD abuts a major collector, arterial road or highway, direct access to such road or highway from individual lots, units or buildings shall not be permitted...



Mayor Weatherly asked if this was the reason for the Planning Board's negative recommendation? Staff: this was the main issue, not recommending approval (vote 4 to 2).

Commissioner Meckes continued, if this is turned down, what could the applicant come back with; would staff encourage them not to come back with individual drives; if it's not a PUD but wanted to subdivide, you stated they would be encouraged not to do that. Staff: if there was no other access, other than NC55 to this property that would be a different issue if they wanted to develop this property. Because our thoroughfare plan shows the design of this road to align up with the one across the street, there is access, and planning believes it should be funneled through this road and come back out to NC55.

Commissioner Jensen was troubled with the size of the PUD, most of them at least this big, if there is commercial along a frontage road, it seems one would want access in at lease from the frontage road from one or two points, if not access out - to flow through and come out the access road - he would have the power door in and push the door out. Staff: way staff reads the ordinance, and the consistency in the past, there is no flexibility with a PUD rezoning. You exchange conditions or variables back and forth - staff reads you can't allow additional access onto NC55.

Commissioner Jones asked about staff interpretation that the PUD was an individual lot? Staff: commented the whole development. Commissioner Meckes asked if this is where the applicant disagrees? Staff: yes. Commissioner Jensen seemed access in would be less of a friction point then access out.

Commissioner Meckes asked: could you have right-in and right-out? Staff: Staff position is it would not be consistent with PUD requirement.

Mayor Weatherly called on proponents to speak.

Stuart Jones, Jones & Cnossen Engineering, disagrees with code wording regarding access points. His interpretation of the code is if you have a PUD (100 acres) with no public street required to go through this site, like this does; he's not sure how staff would interpret the code to be different to allow any access. This site is unusual in that it has a public street set aside to go through the property. If it were not, he doesn't understand how you would change the interpretation to allow any access points. He feels the code is trying to say if carved up into lots, all frontages on NC55; everybody wants their own access driveway (Honbarrier, Ace Hardware). What has been done is the creation of one common driveway, not serving one individual lot, but three individual lots or over 2/3 of this site. He doesn't know if the code specifically uses the words ...individual lot... and in his mind, is one of those lots that will be carved into. Staff interprets this individual lot is the 15 acre parcel. Again, if they didn't have Perry Road, he's not sure they would be allowed to access. He agrees Perry Road is a great way to funnel almost all this traffic, but a 15 acre commercial site with only one access point, he thinks, is a mistake. He thinks right-in and right-out would be a great service to those three lots in this project. That's the difference in interpretation. They look at it as being individual businesses - businesses on lot 1 and business on lot 2; this driveway is not just for them, you would have to turn in and then make another turn into someone's individual lot. He's looking at this as a common driveway and not an individual lot driveway.



He continued an issue with the Planning Board was the amount of RCA or open space being provided and were confused with the percentage being less than what would be required without the PUD. These individual lots will also have to meet the landscape ordinance; they will still have setbacks, they still have islands inside, those individual lots – after their site plan and adding up all the open space, there would be 35 to 40% which is consistent with what is required with shopping center sites.

Commissioner Meckes asked if not PUD what would it be? Stuart: there is one strip of property on one side not zoned shopping center but RA. Option was to rezone strip to SC or come in with a PUD that would bring the project together. If not approved for PUD, they still have Perry Road and would come back asking subdivision of individual lots and asking for additional access points and would be back here, asking basically the same.

Commissioner Meckes asked if Honbarrier's site could be incorporated into this and give up a drive there? Stuart: had hoped that Honbarrier could work with the lot in back and there be one access point, probably on Honbarrier site and could be redeveloped into something. Meckes: could be looking at an access point there? Stuart: a common drive could be used for Honbarrier site, or if redeveloped, could be used for something different; a common drive into the parcel - at this time; it's not feasible to work with Honbarrier. Honbarrier property was identified as the triangle shape parcel, as well as identification of the Gaster properties.

Commissioner Schulze stated it seemed to him the intent and purpose of the UDO was to restrict access on major thoroughfares; with that being said, when saying individual lots, let's assume the access point was for one individual lot, it would not be permitted. Even if opening up to other lots, you exasperate the problem by putting additional cars at that access point, which is contrary to the wording of the ordinance. Stuart responded if not PUD approved, it would be carved into lots and each lot could ask for an individual drive way. Commissioner Schulze was looking at it strictly from a legal standpoint and in his opinion, what's proposed right now is contrary to what needs to be done. Stuart disagreed.

Commissioner Jensen asked why not right-in and access out through the back – circulates in and out. Stuart: if Perry Road were blocked, whether or not it was best for emergency vehicles if there were no other access back out – he couldn't get any read from the Fire Department one way or other whether it was an important issue to them, but if blocked at the intersection of NC55, the only way to get to Lot 5 would be to go around the back way to Perry Road, off Hughes Street. Again, he felt a 15 acre commercial site has a lot of uses and a lot of square footage with only one access. Commissioner Jensen feels with a right-in they could get in and do the job and they could worry about getting out.

Commissioner Meckes asked: will there be a light at Perry Road. Stuart: probably not.

Commissioner Meckes asked: how will people cross Perry Road to the other side of Perry Road once contiguous?

Stuart: his reading is there will be a light at the Peak Way; there's one at James Street; Perry Road was too close between the two to warrant a light.

Commissioner Meckes asked: if NC55 would be 5 lanes – two north, two south and a turn lane. Stuart: correct.

Mayor Weatherly asked those speaking in favor to come forward:



Mark _____, realtor of the site, pointed out there are presently two curb cuts (driveways) there now. His opinion is that a right out would free traffic and get people off NC55 faster, because of the turn lane, and would probably eliminate some of the congestion at Perry Road.

Mayor Weatherly asked those speaking in opposition to come forward:

Howard Frank, Perry Farms, was not for or against, but asked: Has ordinance been changed since other lots were developed on NC55 with their own access? Will Perry Road have access its length or will it be restricted? Can Perry Road on the other side of S. Hughes have access to come off it? He noted Perry Road will connect to Peak Way and to the commercial area across S. Hughes; the original planning had everything zoned residential and Perry was an outlet for the morning and evening residential traffic. He could see it, but seeing Perry Road will not be a major thoroughfare he believes is speculation, and not designed for a major thoroughfare, but believes it will become a major thoroughfare even though the Peak Way will come out there, because truckers come in and have the wrong direction from the way they enter S. Hughes and end up in the residential area – not their fault but a mistake made; anytime an address is off Perry Road, they find Perry and follow it, so it will have, regardless of the plan, truck traffic and people who work in the area there. He continued, if we do not extend Perry Road from the west to east to the creek, it would give Perry Road on the east side of the creek full access any way desirable to get major access to all the lots there. If it becomes heavy traffic, it would be just as dangerous as NC55 when widened. He asked the board to not overlook these concerns.

Corrine Currin, New Horizons Fellowship, is not opposed to uses next to them, but sees benefits to PUD and its limitations. When you subject yourself to advantages, you also object yourself to limitations. There may be comparable issues to be discussed were the property is subdivided, but as a PUD to get the benefit of the allowances that is to be provided, you may want to consider not allowing variables and limitations that are provided as well. Even though, not in objection to the uses, they are technically zoned shopping center – they are a church and are taking the CVS store for a youth center, coffee house and internet café, etc., even though a shopping center, they are not opposed to other shopping centers.

No one else spoke regarding this issue.

Mayor Weatherly asked the Board if they would like to hear the Attorney's interpretation of the UDO.

Attorney Kaus addressed the issue of flexibility, noting essentially the Board had a choice to make - if the Board agrees with staff and consistent interpretation, then we don't have flexibility. He explained the ordinance plainly doesn't allow any access to this highway, whether right-in or right-out, right-in only, no direct access of any nature. We do not have this creativity if you agree with consistent interpretation. He asked what's the touchstone for interpreting the ordinance - it was the intent of the ordinance - the intent of this unique provision in just PUD as he understands it, is to eliminate, combine direct accesses to this important thoroughfare. Again, he noted the intent of a major thoroughfare is to have traffic flow rather than have access to property. He noted Commissioner Schulze's response to intent of the ordinance, and if that is the intent as Commissioner Schulze said, it would be unjust or a ponderous interpretation of the word individual in here. It may not be the most artfully worded provision in the UDO, obviously we will find some ambiguity here amongst ourselves, but he thinks over emphasizing the word individual may lead them to the wrong result here.



Attorney Kaus continued, it appears the intent was for this unique PUD to limit, or eliminate in fact any direct access from the PUD itself to this highway and encourage and require other types of access on secondary roads. He also noted this as staff's interpretation. He advised if you disagree with this interpretation, certainly you're entitled to do that. Two comments on this: 1) he understands the Town has consistently interpreted it this way and may then be going back on a consistent interpretation to decide this case differently tonight. 2) he wasn't throwing up any red flags here, but the Board of Adjustment exists for potentially this exact type situation - to hear appeals from the Planning Director's interpretation, provide guidance on interpretation of the UDO, so you might decide that you are not fully prepared to make interpretation yourself, and you could hold this case open and require the applicant to go to the Board of Adjustment for some guidance.

In his opinion, since they were asking, he agrees with staff's recommendation which is the PUD is a unique animal - by availing one's self of the benefits of the PUD you also avail yourself to the limitations, one of those limitations is no direct access to a controlled highway. If it's just give and take, that's apparently what the drafters of the UDO intended, if you ascribe to that interpretation, again we have no flexibility in this case, must be denied. If you disagree with that interpretation, that is your prerogative, you could potentially approve this.

Commissioner Jones questioned access of Perry Road showing both left and right, asking, would any other access to Perry Road be allowed under the PUD? Staff: Perry Road is admissible; staff does try to line up accesses.

Commissioner Grimes questioned lot 5 that backs up to the stream and subdivision, and the uses allowed in PUD? Staff: it would be all uses allowed in PUD under offices and not commercial - office type use is planned there.

Commissioner Grimes asked: how much RCA percentage wise do we have here? Staff: approximately 18% and the limit if under conventional development would be 25%.

Commissioner Grimes asked: is there some range we are required to have under PUD? Staff: no, it's negotiable (one of the advantages of a PUD); staff, wouldn't come back to the Board if someone was proposing below that - what's been done is where it should be - preservation along the creek bank, where you find the most trees, etc. - staff is in agreement, even though it doesn't reach 25%, it's where it should be on this site; the most sensitive part of the property along the creek. It also acts as a buffer between the uses on this site and any residential uses behind it.

Commissioner Meckes noted the two access points that currently exist and they were defined on the map (having houses on Lots 1 and 2) and with Honbarrier site there would be two more making four access points.

Commissioner Jensen noted the terms of access, right in and nothing out - have we talked to traffic engineers about this? He had concerns with PUD and commercial development along a highway - in regard to access, he tends to think there would be a lot less desire to come down NC55 to turn onto Perry Road and come back, from a business standpoint; he would like to find out; he'd like to find out what effect right-in only, just having one access point. Staff: the traffic engineer would have to look at this.

Mayor Weatherly opened the floor for a motion, if the Board so chose to make one.



Action: Motion by Commissioner Grimes to disapprove the rezoning request with a second by Commissioner Schulze. Discussion on the motion.

Commissioner Grimes disapproves with some reservation, but thinks the intent of the ordinance, may need to be worked with to make it more obvious in its own individual wording. If it didn't mean what we say it means, then literally you could subdivide this front into 22 lots and have eleven different accesses, if you take the interpretation that it serves more than one lot. Obviously, this can't be what we intend. The only other interpretation that we are legitimately considering is not allowed. For this reason and his only reason, he would vote no to approve it as it's currently before the Board.

Commissioner Schulze likes the project and wants more in Apex, but to him the intent of the ordinance is clear and with due consciousness, he can't vote to approve something that contradicts the ordinance. He made the recommendation, that they consider the Board of Adjustment as an option.

Commissioner Jensen agreed with the Board of Adjustment and have them look at traffic flow and maybe give more flexibility. He likes the development concept and a good spot, but he would say no due to interpretation of the Town Attorney – stating "we can't set precedent against ourselves".

Commissioner Meckes recalled discussion at the retreat about what to do for future development of Apex with judged criteria with these type issues coming before the Board time and time again. Criteria has been established and there are going to be some things about it that in particular instances that will not be favorable for the petitioners or the Board. Yet, we are going to establish those criteria and we have to live by the criteria. The noted legal point by the Attorney of consistent interpretation – we have in fact made consistent interpretation of this issue. As much as he would like to see this project come to pass, noted just like Sam Ervin was a simple country lawyer, he's a simple country veterinarian and he knows the rule of law tells him one thing and he has a hard time going against it. We have the criteria established and we are going to face this forever, because there will be projects we really want to do, really unique and if they don't meet the criteria that we've established; that's where he stands.

Commissioner Jones doesn't disagree, could we or should we in this case, one aspect in this proposal looks like we are on the verge of denying it; should we ask the petitioner if he would like to modify his proposal? Attorney Kaus advised they could do so. Commissioner Jones continued, if we turn it down, there's some time factor involved before they can bring it back to the Board. Attorney Kaus advised that he understood the background is that this project has evolved even since the Planning Board met, there's already been some movement on one of these issues and perhaps there might be some late breaking more movement.

Mayor Weatherly responded rather than ask for a commitment tonight, we ask to defer it for two weeks and let them thoughtfully go through the process before they give us a snap judgment answer. Mayor Weatherly noted the motion on the table and asked the petitioner if he would like time to think about this, rather than the inevitable tonight. Stuart advised he would.

Action: Commissioner Grimes withdrew his motion. Commissioner Schulze withdrew his second.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to table this item to the next meeting agenda of March 19. Motion carried.

End of Public hearing # 1



Public Hearing # 2 - (Continuation from 02/19/02) Time Warner Cable (Assistant Manager)

Continuation of Public Hearing and possible motion to approve Report and adopt an Order regarding Time Warner's (1) maximum permitted cable television Basic Service Tier Rate and (2) its Hourly Service Rate (HSC) for Equipment and Installation Services for 2002.

Assistant Manager Mike Wilson gave an update regarding this item and reminded the Board of his recommendation to delay action and reminder of Time Warner's indication of appeal to the FCC and adding their claims for reimbursement of fees; which has not gone to FCC. The validity of their objection and claims is being evaluated by the cable consultant and others in the triangle. No such case has been found where Boards have exercised their duties, and consultant feels it' highly unlikely. Smitinfield has moved forward in their decision and has said to Time Warner to go ahead with an appeal. Recommendation is to hold the public hearing, but hold off on any action.

Mayor Weatherly opened the hearing. No one spoke regarding this issue. This item will appear on a future agenda.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

Report from Commissioner Meckes

Commissioner Meckes informed he has received more information regarding Potassium Iodide and fells surrounding Towns of Holly Springs and Fuquay should be involved in decisions regarding this issue and suggested New Hill, even more so. He asked permission to discuss this issue with council members from these towns and a representative from New Hill, to receive feedback and then would return with update. He and Commissioner Grimes continue to work on this issue. Consensus of the Board was to grant permission for Commissioner Meckes and Grimes to continue on this project.

End of Old Business

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.
Mayor Weatherly will recognize those wishing to speak at the appropriate time.
Please limit your comments to 3 minutes to allow others to speak.

No one spoke during public comment.



NEW BUSINESS

Item # 1 - Irrigation Meters

Possible motion to return the availability of irrigation meter services and require capacity fees.

Director of Public Works Tim Donnelly reviewed history of irrigation meter services that were allowed in the past with payment of capacity fees for those meters installed. It was changed to allow residential single family lots that had paid capacity fees to add the irrigation meter for \$200 with all other irrigation meter installations being required capacity fees. 1999 - these services were stopped due to water shortages. Meters of this type are used to water lawns, plants, shrubbery, etc. and during the hottest days of the summer when there is more usage and we have trouble providing water.

With water plant expansion almost complete, staff recommends to return availability of irrigation meter services and requirement of capacity fees by adoption of a per gallon table based on meter size. If you do not charge capacity fees for these meters, other customers are subsidizing. Based on research of irrigation meters, there's a large water usage and only a few months out of the year (6 months). The rest of the time water plant capacity and storage in Jordan Lake sits unused and does not generate revenue. You need to collect capacity fees to assure other customers are not subsidizing the unused plant capacity that is only used for irrigation fees. Staff does not want the capacity fee schedule locked into current capacity fees, as they are subject to change (table attached).

He reviewed average use by residential homes being 6,000 gallons and with irrigation meters, 13,000 gallons. There is no payback expectation anytime soon (10/15 years). The value is placed on time and convenience of an irrigation system. It's cheaper to install a meter, if you use lots of water, vs. paying sewer capacity fees. Commissioner Jensen asked for clarification for usage table. Small users should not install meters. He explained the meter installation process. Water conservation measures will remain in place, irrigation sensors, no overflow of water into streets and usage days. He noted future endeavors to help with these situations.

Attorney Kaus advised in 1994 and 1999 when this issue was addressed by the Board, it was acted on informally by motion, and he recommends if approval is given, that you approve it based on the way it's outlined and direct staff to come up with an ordinance, codifying all subjects mentioned and place it on the March 19 agenda. This would allow for the irrigation meters in the next two weeks, but there would be a proper ordinance.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the recommendations in accordance with staff and with the Attorney. Motion carried.

End of New Business # 1

Item # 2- Storm Water Management

Request by Commissioner Jensen to consider an amendment to the UDO regarding Storm Water Management. Commissioner Jensen stated the objective -to level the playing field - PUD requires limitation on rate of water discharge from developed area to the same as the pre-development stage; this hasn't stop interest in PUD. Former approved PUD (flea market - Center Street) was required to meet requirements of water discharge, post-water discharge being the same as pre-water discharge and it dumps into the Swift Creek basin. He noted development further down appeared to have no stormwater control (one developer required to be pro-active and the other dumping into the same drainage basin appeared to have no storm water control requirements). He feels this would afford us an opportunity where we don't make the stormwater situation worse, giving a breathing spell to correct past action so it wouldn't happen again in the future. He referred to residents in not just Swift Creek area but Beaver Creek that has this problem. He wants to take the high road to prevent the problem from worsening.

Commissioner Schulze asked questions regarding 10,000 square foot of impermeable surface (about one-quarter of an acre). Commissioner Jensen noted much more than this, regarding what's coming off the property, could erode the streams. He was trying to provide for off-site and talked with Stuart Jones prior to the meeting to see if this would be helpful. He wants to help those developing property, and feels development of semi-regional ponds would be more efficient in terms of utilizing space and would get rid of smaller ponds. Economically it would be less cost than current procedures. As far as planning, he feels if we make these retention ponds into small lakes, with areas around them, could be used for passive recreation for folks, which they seem to want and possibly wouldn't have to drive from their subdivision, but walk to these semi-regional lakes. Three benefits: helps developer, efficiency, and passive recreation facilities for citizens.

Mayor Weatherly indicated referral to the Planning Committee and work with staff regarding this request. Staff has not worked on this at all. Commissioner Jensen understood and feels it's an opportunity for Apex to be on the cutting edge.

Commissioner Grimes asked about the unequal effect. Commissioner Jensen noted in some cases we require retention of a one inch storm upon site, but in PUD, there's trade off, then they retain what the Planning Department decided to be a 25 year storm which is substantially larger on how you define the storm. (Ex: St. Andrews Church was a 7' storm in one-half hour, and what was defined as a 25 year storm). This gives the opportunity to level this situation, so we're not allowing development like on SR1010 and Center Street, where they're not doing anything, it appears to him.

Commissioner Grimes asked if this site was exempt. Staff: it was 2 acres or less and exempt. Commissioner Jensen continued if you provide for an opportunity for a smaller lot, you could tap into a regional retention pond that will be used for recreation. It doesn't hinder development of that property to any great extent, there's a cost factor, but if done right, in long term, it saves everyone - there's no downstream flooding, we don't clean out culverts, and it protects residents downstream, because the problem has been corrected upstream.

Commissioner Meckes, questioned discharge based on a 100 year storm event and being horrendous. Commissioner Jensen noted bigger, but not monstrously bigger. Commissioner Grimes asked if there was a valid technical reason anyone should be exempt from stormwater management procedures and devices, regardless of size of storm; is size a valid factor. Director of Planning noted the two acre exemption as a state requirement being exempt; parcel this small takes up space on the property. Mayor Weatherly noted it reduces value of property where you can't develop it. Commissioner Grimes interjected to say collective would mean you had to wait or get cooperation of people who aren't even developing their land contiguously; noting it ridiculous to him.



Commissioner Jensen disagreeing, sited one example at the bottom of Beaver Creek where the Town is utilizing land purchased by Crockett's Ridge to offset what they were doing, where town gets benefit of a regional park on the west part of town with 10 acres from those folks. If we are proactive in looking at Town the positions these could take place, more of a wetland area, we can arrange for this sort of thing to take place. With respect to Swift Creek, he sited a piece of property below this area that could provide for a two to three acre pond/retention/recreation facility, if we so choose. He knew the people around there would be delighted.

Commissioner Grimes clarified the idea being the Town would buy up this land to put in a semi-lake because this guy wants to put in a body shop or something. Commissioner Jensen felt in some situations, if we look forward and said we can gain a park or lake, we might want to actually put forth the money. He knew the Board had talked about putting forth money, examples: across the street, the property on US64; if we are proactive and look ahead, and say maybe this is what we want, then, if we set this lake up, in a manner that it's just not a lake, it's not just a park, but can be utilized as a retention pond also, and the Attorney would have to check this out, but we could sale the rights for retention pond usage. From his past residence, retention ponds were used as recreation facilities (i.e. dam - water ski and plantings - retention pond for giant drainage area and then it filled up, it was drained out for a month or so, then you get back in). He was not suggesting anything on this grand of scale, but set so they could float two or three feet and could allow for retention pond/recreational facility that would benefit all the people around us.

Commissioner Schulze opinion, that we acknowledge issues regarding flooding, and felt we should take a look at this, and tie it into any study with Williams Creek. As President of Shepherd's Vineyard Homeowner's Association, he's seen continuous erosion of the Creek and has seen lots of money spent so people's private property wouldn't erode away and has seen the situation worsen over the years and thinks it's smart to look at this.

Mayor Weatherly noted we could look, but sees it mutually inconsistent to think of water retention as a recreation area, maybe on a broad area of water ski, but one foot would be a huge volume of water; but now, we put chain link fencing around water retention ponds to keep people out of them, big holes in the ground to contain water to let it out slowly; you don't encourage people to come play in these steep bank ponds.

Commissioner Schulze noted he's not looking at it as a park aspect, but more importantly the reduction of flooding.

Commissioner Jensen noted the ones being talked about were smaller not gigantic ones, but those are on site and people are trying to save land area because the scale factor goes against them, noting smaller ones are inefficient and bigger ones are efficient. He's looked at the one in Swift Creek and for about a four foot float, we could take out another one full inch and in combination with other ponds on site, he thinks you could get good advantage and a useful area for people besides.

Commissioner Grimes indicated it was fine if the Board wanted to refer to Committee, but would like for this to have gone through staff, but since not. Commissioner Jensen agreed he would be fine for it to go directly through staff for their recommendation.



Mayor Weatherly felt it would be good to refer Committee to direct staff to look at this. Commissioner Jensen indicated rather than taking time to go to Committee, actually direct staff from here and come back to Committee. Commissioner Grimes indicated staff would be asked to brief us on their reaction to this particularly proposal, and is what we're asking them to do. Commissioner Jensen asked if this is what we're doing right now. Commissioner Grimes indicated yes, he was asking staff to take a critical look at this particular proposal and advise us on whether or not it has merit. Mayor Weatherly responded, advise Committee, and refer to Committee, with Commissioner Grimes indicating yes.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to refer this to the Planning Committee subject to asking staff now that they review this. Motion carried.

End of new business # 2

Item # 3 – Directive for Storm Water Management

Request by Commissioner Jensen to consider directive for storm water management from Town projects.

Commissioner Jensen noted this similar to the ordinance. He noted the Peakway will be constructed in the Swift Creek area, with about 2 acres of impermeable surface. He understands there will be temporary storm management facilities, and when done, they will be covered and we're on our way. When the big storm hits, we've added an additional 2 acres of impermeable surface that runs into Shepherd's Vineyard and increases problems. As a town, he feels we should lead the way to show the development community the best things to do. We should not ask the developers to take the high road when we are willing to take the middle road. His objective is to direct the Town to take the high road and manage the stormwater run-off and not create more problems on citizens than they already have. He placed this here, as we deal with ourselves as a responsible town, that we can run this directive through more rapid manners to protect our citizens from ourselves. We should not be doing less than the best for those folks who came to us after the July storms to put forth their concerns about their homes. It puts us as the "knight in shining armor" for the rest of the development community to look at. We are the guiding force.

Action: Motion by Commissioner Jensen to adopt this directive. He restated he was not asking it be adopted tonight, but to have staff input and isn't sure this should go to the Planning Committee, as simple as it is, should go directly to staff.

Mayor Weatherly stated staff would be looking at the stormwater management issue and asked the Manager if staff should have input and would be consistent with the previous manner. Manager agreed both could be considered at the same time. He reported last fall the stormwater management team had addressed some of these kinds of issues and obviously were being asked to go and do something specified toward the Town in a financial direction, and certainly would address this.

Commissioner Grimes doesn't see the Town under any lesser standards than developers or are we allowed to do less. Manager had not seen any exceptions to this. Director of Public Works addressed rules of stormwater management and building of roads are taken into account, but advised roads do not create a major source of water. Mayor Weatherly questioned the flood requirements by the State and major flooding into wetlands areas. Director of Public Works noted it not a requirement to collect the first inch of run-off from roadways, but has some value. The Town is subject to the same requirements except for road projects.



Commissioner Jensen asked curb and gutter and run-off be looked at since it impacts areas down stream. He wants the Town to be considered above the rest of development for the protection of the citizens. He views sheet flow the best, but retention ponds are less expensive way.

Commissioner Grimes was opposed to requiring the Town to do a lot more than anyone else and at a greater expense to the taxpayers. He would vote no; to deny the motion.

Commissioner Schulze addressed road issues, noting Peak Way requires no site plan, where site and subdivision plans require retention. It was asked if the cost of the Peak Way would increase or other Town maintained streets. It was noted it could be costly.

Both items will be sent for Committee with staff researching cost estimates. Planning Committee will meet Thursday, March 14.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to refer this item to the Planning Committee. Motion carried.

End of New Business Items

CLOSED SESSION

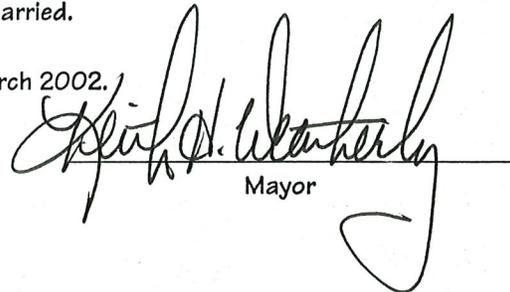
There were no Closed Session items.

ADJOURNMENT

With no further business to come before the Board, there was motion by Commissioner Jones and second by Commissioner Meckes to adjourn at 8:50 p.m. Motion carried.

The above minutes were approved on the 19 day of March 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, March 19, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners meeting to order on Tuesday, March 19, 2002 at 7:00 p.m. in the Board Room of the Apex Town Campus, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Schulze
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

CONSENT AGENDA

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

Manager Radford asked to amend the agenda by moving item # 4 from the consent agenda for consideration prior to adjournment and inclusion of closed session to confer with the legal counsel in regard to the William Barker (Apex Properties) case and to receive legal advice from Town Attorney. With no further amendments:

Action: Motion by Commissioner Jones and second by Commissioner Grimes to approve the consent agenda as amended. Motion carried.

1. Minutes of March 05, 2002 Board of Commissioner's Meeting.
2. Minutes of February 28, 2002 Planning Committee Meeting.
3. Formal acceptance of Lower Neuse Basin Association Grant Award for Wastewater Reuse Project.
4. Moved for consideration prior to adjournment – Award of R-01-1 Apex Peakway Construction Contract to Curtis L. Jones Grading Company.
5. Ordinance Authorizing Town of Apex to Offer and Provide Irrigation Water Meters for the Town's Utility Customers.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as modified.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to set the regular meeting agenda as modified. Motion carried.

PUBLIC HEARINGS

Public Hearing # 1 – NC55 Corridor Plan (Director of Planning)

Public hearing regarding NC55 Corridor Plan; possible motion regarding adoption of plan.

Staff Planner Dianne Khin presented the NC55 Corridor Plan. Steering Committee was created and public workshops held. Planning and development objectives were identified (outlined in staff report). Implementation priorities for the corridor action plan: update of 2010 Land Use Plan, amendment to zoning map, creation of access management policy, development of streetscape program, revision to the thoroughfare plan, agreement with the approved Parks, Recreation, Greenways and Open Space Plan, and obtain funding for implementation.

Plan provides for major employment center to allow mixed use – commercial and community services – high density single/multi family (existing residential) – park - additional thoroughfares and connector streets for motorists, bicyclists and pedestrians - (north/south thoroughfare next to the Holly Springs Bypass at US 1 would allow commuters traveling from Holly Springs up to US 1 to take a route off NC55).

Plan provides for streetscape improvements along commercial portions of NC55 (page 29 – 40 of plan). Note: street standards (traditional curb and gutter); medians (NCDOT planned areas would not have a median – those being asked for future projects would have a median); NCDOT has no plans beyond the Holly Springs By-pass; median plantings and plantings between sidewalks and street and surface run-off were discussed . NCDOT may complete portions of the work; some portions are development driven; and enhancement funds from various sources will be sought in regards to plantings.

The Steering Committee, staff, and Planning Board recommend approval.

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

Bob Atkinson noted various property owners being supportive of the plan and its implementation; may be some concerns with the overlay plan; asked Board to move forward with the plan.

Leonard Schaffer, property owner, is supportive of the plan, and noted it a courageous plan that will control development and not development driven as in the past.

Herman Jaffee, asked consideration for an overpass vs. underpass to cross the highway.



Public hearing # 1 continued

Bob Barker, property owner and former Apex Mayor, commends the plan for the southern door into Apex and asked it be implemented as soon as possible; only reservation is a street that may be removed that impacts the commercial value of his property.

The hearing was closed at 7:30 p.m.

Manager Radford advised there was no time table to adopt the plan and could be considered for adoption at the next meeting but would like to do so in a fairly expeditious manner.

Discussion followed regarding pros and cons of overpass vs. underpass. Staff's view: underpass is more realistic and better cost wise (plan calls for two pedestrian crossings); Engineer Gron views underpass more realistic with Alternate I-540 in place (long term goal). Staff hopes NCDOT will complete this (discussed installation and closure of highways); plan upgrades pedestrian facilities (sidewalks, and greenways). Staff will continue to look into issues of the pedestrian crossings (maybe a pedestrian walkway). Zoning amendments: an overlay plan (no properties would be rezoned) but makes potential for future uses, establishes guidelines for the whole corridor and would not impact taxes of the property owners.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to consider adoption of the NC55 Corridor Plan at the April 2 meeting.

Manager Radford acknowledged the quality of the plan and asked prior to adoption staff be allowed to submit it to the NC Chapter of American Planning Association for potential award. Director of Planning Rowland recognized Planner Khin for her diligence in preparation and presentation, along with Mark Robinson and Amy Mackintosh of the design firm. Vote on the motion carried.

End of Public hearing # 1

Public Hearing # 2 – Unified Development Ordinance Amendments (Director of Planning)

Public hearing regarding amendments to certain section of the Unified Development Ordinance; possible motion regarding adoption of the amendments.

Planner Dianne Khin presented proposed amendments to the Unified Development Ordinance recommending approval to certain sections in Article 2, 3, 4, 8 and 12 (outlined in staff report). Clarification was made in reference to Section 8.2.7(D) for Commissioner Jensen regarding plantings in conjunction with fences/walls abutting public use properties or public rights-of-way (enhancements and appearance).

Mayor Weatherly opened the public hearing at 7:50 p.m. With no one making comments, the hearing was closed.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to adopt an ordinance amending certain sections of the UDO.



Commissioner Jensen asked to amend the motion to have staff evaluate a method of recommending plantings (buffer enhancements to residential properties) along exterior walls between major highways to a Class B type. Mayor Weatherly advised it was not necessary to amend the motion to ask staff to look at this. Motion carried on the motion to adopt the amendments.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to have staff evaluate a method of recommending plantings (B type) between walls and major thoroughfares of residential lots. Motion carried.

End of public hearing # 2

Public Hearing # 3 – Extension of Suspension of Limits of Allocation of Wastewater Treatment Capacity
Public hearing and possible motion regarding adoption of an ordinance extending the suspension of the limits on the allocation of wastewater treatment capacity for residential uses in qualifying residential developments.

Director of Construction Management Kent Jackson reviewed past history regarding limits for the allocation of wastewater treatment capacity and recommended adoption of an Ordinance extending the suspension of the limits on the allocation of wastewater treatment capacity for residential uses in qualifying residential developments running through and including June 30, 2002; this action would bring Town to the final year of the allocation plan as adopted originally.

Commissioner Jensen asked if this were based on getting wastewater line in place with Raleigh. Jackson noted this was an enhancement, but in a development stage of criteria as to what Town would like to have for the use of that additional capacity. Noted: this action is a suspension of allocation of the pre-approved units (nothing beyond capacity we already have). Manager Radford noted specifically the engineering of the line itself – line study determines where the odor controls will be, volumes, etc. and anticipating seven to ten months to be able to pump wastewater, and within the confines of the agreement with Raleigh. Lines have not been pressurized but funds are available should need be to make repairs.

Commissioner Jensen expressed concern with transition of 4% growth and amount of increased construction. He disapproved of the suspension continuing, originally voting for it, and the impact of increased construction, as public facilities are already stretched to the limits and further concerned with the additional development when the pipeline is ready for pumping to Raleigh (wants to smooth the transition). Jackson explained this was departure of the original ordinance adopted in 99 and would have zero impact over the next few months or the remainder of this physical year.

Mayor Weatherly asked the number of additional houses that could be built above the current allocation if reverted to the allocation without the suspension. Jackson didn't think there would be any impact with this change.



Public hearing # 2 continued

Commissioner Jones reminded the number of units were finite that could be developed; all remaining allocation units are available June 30. Commissioner Meckes noted market was driving the development and this action would make it come to pass two/three months sooner. Commissioner Grimes noted flexibility as to where to build, but doesn't change the absolute numbers.

Mayor Weatherly opened the public hearing at 8:00 p.m. With no comments being made, the hearing was closed.

Jackson reviewed a chart of the building permits issued and remaining units undeveloped (65% to 70% of allocation offered has been used). Commissioner Jensen's concern with defer of the allocation plan was with transition and impact on total public facilities systems available.

Commissioner Jensen confirmed growth rate would be independent of allocation. Mayor Weatherly responded there was no approval for new residential growth; the ordinance had determined criteria to dwindle down to 4% and the allocation was already approved lots. Commissioner Meckes noted the 1000 previously approved units that could be built without regard to the 4% growth rate and noted we haven't met the allocation. Commissioner Jensen felt there could be an additional 450 building permits within one year. Jackson saw them independent one from the other. Commissioner Meckes asked the status of the approved units at the end of June 30 when we go to the 4% growth rate. Manager advised they are unallocated at that point, and becomes free for allocation.

Mayor Weatherly reminded these building lots were approved and Town had placed a deceleration on them; we're not approving any new residential growth; the new ordinance determines the beauty criteria to dwindle it down to 4% - a number.

Manager Radford noted the Board has a grasp for where we are as far as numbers, but the issue of wastewater allocation is not exact, but given a little at a time and in terms of how long it will last, the only way to know what the additional capacity is, is how far it flows at the wastewater plant, how high it gets on a peak day, because that number is continually massaged, and when getting closer to that horizon; just don't want to come up short. Commissioner Jones noted this only an extension of what's been done and staff was not prepared to answer all the questions, but will in the future.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to continue the suspension through June 30, 2002. Vote on the motion was 4 in favor and 1 opposed with Commissioner Jensen being opposed. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.



PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item. Mayor Weatherly will recognize those wishing to speak at the appropriate time. Please limit your comments to 3 minutes to allow others to speak.

Herman Jaffee addressed affordable housing and need for improvement on Trackside development – no affordable housing for seniors – encourage looking for sites for villages within Apex – employee finding sources to accomplish goals (i.e. home buyers fair for information and help – noted zoning changes by Chapel Hill).

Mayor Weatherly noted at the time of modification of agenda, he had forgotten an item, 2002 Wake Education Summit and asked to amend the agenda to discuss this.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to add New Business Item #3 - Wake Education Summit. Motion carried.

NEW BUSINESS

New Business Item # 1 – Rezoning Case #O1RZ11 (Director of Planning)

Discussion and possible motion regarding rezoning case #O1RZ11, Jones & Clossen, applicant, seeking to rezone from Residential Agricultural and Planned Commercial District to Planned Unit Development, property located on E. Williams Street between James Street and S. Hughes Streets containing 15.94 acres.

Director of Planning David Rowland advised applicant has amended his application to delete access onto NC55. Staff recommends approval. Clarification: access will be off Perry Road; all other items on the plan remain the same; Perry Road homes have a larger setback from the road to allow for plantings and if so planted would be in the public rights-of-way.

Commissioner Jensen was concerned with buildings face and appearance on NC55 (there will be no change in buildings); reference: Olive Chapel Village appearance (backs not as nice as fronts). Rowland notes provisions in the UDO to address backs and fronts and visibility to public rights-of-way, and as trees develop, would see a better buffer; shopping center is unfinished. Jensen desires more evergreens and wants to look at a better buffer situation.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the rezoning request. Motion carried.

End of New Business # 1



New Business continued

New Business Item # 2 – Ordinance Regarding Utility Access (Commissioner Jensen)

Commissioner Jensen requests consideration of an ordinance regarding utility access under driveways and sidewalks. He noted with cable installation and sidewalks, costs could be minimized by installation of underground pathways at time driveways or sidewalks are constructed, with cost of conduit being minimal. Manager Radford spoke with Electric Superintendent and Director of Construction Management for pros and cons and recommends having staff review this request. Consensus of the Board was to do so.

End of New Business item # 2

New Business Item # 3 - Wake Education Summit

Mayor Weatherly asked to have Apex be host to the May 1, 2002 Wake Education Summit at the McKimmon Center. Hosts are asked to identify a delegate to represent them at the Summit and to donate \$250 toward the cost of the event.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to approve the request with Mayor Weatherly being the delegate. Motion carried.

End of New Business

CLOSED SESSION

Action: Motion by Commissioner Jones and second by Commissioner Grimes to move into closed session to discuss award of the Peakway construction contract and to receive legal advice from the Town Attorney regarding pending litigation (William Barker). Motion carried. Minutes are recorded separately.

Mayor Weatherly called for a motion to move back into open session.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to go into open session. Motion carried.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to award contract R-01-1 Apex Peakway Construction to Curtis L. Jones Grading Company. Motion carried.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Jones and second by Commissioner Grimes to adjourn at 8:51 p.m. Motion carried.

The above minutes were approved on the 2nd day of April 2002.



Town Clerk



Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 2, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, April 2, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Jensen
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

CONSENT AGENDA

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

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the consent agenda as presented. Motion carried.

1. Minutes of March 19, 2002 Board of Commissioner's Meeting.
2. Minutes of March 19, 2002 Board of Commissioner's Closed Session (separate).
3. Minutes of March 14, 2002 Planning Committee Meeting.
4. Ordinance for Rezoning Case #01RZ11, Jones & Crossen, Planned Unit Development District, 15.554 acres located on E. Williams Street between James Street and S. Hughes Street.
5. Agreement between Town of Apex & Carolina Power & Light Company for Mutual Use of Poles.
6. Contract with ECS, Ltd. and authorization for Town Manager to execute contract on behalf of Town (Proposal # 7053 Phase I Environmental Site Assessment – Old Apex Fire Station).
7. Resolution Accepting Dedications of Public Rights-of-Way & Easements for construction of sidewalks.
8. Amendments to Municipal Records Retention and Disposition Schedule: adds the series Powell Bill Records (Standard 3-61); increases retention period for Payroll Records (Standard 3-61); increases retention period for Payroll Deduction Records (Standard 3-62) and changes description of records – (Replaces Standard 13: Personnel Records).
9. Wake County Tax Report for Town of Apex.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows. With no amendments being made, the agenda was set as presented.

PUBLIC HEARINGS

Public Hearing # 1 – Rezoning Case # O2CU01 (Director of Planning)

Public hearing regarding rezoning case #O2CU02 NEFA Properties, LLC, applicant, seeking to rezone from Office & Institutional Conditional Use & High Density Residential Multi-Family Conditional Use District classification to Office & Institutional Conditional Use District classification, 2.779 acres, located on NC55, north of the Apex Peakway; possible motion regarding same.

Being sworn by Town Clerk: David Rowland, Director of Planning, and Jim Pendergrass, Counsel for NEFA Properties, LLC.

Director of Planning oriented the Board regarding the 2.779 acres located on NC55 north of the Peakway and noted the surrounding land uses. Requested zoning is to zone the entire 2.779 acre tract to O&ICU. In a previous rezoning #95CU17, .699 acres was omitted from the legal description of Tract "F". This rezoning request will correct the previous approved rezoning case. An existing condition on the property limits access to NC55 to one access point; the existing condition will carry forward into the proposed rezoning. Planning Board reviewed this rezoning request and unanimously recommends approval.

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

Speaking in favor of the rezoning:

Jim Pendergrass, Counsel, NEFA Properties, LLC., noted the current zoning of the property needs to be corrected so entire parcel is consistently zoned.

No one spoke in opposition to the rezoning request. Mayor Weatherly closed the public hearing at 7:10 p.m.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the rezoning for Case #O2CU01, with the existing condition of the previous rezoning of limited access to NC55 for one access point and to be carried forward into the rezoning. Motion carried.

End of Public Hearings



OLD BUSINESS

Old Business # 1 – NC 55 Corridor Plan (Director of Planning)

Discussion regarding NC55 Corridor Plan; possible motion to adopt the plan.

Planner Dianne Khin spoke with NCDOT Tom Norman, Engineering Unit Head, Bike and Pedestrian Division regarding costs for pedestrian underpass vs. overpass and was advised costs are site specific; in general where the road may be higher than adjacent property, an underpass is most cost effective, but where the road may be lower than adjacent property, an overpass perhaps is the best option. Typical overpass is more expensive, but with terrain advantage, an overpass might make more sense. Cost Ex: 5 lanes requiring an 80 foot span to do a culvert underpass - \$120,000; tunnel under existing roadway is expensive (bore/jack equipment) and if not a new roadway more sensible to do an overpass – Cost Ex: 5 lanes with an 80 foot span would require approximately a 200 foot bridge – minimum cost \$240,000 or greater. (Ex. 332 foot bridge for the American Tobacco Trail - \$400,000 (Durham over an interstate highway). There are situations where overpass is better than underpass.

Commissioner Schulze asked the percentage mix of residential vs. commercial for this plan. Rowland noted it to be site specific in terms of major employment centers; negotiated at time of site plan or development plan approval and depending on the mix of use. Commissioner Jensen felt it would be a higher percentage of industrial than houses. Commissioner Jensen asked if on side streets (3 lanes) the plan have inclusion of center planters and plantings where feasible to slow traffic down (traffic calming) to keep it from becoming a freeway; for safety and beautification.

Khin noted design concept was to not overload the area with additional requirements above and beyond requirements of other areas. Three lane sections with center turn lanes and only where required, and not necessarily the entire lane. Ex: Olive Chapel Road and N. Salem Street. In previous discussions of the Committee regarding medians, she noted major thoroughfares with 4 or 5 lanes definitely needed a median, but saw it differently for 3 lanes where people cross, especially at intersections.

Commissioner Jensen wanted to know if the installers could be advised there be medians installed with 3 lanes of construction. Commissioner Meckes noted the plan was not cast in stone, a conceptual process allowing opportunity to modify and fine tune. Commissioner Jones agreed with traffic calming and esthetic points, and better to have such, but not at the expense of turn lanes. Commissioner Jensen agreed, but at least have something indicating a side street and to go slower. Rowland noted if the Board was inclined to adopt the Plan, it could be modified, and hopes the plan would pay benefits to the Town. Mayor Weatherly agreed it is in the best interest to all citizens to have this work done in this area.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the NC55 Corridor Plan, with modification of installation of medians with 3 lane construction. Motion carried.

End of Old Business



PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item. Mayor Weatherly will recognize those wishing to speak at the appropriate time. Please limit your comments to 3 minutes to allow others to speak.

No one spoke during public comment.

NEW BUSINESS

Item # 1 – Memorandum of Understanding (Mayor Weatherly)

Mayor Weatherly presented a Memorandum of Understanding for Southwestern Wake Regional Cooperation, which was adopted by the Towns of Fuquay-Varina and Holly Springs. He noted numerous conversations of issues of mutual concern and needing mutual cooperation, and this document would clearly indicate wanting to work cooperatively on a number of issues, but where one must disagree, he indicated it would be perfectly all right to do so if in the best interest of the respective citizens. He recommended adoption of the document.

Commissioner Grimes clarified there would be no specific dates; only adhoc, where issues arise, and open for ideas. Commissioner Schulze asked if Morrisville should be included. Mayor Weatherly noted it may branch after getting the initial three towns; with these three having a strong mutual interest and others would be fine; noting Mayor Sears indicated even Garner may have interest. Commissioner Jensen felt it would be good to have as many as possible regionally.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the Resolution. Motion carried.

End of New Business Item # 1

Item # 2 – Interlocal Agreement for Regional Wastewater Treatment Study (Manager Radford)

Possible motion to adopt a Resolution to approve an Interlocal Agreement for Regional Wastewater Treatment Study.

Manager Radford noted Towns of Holly Springs, Cary, Fuquay-Varina, Morrisville, Apex, and the County of Wake had worked together to develop a regional partnership for treating future wastewater needs; with an outstanding level of cooperation of all parties to arrive at the proposed agreement. Wake County volunteered to pay 33% of costs of the preliminary engineering study, with an estimated cost of \$200,000. Apex's share would be approximately \$123,000, for a share of 7 mgd. or 20.7% of the costs of the project. Long term costs of the wastewater treatment facility have not yet been determined, and away from such estimate by three years, depending on location, number of discharge points, other partners that may choose to be involved - even partners from outside the County (Lee, Chatham, Pittsboro, or Harnett).



New Business Item # 2 continued

Wake County passed a similar Resolution, as the one in hand which authorizes himself as Town Manager and the Town Attorney to further review and make modifications to the Agreement for typos and general consensus issues. A slight difference in the Resolution in hand, vs. the Resolution included in the agenda, allows the Town Manager and Town Attorney to approve the Agreement based on the legal counsel each town has represented at the table. It's anticipated it will be less than two years to do the preliminary engineering study. Holly Springs is considering this issue at their meeting, and going before Cary's Planning Committee, with Fuquay-Varina and Morrisville to hear it within the next week. He complimented all the Town staffs on their participation and the high level of consciousness for what the program can be 10 years from now when all of the municipalities will be in need of further wastewater treatment facilities. He strongly supports passage of the Resolution in hand and the Town's involvement in the preliminary engineering study.

Town Attorney Kaus commented on the long and involved process with Apex and the other municipalities, noting the document as very intricate and complex. He called attention to the way in which the contract or the preliminary work will be approved, where normally the contract would come before the Board, much like review of the Interlocal Agreement – reviewing terms and making comments, etc. He pointed out the Board would be delegating Manager Radford to be the Town's representative on the "project guidance team," and the Town's authority to review and approve the contract. Two different teams have been established: one would come up with the elements the Town would want to see in the contract and the other would be made up of Manager Radford and the other Managers who would approve the contract rather than this Board. He advised there were no legal issues involved there, because the Resolution in hand delegates the authority for Manager Radford to do so. He noted the thought behind the working group was that it would be much cleaner this way and would absolve the Board's of any obligation to get involved with such complex details.

Commissioner Jensen clarified commitment to 7 mgd flow and the current flow being 3.6 mgd. and if this would double capacity. Manager Radford responded this would not double capacity, but the plant would eventually be abandoned, and would be in addition to; planning for 60,000 population by the year 2050; with a 40 year life expectancy of the plant. Commissioner Meckes noted the additional 1 mgd from Raleigh, and being 4.6 mgd.

Commissioner Grimes asked the Manger consult with the Board prior to making commitments on anything the Board should know about, and without saying, that all would be consulted before any decisions. Manager Radford responded in terms of the level of co-operation with the money as stated (\$123,000) and the usual regular update to the Board as far as terms of development of the engineering plan itself instead of just the preliminary plan.



New Business Item # 2 continued

Commissioner Meckes reflected on Commissioner Jensen's comments that the growth cap was 40,000 population; that the Town could suitably and well serve with 4.6 mgd of treatment capacity. He had no problem planning for the future and feels this Board and Boards prior have benefited from the fore-fathers foresight several years ago when there was a contractual agreement for the water treatment plant expansion when they expanded the wastewater treatment plant from the 1.8 to 3.6 million gallons. He asked the costs that would be involved to build capacity for 7 mgd vs. 5 mgd. Manager Radford noted some difference in economic scale; advising the 1 mgd from Raleigh would go away in 2011 and would be replacing it on our own. Commissioner Meckes continued it wise to go to this level, not to say we ever will, but all know and have been concerned should an opportunity come along, no one could ever pass up, all would want to be able to take advantage of such opportunity. He feels this is what's being done here, and felt Commissioner Jensen's concern with 7 mgd of wastewater treatment capacity means committing to 60,000 people and he doesn't feel this is the case.

Commissioner Jensen indicated this was not his concern, but wanted to understand fully and hopes to stick with 40,000 and continued that even when this is reached, one would understand it will not absolutely cap at that point, and in all likely-hood the Town will grow at one or one-half percent because of growing families. Commissioner Meckes noted the Town could be at a 40,000 population and then Trackside comes to pass...with Commissioner Jensen thinking families as they grew, their children would want to live in the area. He continued in the next 10 or 15 years maybe the next Boards would want this and this allows for flexibility and with the economy of scale, would not cost much more to plan for this. He agreed the costs of the study were acceptable. He doesn't believe other Boards should be "hand cuffed" should people want this, and that they might. He noted the need to allow for the one or one-half percent.

Commissioner Schulze asked if flow reached 21 mgd, could it be managed at one plant or anticipation of more than one plant. Manager Radford noted the flow to be greater as a result of the small quantity of Fuquay and Wake County; and that plants are made to exceed up to 40 times this limit and this plant would be expandable to any future number of daily gallons.

Commissioner Jensen asked in terms of size and removing nitrates, how much reduction percentage wise would it be from where we are now. Manager Radford did not know. Commissioner Meckes noted the Public Works Director had indicated the Town was "state of the art" noted as far as nitrogen reduction. Commissioner Jensen noted scale helps and if willing to reduce materials coming out, could eliminate it all, but there's the cost factor. Manager Radford noted these kinds of issues would be considered in the engineering study opposed to the preliminary study, which decides who will be doing engineering, costs, potential discharge points, and possible discussion of the treatment process, and to what topical water source it would go into. There's potential to go to the north side of the lake prior to the still body of water divided by the bridge at Jordan Lake - bridge has a 160 foot passage way and is not open all the way across and potential for stagnant water to the north side, whereas if placed below Buck Horn Dam on the south side, the engineering and pumping fees costs would be phenomenal to get it to this point and with a lot of work to be done.



New Business Item # 2 continued

Commissioner Jensen asked if we were required to put it in the down side of the Buck Horn Dam. Manager Radford advised we were not; it can be put back into the Lake and not a requirement, but the best engineering practice might dictate otherwise. Commissioner Meckes noted this could change as well. Manager Radford advised Durham and Chapel Hill already dumps into the Lake above our intake at the water plant.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to adopt the resolution (i) approving the proposed Interlocal Agreement, re: the regional wastewater treatment study (subject to any subsequent revisions approved by the Town Manager and the Town Attorney), and (ii) authorizing the Town Manager to serve on the "Project Guidance Team" and approve contracts for the "Preliminary Work" on behalf of the Town. Motion carried.

End of New Business Item # 2

Item # 3 – Traffic Calming (Police Chief and Planning Committee Chair)

Possible motion concerning Planning Committee recommendation to amend Town of Apex Policy Statement regarding Traffic Calming Criteria and Guidelines.

Commissioner Grimes, Chair of the Planning Committee, reported traffic calming had been discussed at several meetings, with committee agreeing to thresholds being too high and deciding 25% to be reasonable and with 5 mph rather than 7; another meeting was held concerning volume of traffic. Chief of Police Hearn presented the Committee's recommendation to amend the Town of Apex Policy Statement regarding Traffic Calming Criteria and Guidelines as follows:

Qualifying Criteria:

2. Speeding must be the chronic problem:
 - a. 25th percentile speed is measured by radar and determined to be 5 mph and above the posted speed limit during any one hour period whereupon the number of vehicles meets or exceeds 100.

And further, staff recommends additional wording be included due to expense of removal:

Where that in the event the Homeowners or Homeowners Association at any time within three (3) years of installation of a traffic control device be removed, that the cost of removal be charged to the Homeowners Association.



New Business Item # 3 continued

Commissioner Jones was in agreement if the Home Owner's Association was in agreement for installation of the devices in the first place; but not to hold them responsible for something they didn't concur with initially. Chief Hearn will contact the Association when a request comes to him; he has been contacted by three neighborhoods and none without consent of the associations.

Commissioner Grimes noted the associations were corporations and have dues, assessments, etc, and it would be easy to get money from them, but individual homeowners from a neighborhood with no association, a separate entity, or petitioners, would be different. Attorney Kaus advised it was a collection problem either way, whether a formal corporate entity, or individual homeowners who call themselves under the umbrella of the homeowners association. If there is no corporate entity there and since you're proceeding against the individual homeowners, being opposed to the assets of a corporation, either way there will be some "ugly" collection problems.

Commissioner Grimes felt there should be some type of memorandum of understanding with the petitioners prior to doing such, accepting indemnity in the event they want to take the devices out. Chief Hearn advised Charlotte, Mecklenburg and Cary assume all expenses. Commissioner Grimes didn't want this to chill ones desire to get this done should need be, but cause one to think carefully about doing so if you knew you had to pick up the tab. Commissioner Jensen asked after three years would the Town take it out. Chief Hearn advised it would be a Board decision to remove it or not, and he would bring the requests back to the Board for consideration. Commissioner Schulze clarified the same criteria would be used - 70% of the homeowners signing a statement to this effect. Chief Hearn responded probably so, with Mayor Weatherly noting we could see the amount of opposition to keep it or remove it.

Mayor Weatherly opened the floor to Robin Oke for comments. She agreed with the requirements, but not with the Associations having to pay, when the traffic pattern was created by the Town, or "poor planning by the Planning Department", calling it a "bitter pill" to bare the costs to slow traffic down. Commissioner Grimes advised that he was only talking about the cost to remove it. She thought it fair, when they knew there was cost when being considered. She further wanted the neighborhood to have a voice of opinion about placement, not wanting to have humps every 100 feet, but placed practically so as not to be a hindrance to people who live there.

Commissioner Jones noted the way 3.c. was written indicates 25% of the cost would be paid by the homeowners association (installation cost). Oke would like this taken out, viewing 25% funding by homeowners as, "double taxing" and felt the funds should be there to take care of these costs. Mayor Weatherly recalled from previous discussions, this was to keep lots of neighborhoods from making such requests, and there would be some equity required for both earnestness of effort and to weed out those less prioritized projects by the investment required of the homeowners, and why it's there, asking appropriateness from everyone with no investment.



New Business Item # 3 continued

Chief Hearn advised costs for one hump being \$2000 to \$2500. Manager Radford advised staff's position is there should be an ownership position and someone that brings a request for such be required to have some financial requirement and that being 25%.

Commissioner Jensen recalled discussion of this and noted the criteria that one has to follow to have one in the first place to prove that there's one needed. He thinks this should be enough. He knows with Vintage Grove and Surry Meadows this was not their fault this situation has occurred and has turned out to be a cut-through, and feels the Town should carry this (ex. Heatherwoods when the Town supplied moneys to absorb costs to take the streets over). He understood wanting to assure a buy in but criteria has to be met in the first place.

Commissioner Schulze advised he would be open to reduction of costs but wanting something, and that the Board would still have the ultimate decision whether to install the humps or not, and it would be based on the requirement and could still say no.

Commissioner Jones agreed there could be a reduction in costs, but there needs to be some amount due to expense on the Town's part to see if criteria are met. Commissioner Jensen asked if an application fee could be applied to look at this. Manager Radford stated staff had started with 50% and have made changes somewhat.

Tim Carley added as a homeowner, thought it to be a great idea when three years down the road wanting to get out of it and with the association having made the town go through the expense, and knowing it was a serious financial burden to remove it; with money being on the backend, but knowing going into it that they may have to pay a certain percentage, even though they may not like it may have too, if that's what it takes. If another neighborhood comes up and doesn't have the money, or do have the money, why not put more financial burden, you ask to put these in but make us take them out then you're going to pay.

Mayor Weatherly asked Chief Hearn if he knew the number of humps needed for Vintage Grove and Surry Meadows. Chief Hearn advised four, but would be looked at by the engineer with placement and proximity to drive cuts. Mayor Weatherly clarified costs of the two associations involved to be \$1000 per, and hopeful the Peakway would alleviate some traffic. Oke responded there is an additional mile one way and not sure drivers would go an extra two miles daily. Chief noted this request was for entire length of Vintage Grove, with another request to look at other streets, but would be looking at the entire neighborhood. Oke commented she was "put off" by the opinion that "they" are making the town work so hard to make her street safe, that this was the Town's job and feels if their children are in danger and adults backing out of their driveways, then they come to the Town for help, instead having to pay more money than what they pay in taxes to get the appropriate help needed to slow down speeders in the neighborhood.



New Business Item # 3 continued

Mayor Weatherly pointed out once a precedent is established by putting in a speed hump asked how could the Town say "no" to the next request that meets the criteria. Oke noted they could not meet the first criteria and had come back because they recognized there was a problem with speeding. They had asked to rework the ordinance to try to enforce it as it would be hard for anyone to qualify. She feels there are enough requirements so that the additional fee needed shouldn't be...it had taken lots of time to get signatures and a lot of time spent to get something to work with.

Manager Radford noted in terms of contributions from the neighborhood, he hopes this would ensure and safeguard those citizens rights to not have speed bumps put in other neighborhoods throughout the town on a rather indiscriminant basis and cost a great deal more money that everyone would end up sharing.

Commissioner Jensen questioned the requirement of the associations paying 100% to remove them to be a deterrent in wanting to have them put in; the fact being if you realize you would have to pay the total cost to have them removed. He could see the initial fee for a study, but to pay for the humps because there has to be four rather than one, and the cost goes up because it happens to be a long road there; he doesn't feel this burden should be placed on the people who didn't create the problem in the first place.

Commissioner Grimes noted in the criteria, it doesn't say anything regarding cost of removal but thinks it should; as far as installation costs, he sympathizes with Oke and Commissioner Jensen as to what they were saying, but thinks it could be reduced to 15% and be a deterrent to frivolous requests. Commissioner Meckes and Commissioner Jones suggested 10% with Commissioner Grimes agreeing. Commissioner Meckes noted this would meet the requirements staff wanted and empathizes with staff and the others position but agrees equity position in anything assures accountability.

Commissioner Schulze was in agreement with a financial stake, and likes the filing fee, being able to come into Planning and when reviewing a site plan they charge a fee; could also charge a fee for the officer to survey the street; notes it easier to swallow. Commissioner Grimes asked if there would be a graduated cost of all the same regardless of the size and length of the road and number of houses with Commissioner Schulze thinking the same. Commissioner Jones noted if they try to apply it to this situation it would be easy to say it would be a fee they would pay, or not pay at all, but his concern was those subdivisions where maybe it's not a cut through, but maybe a traffic problem that's subdivision specific. He noted this would have to be applied to every situation, and thinks a percentage is the best as there may be a situation that needs 10 speed humps. Commissioner Grimes felt proportionality is more in line here rather than some arbitrary amount.



New Business Item # 3 continued

Commissioner Meckes called attention to Oke's statement in regard to paying tax dollars, and his response was everyone in the community pays tax dollars too, and here this single neighborhood will benefit to some greater extent from tax dollars than the community at large. He noted the problem being the people who violate the law and if everyone obeyed the law there wouldn't be a problem. He continued it was not because of a poor job in planning, nor development, nor the Board that approved it, nor the road, but because people are neither doing what they should be when going through this neighborhood, nor watching out for kids and people.

Commissioner Grimes noted this was speeding issue that is critical and not the volume of traffic.

Commissioner Schulze again indicated he liked the idea of a filing fee. Once the officer assures it's an unsafe situation, then it's "our" part to make sure the street is safe and where tax dollars are used not necessarily private money. He noted if we saw other unsafe situations, "we" would take action to correct the situation, not ask the people who were affected by it.

Commissioner Grimes again noted the real complaint was speeding and not volume of traffic; an issue we don't understand what the mind set is, maybe it isn't speed, but actually volume they are concerned with. He continued volume wasn't what the policy addresses, and the Town by creating a road, whether it's a cut through or not is not inviting someone to violate the law or encouraging or instigating or fostering or inadvertently allowing - we're not making people speed. He agrees with Commissioner Meckes in that the Town hasn't done anything to promote speeding through this neighborhood. He doesn't think the Town should take the position that the Town needs to be punished because "we've" done it.

John Morgan, V. President Cameron Park Homeowners Association, indicated a formal request had been submitted from Cameron Park for speed humps. He has counted the cars and has had the traffic trailer placed where when people saw it they slowed down. He had over 30% people over 30 mph in a 25 mph zone (500 cars under one and one-half hours), which meets criteria. They don't mind paying the impact fee to have the humps installed, but there's a cost benefit that the town has a limited revenue or excess cops to monitor traffic. He advised with humps, the recommended to be effective is every 200 to 400 feet with one not doing so much as with 2 or 3 being spaced adequately would seem more effective. Cameron Park would require 10 to 12 not including the major thoroughfare down Townside Drive. Cost benefit is this would free up police for other responsibilities. He is not opposed to 25% funding; 98% of those surveyed had signed. He views installation of humps for safety of the kids as well as to slow down speeders (White Dogwood Drive).



New Business Item # 3 continued

Action: Motion by Commissioner Jones and second by Commissioner Grimes to adopt the qualifying criteria and guidelines of the policy statement

2. Speeding must be the chronic problem:

- a. 25th percentile speed is measured by radar and determined to be 5 mph and above the posted speed limit during any one hour period whereupon the number of vehicles meets or exceeds 100.

And qualifying criteria 3.c. to 10% and with the additional wording:

Where that in the event the Homeowners or Homeowners Association at any time within three (3) years of installation of a traffic control device be removed, that 100% of the cost of removal be charged to the Homeowners Association. Motion carried.

Chief Hearn noted Vintage Grove qualifies and will check on Cameron Park. Commissioner Jensen clarified that after three years, it's the town's decision to remove the humps or not, if the Board decides it should be removed. Mayor Weatherly informed with the Board's decision whether it should be or not.

End of New Business Item # 3

Item # 4- Transportation Plan Advisory Group (Mayor Weatherly)

Mayor Weatherly recommended approval of the following list of individuals to the Transportation Plan Advisory Group that would be receiving input from citizens and business people for an update of the Town's Transportation Plan. Work will continue over the next 6 months (process similar to the NC55 Corridor Plan), with a goal being to have the plan for consideration by the Board of Commissioners in August or September 2002 and then will be forwarded on to CAMPO before October.

Board of Commissioners: Gene Schulze

Planning Board: Amy Flanary-Smith

Appearance Commission: Chris Holmes

Citizens: Alonzo Wilson, Jay Gibson, PE and Joe Milazzo, PE

Business Owners: Elizabeth Eckert-Sorrell and Sanjeev Patel

Developers: George Richards and Tommy Morgan

Apex Chamber: Cat Kearns

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve the group as presented. Motion carried.

End of New Business Item # 4



New Business continued

Item # 5 – Resolution in Support of Passenger Rail Service (Mayor Weatherly)

Mayor Weatherly presented a Resolution in Support of Passenger Rail Service for Southern Wake County, advising the Town of Fuquay-Varina had adopted this resolution. He asked Apex give its support of this effort by adopting this resolution to ensure this area is served by this service.

Manager Radford reported NCDOT Rail Division reports services from Wilmington to Raleigh and Morehead City to Raleigh with routes through Fayetteville and Goldsboro. Tracks are in place from Raleigh to Fayetteville. Fuquay-Varina has great interest in this service and advised Apex does not have existing rails.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to adopt the Resolution as recommended. Motion carried.

End of New Business

CLOSED SESSION

Motion to enter into Closed Session to consult with an Attorney regarding pending litigation, "Apex Properties, LLC. vs. Town of Apex" and to discuss potential real estate acquisition.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to enter into closed session at 8:15 p.m. Motion carried. Minutes are recorded separately. Motion by Commissioner Jones and second by Commissioner Meckes to move back into open session at 9:00 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion made by Commissioner Jones and second by Commissioner Meckes to adjourn at 9:02 p.m. Motion carried.

The above minutes were approved on the 16 day of April 2002.

Georgia A. Parker
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 16, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, April 16, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Jones
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly
Special Welcome by Commissioner Meckes and recognition of Scout Vance Pope, Troop 364

AWARDS PRESENTATION

Mayor Weatherly presented Apex Appearance Commission Awards.

Residential Award: John and Teresa Paterson, 1008 Devonhurst Court
Winner of Attractive Fall Color in Landscape

Non-Residential Award: First Bank, 402 E. Williams Street – Scott Booth, Manager
Winner of Tree Preservation During Development

Annual Tree Award: The "Pearson Magnolia, Northwest Corner of Mason and Center Streets
Arbor Day 2002 – Exceptional to-the-ground form and classic, almost perfect pyramidal magnolia
shape ((Magnolia Grandiflora – Southern Magnolia)

Memorial Tree Award: "Memorial Pine Plantings" – Apex Town Campus
Grove of loblolly pines planted in memory of the Victims of September 11, 2001 terrorist attacks,
and in cooperation with "NC Trees of Strength Program." – Arbor Day 2002

Arbor Day Ceremony, Saturday, April 20, 2002 – 3:00 p.m. First Union Bank
End of presentations



CONSENT AGENDA

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

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve the consent agenda as presented. Motion carried.

1. Minutes of April 2, 2002 Board of Commissioner's Meeting.
2. Minutes of April 2, 2002 Board of Commissioner's Closed Session (separate).
3. Findings of Fact and Conclusions of Law and Ordinance for Rezoning and Conditional Use Permit #02CU01, NEFA Properties, LLC, Office and Institutional Conditional Use District, 2.779 acres located on NC55 north of the Apex Peakway.
4. Annexation Petition #327, Pinnacle Quik Mart, LLC, H. Brantley Powell, Kelly P. Gould and Kimberly P. Atkins, owners/petitioners; petitioning to annex property known as the Pinnacle Quik Mart, LLC., located on Ten Ten Road (SR1010), containing 7.607 acres and including public rights-of-way; adoption of Resolution directing Clerk to investigate the annexation petition; Certificate of Sufficiency of Petition by Clerk; and adoption of Resolution setting date of public hearing for May 7, 2002.
5. Mayor and Board of Commissioners to formally recognize the planning process that will be undertaken by the Planning Department in the preparation of the Town's first Hazard Mitigation Plan.
6. Adopt Resolution Accepting Dedication of Public Right-of-Way and Easements and Authorizing Payment in Consideration Thereof.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows.

Manager Radford asked to amend the agenda by inclusion of NB Item # 3 appointment of members to the Fire Advisory Board.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to do so. Motion carried.

The regular meeting agenda was set as amended.



PUBLIC HEARINGS

Public Hearing # 1 – Rezoning Case # O2CU02

Public hearing regarding rezoning case #O2CU02 Lovie Factory, applicant, seeking to rezone from Residential Agricultural District to High Density Residential Conditional Use District, .89 acres located at 713 Tingen Road; possible motion regarding same.

Being sworn by the Clerk: David Rowland, Director of Planning and Lovie Factory, Applicant

Director of Planning oriented to the location of the property, noting adjacent zoning and surrounding land uses. Conditions placed on the requested zoning to HDSF-CU: limited development of the lot to two single-family detached homes and the proposed home will be similar in scale, location and materials of the homes along Tingen Road (brick or vinyl siding with asphalt shingle roof).

2010 Land Use Plan shows the area as low-density residential permitting 1-4 units per acre. The proposed zoning is for high-density residential, applicant has restricted development to two, single-family detached homes which would be consistent with the 2010 Land Use Plan. The proposed rezoning would allow for homes consistent with the adjacent houses on Tingen Road and the Perry Hills Subdivision; and consistent with the infill development policy.

Recommendation by Planning Board and Staff is for approval. One opposition vote from the Planning Board was due to inconsistency with the 2010 LUP. Applicant requested high-density but has limited development to the two single-family units with considerable size lots.

Director of Planning answered questions:

- the lot can't be broken up in the future without a rezoning of the property
- approval of the request could set precedent for future requests such as this
- staff has talked with applicant concerning medium density zoning rather than HDSF
- staff looked at break-down in density: after looking at Perry Farms the idea was to continue the rezoning with low density residential which is consistent with the LUP
- setbacks for high density is greater than low density but similar; staff preferred low-density
- applicant could go to low density vs. high density and still accomplish what she wants to do

Mayor Weatherly opened the public hearing at 7:16 p.m.

Lovie Factory, applicant, having been sworn, advised her request to rezone complies with the zoning code; lot would serve as her residence; surrounding properties are family members and asked support for the rezoning request. She advised Commissioner Jensen her application was limited for only 2 houses with nothing else being placed there. She indicated she had no problem with low density and others living within 300 feet of the property were in agreement with the original application. Commissioner Grimes asked if she were willing to amend her petition to low density with those conditions indicated and she was.



Attorney Kaus advised either with or without the conditions the Board could rezone to low density or since the applicant has consented, the Board could rezone to low density with the conditions.

There were no others speaking in favor or in opposition to the rezoning request. The hearing was closed at 7:20 p.m.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to approve the rezoning request as amended by the petitioner changing the zoning from high density to low density with the conditions. The applicant stated she did agree to the change in zoning and with the conditions. Motion carried.

End of public hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

Tom Colhoun, 1506 N. Salem Street, addressed concerns with the 2010 Land Use Plan, noting it as a planning tool not locked in concrete and should work with growth. He is working with property owner WC Mills, at Green Level Church Road and US64; 23 acres adjoining the Morris property. NCDOT has advised no land sale on the Morris property due to the I-540 corridor.

An offer from a big-box store has been made on the Mills property and is one that has been omitted from Beaver Commons. He noted such a store could draw a large tax base and he wanted to piggy-back on the Green Level Church Road site. Conversations with NCDOT reflect problems; no light is wanted at this location and they also are eliminating all road cuts. He has talked with them concerning a potential bridge and the elimination of access, which would mean some cash from them and some from developers.

The land is in the County and not in Apex's ETJ. He indicated the property owners need the proper zoning of the land prior to annexation by the Town to assure a sell of the land, but wouldn't work the way because annexation comes before rezoning and defeats the purpose. The property owner doesn't want to pay taxes before he gets the needed zoning; several years ago, annexation had fallen through.



He continued the 2010 LUP calls for O&I zoning for this area; that there is an increased vacancy in the Triangle in office and flex space and continues to get worse. He asked why focus on O&I zoning next to a major I-540 corridor when there is a much needed tax base for retail and commercial development. He asked the Board to not set the LUP in stone, but bring in a big-box store that is not in with Beaver Commons. He indicated he knew there would be a problem with Walden Creek residents as they do not want any other development, but other property owners can't tell him that they don't want to see it. He asked their support for the tax base development.

Manager Radford responded to his comments, noting the appropriate paper work had been sent to the county but the county was not willing. He had talked with County Manager Cook and with the distinctive criteria makes for a potential land grab (300 acres) and didn't want to relinquish this to the ETJ. He noted the owner was willing to bring two tracts into Apex, and annexed if zoned a particular way and voluntary. He will talk further about this and feels this is an opportunity to accept those voluntary tracts into the ETJ, and sets up an opportunity for the Board in the future to hear potential rezoning cases based on the merit for each case.

Commissioner Meckes commented on the county and denying our request to bring this land into the ETJ. Manager Radford response was County didn't want to give up authority over building inspections and county fees, etc. Mayor Weatherly was under the impression the county was putting on hold all requests until review of the required criteria for properties lying within the ETJ – setting up arbitrarily guidelines for water/sewer extension within ten years and not practical in all cases. Also, to establish short range urban service areas.

John Morgan, Cameron Park asked for an update of traffic calming, as he had seen action being taken. He continued he had exhausted conversation with the Chief of Police. He noted with increased development such as Wal-Mart, and with no access, all traffic would funnel onto NC55 and the neighborhoods – and has already seen an increase with the shopping center. He has a pending application and doesn't want it to fall by the wayside. He noted the Chief was to review the criteria – noted traffic to school, and wants the Chief to see the problems as it is now not later when school is out of session. He noted the policy had no criteria for the traffic study in the policy guidelines. He wanted to inform homeowners at their upcoming meeting where this issue stands. Morgan indicated the numbers exceeds the 10% level and continued conversation from the back of the room.

Mayor Weatherly indicated the interest for Cameron Park and Police Department are the same, to slow down traffic moving through residential districts, and felt there would be fewer calls by doing so.

Manager Radford noted integrity of the study and Town is prepared to move ahead, with Cameron Park qualifying based on the amount of peak traffic with studies already done; and with the number of speeders exceeding the 10% level. Deficiencies were noted in petition submitted by Cameron Park regarding number of homeowners abutting on Cameron Glenn, with intent to rectify those issues and continue on.

End of Public Comment



NEW BUSINESS

Item # 1 – FY01-02 Financial Summary

Director of Finance, Lee Smiley gave a review of the 3rd. Quarter Financial Summary and reports Town is in good financial condition.

An area of concern in General Fund Revenues is with Intergovernmental revenues, and state withholdings. After April 15, State should have some handle on their financial situation. Municipal and County funds in the past were first funds released. Governor Easley should make a decision at this time. Finance Director doesn't expect good news, but would be end of June for this news and August before any news regarding next fiscal year, and doesn't expect to receive any funds at this point. By July 1, 2003 a state wide 1 / 2 cent sales tax – counties are given an option and feels this will be done – if state keeps reimbursements this would be our reimbursement; possible for the time to be moved up to July 1, 2002 (NCLM has a bias view on this). Anticipates additional revenues for Town is \$550 to \$600,000. Next years estimate for withholdings is \$1.2 million and hopes improvement within next year.

Mayor Weatherly commented on his meeting with the Wake County Delegation, in which there is a reasonable support for these proposals defining these reimbursements for municipal and county monies, not to be withheld by action of the Governor and to move the 1 / 2 cent local option up by one year; whether passed or it, the message is being delivered to the legislature.

Director of Finance noted should the state situation get bad enough, no funds are truly safe. Franchise tax has been considered a local revenue and is also being withheld by the Governor under his emergency powers to balance the state budget. He continued with the interest rates at their current level, interest projected will not be reached.

General Fund Expenditures: Public building funds were estimated generously and not all monies are being spent; a fire truck is on order for Public safety; street resurfacing due in the spring will be postponed to the end of summer and combine these monies with next years to complete larger projects (Powell Bill funds are rolled over into Public Works). Sanitation: costs are up but revenues also ahead of budget, he will have to amend this later in the year.

Under Utility Funds Revenues, the Electric Fund Revenues are where they should be and have benefited from recent electric rate changes (system more efficient). Development has slowed down and underground charges have fallen behind the current year estimates.

Water/Sewer Revenues are inline at this point. Large fund balance reflects the water tank and City of Raleigh contract. Expenditures: System improvements reflect various projects not yet begun (Cary connection and others will be re-budgeted for next year.)

End of New Business # 1



Item # 2 – Utility Access Ordinance

Town Manager, Bruce Radford presented an Ordinance requiring the installation of utility access conduit for homes and businesses, formerly presented for consideration by Commissioner Jensen. Staff proposes amendment to UDO, building specifications and recommends it be approved. Conduit will be one and one-half inch in diameter and twelve inches deep into the ground and will carry low voltage lines for communication, cable TV, radio, etc. A one foot long, one-half inch in diameter iron stake will be on either side within three inches of the pin to be easily found with a metal detector. He further asked amendment of the ordinance for inclusion of sidewalks along with driveways. Other municipalities do not have this in place, but assures builders will know this is a new requirement and would take effect in the next round of subdivisions, and doesn't affect any subdivisions currently under construction; will be added to building specifications in engineering that will be reviewed by the technical review committee and filtered down to building inspectors as a punch list item; will be included in the drawings.

Commissioner Jensen agreed with the detail taking place in the Planning stage and agrees with staff's proposal. Long term will assist homeowners with the replacement and running of cable under drives; can't always bore under driveways.

Commissioner Schulze felt utility companies would have to feed wire instead of dig, which is a cost savings and hopes there would be some appreciation for this action taken.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen for approval of the ordinance as modified. Motion carried.

End of New Business # 2

Item # 3 – Fire Advisory Board

Mayor Weatherly recommended appointments to the Fire Advisory Board 3 from the AVFD and 3 from the Town of Apex fulltime firefighters and two ex-officio members of the Committee.

Recommends approval: Volunteers (John Sperath, Sue Lynn Hinson, and George Mizer)
Ex-Officio (Billy Gilbert)

Municipal (Mike Beasley, Lawrence Carter and Kevin Rink)
Ex-Officio (Gene Schulze)

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the appointments as recommended. Motion carried.

End of New Business Items



CLOSED SESSION

There were no Closed Session Items to be considered.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Grimes and second by Commissioner Jones to adjourn at 7:57 p.m. Motion carried.

The above minutes were approved on the 7th day of May 2002.

Georgia A. Parker
Town Clerk

Keith A. Wankler
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 7, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, May 7, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Grimes; Pledge of Allegiance led by Scout Jamie Cregger, Troop 104; Welcome by Mayor Weatherly

PROCLAMATION

Mayor Weatherly presented a Proclamation for "NATIONAL POLICE WEEK" to Chief Ronald Hearn.

INTRODUCTION OF TOWN EMPLOYEES

Human Resources Director Eleanor Green introduced Town Employee Alix Peters, Office Assistant.

CONSENT AGENDA

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

- Manager Radford asked item # 8 be pulled and placed on a future agenda.
- Town Attorney Kaus asked to modify item # 5 with a revised Resolution and an additional Easement Agreement regarding construction of the Peakway.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to amend the consent agenda. Motion carried.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the consent agenda as amended. Motion carried.



Consent Agenda continued

1. Minutes of April 16, 2002 Board of Commissioner's Meeting.
2. Minutes of April 24, 2002 Personnel Committee Meeting.
3. Findings of Fact, Conclusions of Law and Ordinance for Rezoning and Conditional Use Permit #02CU02, Lovie Factory, rezoning .89 acres located at 713 Tingen Road to Low Density Residential Conditional Use District.
4. Budget Ordinance Amendment No. 7 to pay Dixon Odom, LLC for review and recovery of sales tax revenue.
5. Resolution Accepting Dedications of Public Rights-of-Way and Easements for Peak Way construction.
6. Amendment to Apex Code of Ordinances to add a Four-Way Stop Intersection at Brittlely Way and Frenchchurch Way and two (2) Stop Intersections to Section 20-68 (b) on Purple Glory Drive where Purple Glory intersects with Silky Dogwood Trail; also, an Amendment to the "No Parking at Anytime Zone", Section 20-171 (1) from Dogwood Trial on Purple Glory Trail along the southernmost side of Purple Glory Drive continuing along the inside as it circles to end whereupon it re-intersects with Silky Dogwood Trial and along the west side of Silky Dogwood Trial form Purple Glory Drive running in a southerly direction to end at Xanthacarpa Lane.
7. Acceptance of Cameron Park Homeowners Association petition (meets all qualifications) for speed calming devices, to be installed on Town Side Drive, White Dogwood Road and Cameron Glen Drive; will proceed with engineering study and installation of devices.
8. (Pulled) Resolution approving Municipal Agreement between Town of Apex and NCDOT for Project R-2906A, Widening of NC55 (US64 in Apex to SR3014, Morrisville Carpenter Road.)
9. Award bid for Waste Water Treatment Plant Sludge Tank to Crowder Construction Company, in the amount of \$945,500 and approval of Budget Ordinance Amendment Number 8.
10. Transfer and Assumption Agreement for existing copier Lease (#6572857002 to Town (currently between Apex Volunteer Fire Department and Kyocera Mita America) due to pending merger.
11. Contract with MBNA to provide procurement card services for authorized Town employees.
12. Authorize Street Closings for July 4 Celebration.
13. Wake County Tax Report.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows.

PUBLIC HEARINGS

Public Hearing # 1 – Zoning Case # 01CU12 (Director of Planning, David Rowland)

Public hearing regarding Rezoning Case # 01CU12, Spaulding & Norris, PA, petitioner, seeking to rezone 80.061 acres, located on NC55 between Reunion Parkway and Bobbitt Road, from Office and Institutional and Wake County Residential 30 to High Density Multi-Family Residential Conditional Use District; possible motion regarding same.

Being sworn by Town Clerk:

Director of Planning David Rowland, Planner Dianne Khin and Don Mizelle, Spaulding and Norris.

Khin oriented to the property location currently zoned Office & Institutional & Wake County R-30.

Requested zoning: High Density Multi-Family Residential Conditional Use District.

Adjacent Zoning and Land Uses: North (Vacant, Wake County R-30; South (Reunion Park Apartments; High Density Multi-Family Residential; East: (Vacant; Wake County R-30); West: NC55.

No adverse impacts are anticipated due to the already high density development (multi-family residential) with the area proposed to the north to be high density residential and in conjunction with the NC55 Corridor Plan.

Restrictions/conditions proposed by applicant are outlined on page 2 of staff report; attached and incorporated as a part of the minutes; conditions proposed are in compliance with the draft NC55 Corridor Plan.

2010 Land Use Plan calls for low density residential in this area; however, an existing apartment complex (zoned HDMF) is located directly adjacent to this property. Furthermore, the adopted NC55 Corridor Plan calls for high density residential on the subject property and on the property to the north.

Staff recommends approval of the rezoning based on surrounding land uses, NC55 Corridor Plan, and conditions placed on subject property through this conditional use rezoning.

Planning Board reviewed the proposed conditional use rezoning request at their January 14, 2002 meeting and recommended denial of the rezoning with a vote of 7 to 1. The reasons are as follows:



Public Hearing # 1 continued

1. Growth needs to be at a rate the Town can support. If looking at 4% growth, this is a significant bit out of what the budget would be.
2. It is going to be important to have a plan in place on how permits are issued.
3. There are issues brought up in the Growth Management Plan such as identifying what new development costs and who pays.
4. There is the wastewater capacity issue.
5. There is need to measure appropriateness of this use in light of public interest, Neighborhood comprehensive plan and all other factors such as safety, health and welfare.
6. There is the issue of access points off highway NC55.

Staff noted:

- Points 1 – 4: Rezoning/annexations do not guarantee water service or wastewater capacity.
- Point 5: NC55 Corridor Plan was adopted April 2, 2002 and this rezoning is consistent with the plan.
- Point 6: Two means of access are proposed – one on NC55 and one connecting with Reunion Creek Parkway.

Planning Board was concerned Reunion Creek Parkway had not been extended to the subject property. Staff believes this issue will be resolved, as the road section for Reunion Creek Parkway is approved and the second phase of Reunion Park Apartments, which are under TRC review and will be forwarded to the Boards in the next few months.

Commissioners noted the following:

Commissioner Meckes: Planning Board wasn't privy to NC55 Corridor Plan in January.

Commissioner Jensen: Saw conflict in that the 2010 Land Use Plan should be consistent with the corridor plan. Khin advised Planning Board will review recommendation at their May 13 meeting regarding amendment to the 2010 Land Use Plan being consistent with the NC55 Corridor Plan, and will be forthcoming to the Board of Commissioners.

Commissioner Jones: Clarified reason for delay from January to present; applicant asked the rezoning not come forth for approval until after NC55 Corridor Plan was approved.

Commissioner Jensen addressed issues regarding floodplain. Khin noted no residential development is allowed to be constructed, where non-residential development is allowed – could not develop due to the conditions of the property and was a safeguard not to build in this area.

Commissioner Schulze clarified High-Density Multi-family allows up to 14 units per acre of single family homes, townhomes, or apartments.



Public hearing # 1 continued

Commissioner Meckes expressed and understood established judged criteria was means to make choices for new development – and envisions this 80 acre parcel falling under new criteria for development, asking where this stood. Manager Radford reported staff is in the process of formulating membership of the focus group and anticipates this at the next meeting. A 2-day seminar will be held in June with DPZ. He hopes to have a proposed ordinance drafted and presented to the Planning Board and then on to the Board of Commissioners for approval.

Commissioner Meckes asked if the parcel was in limbo – as record reflects approval of mixed use for all future development and if this property were annexed and the zoning changed, asked if those requirements wouldn't apply or could those requirements be applied? Manager Radford responded they could make them apply and adhere to them. Other areas of Town are zoned and approved for apartments based on the zoning designation, and are unable to get wastewater capacity and believes wastewater capacity to be paramount in order for any development anywhere; this criteria will only allow wastewater capacity to a project that has been judged through this system and allocated wastewater.

Commissioner Jensen asked questions regarding Resource Conservation Area and appearing to be floodplain. Khin advised it was on site and includes two pieces of property.

Commissioner Grimes was curious about the statement wastewater/water access is not guaranteed, and clarified the property was already annexed and it is. He wondered why the rezoning request hadn't come earlier for consideration, but was conscious of the designation for mixed use. Seems to him to be against the grain of the incentive the Town wants.

Commissioner Jensen had a problem with putting high density in this side of Town, where typically the link is to RTP or some place on the opposite side of Town, meaning an added traffic burden on NC55. He questioned the public interest in this project to the people living in Apex that are already burdened with heavy traffic on highways?

Khin explained this property was a portion of the NC55 Corridor Plan area and has a very large chunk specific for a major employment center. Staff was trying to have in this area, housing, work, jobs, and retail in the same vicinity, where people would not have to drive for miles to get to work; they could bike or walk to work or make short trips. This rezoning was requested early but it's understood this may not be developed for awhile. Staff sees the Major Employment Center as a benefit to everyone in Town, because people who live here will have the opportunity to work in the same vicinity and not drive through downtown Apex to get to RTP. The idea is to have integrated mixed use in the overall corridor. Khin indicated in January, the Planning Board had no indication what the future may bring for mixed use or wastewater allocation. Staff is looking at the whole corridor with this being one piece of it.



Public hearing # 1 continued

Commissioner Meckes clarified this part may not necessarily be mixed use, but would be all residential, with the idea of the NC55 Corridor being completely mixed use and being correct.

Commissioner Jensen asked when there would be adequate jobs in this area, and considering a lot of people, but during the interim would be going elsewhere until there such time business is there. He called attention to lots of people in Holly Springs and on the Apex side that he feels would appeal to this situation. Khin noted there are interests in the area on the west side of NC55, but have not received proposals. Rowland felt I-540 will bring people to this area and re-iterated Khin's comment ... putting people where they live and work close together and having to look at the entire Corridor Plan for the entire area; he hopes the way in which this is being set would make this happen, giving developers the Town's vision for this area ...to promote employment centers in this area. Planning Board agrees with the idea of having people work and live in Apex. Khin agrees I-540 is the key (year 2008 or 2010), but doesn't think it's far off before some areas will develop as major employment center areas.

Commissioner Meckes noted the NC55 Corridor Plan includes bike lanes across Jessie Road and through the major employment center.

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

Don Mizelle, Spaulding and Norris, represents Stonehedge Carolinas. He complimented staff on the rezoning process, guaranteeing the land use and NC55 Corridor Plan, street network, pedestrian network and open space network and the cross access between properties, all being in compliance with the most recent land use plan and an effective way to make sure whatever happens here in the future, multi-family is in keeping with the plans as they stand today. When beginning work with staff, he had proposed questions but now feels comfortable for the Town and the developer and mirrors the plan. He pointed out the property is currently zoned O&I on the NC55 portion and the rest retains the Wake County zoning, is in the Town limits, but not Town zoned. He felt this was a good time to come before the Board, use the plan with multi-family and with conditions.

Commissioner Jensen noted when looking at the plan, it appears high density housing will probably be apartments. Mizelle advised at this time, but there is no real firm plan as far as apartments, townhomes or condos. He understood options are available once an in-user is selected. At this point, they are going with multi-family designation to do any of the three.

No one else spoke in favor of the rezoning.

Mayor Weatherly noted any of those uses would be appropriate under this zoning category. Attorney Kaus advised this was correct. Mayor Weatherly continued the developer could change his mind once the rezoning is done. Attorney Kaus advised, but just subject to the conditions; it wouldn't bind him.



Public hearing # 1 continued

Mayor Weatherly asked those opposed to the rezoning to speak. With no opposition, the hearing was at 7:30 p.m.

Commissioner Meckes asked to see the NC55 Corridor Plan map. Mayor Weatherly was not comfortable pursuing this at this time and hopes to have at least another session to allow staff to investigate. He indicated he may be the only one with concerns to rezone to high density at this location, but he's in favor of mixed use with access to employment, but not sure whether "the horse or the cart came first."

Commissioner Schulze was concerned as well, with there being a couple thousand of people here. He feels as long as this falls in the NC55 Corridor Plan, he's ok with the rezoning, but not prepared to approve a site plan until there is actually an employment center for people to go to. He thinks Commissioner Jensen was right "just putting people there"; they will pull onto NC55 and cause more traffic headaches.

Commissioner Meckes continued, six months down the road the judged criteria would be established, and at that time a number of proposals would have been submitted for consideration; it may well be this would not be a selection they would make. He envisions this as the way it would work - the Board could say ...we have high density residential and realize when looking at the big picture, the entire NC55 Corridor, that it's going to supply these areas where the major employment centers are, but we have something else more desirable. He stated approval of this rezoning doesn't allow things as it has in the past, or automatically dictates that we go on with approval of a site plan and construction. He's in hope this is the way it would work.

Commissioner Grimes viewed the problem being that once rezoned, the site plan is a lower level of review, a lot less discretion in terms of submitting a site plan that meets the zoning criteria, it can be tweaked, adding bell and whistles, but basically it's still have multi-family. Commissioner Meckes interjected it doesn't have to be approved.

Mayor Weatherly stated if we're certain the wastewater allocation ordinance will not come off prior to; the second it comes off we enact judged criteria - indicates no lag - but having a safety factor and making his comfort level go up. He continued as of right now no residential is being approved and will not be until the current ordinance is modified. Commissioner Meckes noted wastewater comes off and judged criteria comes on, and they submit 300 apartments, 40 townhomes, and 60 condominiums, and they will be judged against others. Mayor Weatherly continued they will be judged against criteria, or obligations we may have had, had we not had a wastewater allocation ordinance. He noted legal obligations go up when we have a site plan that is in compliance with current ordinances, that is zoned appropriately - and being boxed in if it's a site plan that meets the test of the ordinance. Commissioner Meckes continued he didn't want to be boxed in and was the idea of the judged criteria with Mayor Weatherly agreeing.



Public hearing # 1 continued

Attorney Kaus advised the important distinction to keep in mind is that rezoning property is not linked at all to provision of utility services; just saying in the abstract that this is an appropriate use under ideal conditions of the property; similarly with the site plan - it's no guarantee whatsoever of utility services. It's saying with this - a little more specific, a little more detailed plan is appropriate for this property that is currently zoned, and then the criteria being talked about will come into play to say all this is well and good. You may have a site plan that is approved, and you may build that building, but under our criteria you're not going to get utility services for it. That's essentially the way the procedure would work.

Commissioner Meckes commented it's almost rather than a practical approval, a philosophical approval. Looking at what staff is thinking and at the whole NC55 Corridor - going to be a pie shape with the northern boundary of US1 and the eastern boundary being NC55 and the arch made up by I-540 and Jessie Drive at US1 and NC55; this potentially could be the most desirable piece of property in the county with this three-way exposure. We are looking at residential, but seeing tremendous retail/commercial development, Office and Institutional development within the wedge of the pie.

Commissioner Grimes was willing to concede for the sake of argument there would be other uses there. His only concern was why just high-density, multi-family on 80 acres of land - seeming heavily weighted, with Commissioner Schulze agreeing. Commissioner Grimes didn't know whether there was a zoning classification that requires a mix of residential uses, but certainly nothing to stop someone from making it a condition of the rezoning, there be a certain percentage of medium and lower density, but now as it stands, there could be 80 acres of apartments. Commissioner Meckes noted 40% of it is set aside for RCA.

Commissioner Jensen agreed with the Mayor in "...the cart before the horse", feeling this is where it stands and I-540 being eight years away, and a long time.

Commissioner Schulze indicated he would not approve any apartments until there was an I-540 and an employment center, for the simple reason he would not want all those people dumping out onto NC55. He would be willing to go along with the NC55 corridor plan to rezone, but would not approve anything until he thought it appropriate, not a site plan, thinking he would have legal authority to do so and asked if this were right. Mayor Weatherly noted one factor under the current ordinance is the unsafe volume of traffic. Commissioner Schulze continued this was his safety valve, with Commissioner Meckes agreeing and noting he had actually missed the point and was ready not to support this for all the reasons discussed until it was pointed out to look at the big picture. He continued all had commended staff on the NC55 Corridor Plan and the Committee and what had been done and now have the opportunity to endorse what's been done and feels he has to do so. He noted the NC55 Corridor Plan as innovative and forward thinking; "this is what we do and is all about looking five, ten and fifteen years down the road in planning for the future and this is what this has done."



Public hearing # 1 continued

Commissioner Jones agreed this was one piece of "the NC Corridor Plan" and realistically has to happen, one or two pieces at a time, as all pieces of property would not come in to be rezoned at one time. The question in regard to when this will occur he noted others who own property aren't going to start thinking about it until someone else steps forward, gets up to the plate and actually gets on base by getting a rezoning. He indicated this was the start, not saying we need to move along any faster than it would ordinarily occur, but tends to agree with Commissioner Meckes that the plan was unanimously approved and this being the first step in making it happen.

Commissioner Meckes noted assurance from legal counsel that we are not going to have to put anything in there that we don't want too; indicated this was where they have always been caught up before the UDO; just like the Mayor said, if all the criteria was met, we didn't have a choice and was why they've ended up with some things that we have, but now , we do have a choice of making a decision based on what is the very best for the Town of Apex and not everything that comes before us is going to be approved; a simple fact of the matter from this point on - nothing will ever be the same as it was in the past.

Commissioner Jones noted it somewhat puts them under pressure to get the judged criteria out on the table and approved in a timely manner; not saying this one request does this, but there are others that are waiting to move along in the process as well; we've got to get this moving along before the allocation plan sunsets (soon), this just adds to the pressure, if we act on it.

Manager Radford hopes in the event this land lies fallow for awhile, it might be an interval piece of an assemblage that may be able to contribute toward a future mixed use development. Mayor Weatherly added ... and wouldn't preclude another rezoning; with Manager Radford agreeing this was correct. At that time, the owners or developers may benefit from the property.

Mayor Weatherly agreed with all the concerns of the Planning Board in their rejection and thinks they are on sound ground in viewing it in that light, however, he noted ...we generally tend to think the Planning Board should be a more technical legalistic body, but this is basically a philosophic outlook and agrees with all the concerns and doesn't want to be short to those concerns expressed in their denial. He has heard some things that clearly indicate the rezoning would not be tantamount to have 80 acres of apartments there, but there will be other events prior to getting to that point. His comfort level has gone up somewhat. Commissioner Jones agreed with all the points as well, but not with the timing of bringing these points to bear on this particular situation.

Mayor Weatherly asked if anyone was comfortable with making a motion and then debate and reach a resolution one way or the other or delay for two weeks.

Action: Motion by Commissioner Meckes to table this item until May 21, to allow everyone to be comfortable with the decision.



Public hearing # 1 continued

Attorney Kaus suggested the public hearing be continued in case there was additional evidence to be heard in two weeks. He knew the hearing had been closed, but asked to continue to May 21; to reopen the public hearing and hear additional evidence.

Action: Commissioner Meckes agreed to change the motion to continue the hearing to May 21 as suggested by the Attorney. Mayor Weatherly stated the motion was to continue the public hearing to May 21. Second by Commissioner Schulze. Motion carried.

End of public hearing # 1

Public Hearing # 2 – Site Plan – Classic Road, Pinnacle Park (Planner, Keith Lankford)

Public hearing regarding Classic Road Industrial Flex located at Lot 44, Pinnacle Park, containing 4.57 acres; possible motion regarding same.

Planner Keith Lankford oriented to the location of the 4.71 acre site located at 1041 Classic Road. He noted a previous site plan had been approved in January 2000, but had expired; applicant is seeking approval. The proposed use is light industrial and under the old zoning ordinance. The project is proposed in two separate phases with the first including a 29,700 square foot building with 50 parking spaces and the second phase including a 31,050 square foot addition and 46 parking spaces. Total square footage 60,750 and total parking spaces 96 and even though does not fall under the UDO, it does meet all requirements that at least 50% of the parking is provided to the side or rear of the building. Since the project falls under the old Zoning Ordinance it is not subject to the RCA provisions of the UDO. The property is not located in either of the Town's watersheds and is grandfathered from complying with new watershed regulations adopted October 16, 2001. Electric service is provided by an existing CP&L line; water service is being extended from an existing 12 inch water line. Two drive access points are proposed; traffic impact doesn't warrant a traffic study. Site plan complies with requirements of the old Zoning Ordinance; complies with the 2010 Land Use Plan allowing for industrial uses in this area; and complies with the Town's Thoroughfare Plan and requires no additional road improvements.

Staff recommends approval of the site plan as presented.

Commissioner Jensen questioned the percentage of impermeable service. Lankford informed him there are no specific restrictions and approximately 60%.

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

Blair Pittman, Bobbitt and Associates, and representing Classic spoke in favor of the site plan and noted the Planning Board's approval.

With no one speaking in opposition to the site plan, Mayor Weatherly closed the hearing at 7:54 p.m.



Public hearing # 2 continued

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the site plan as presented. Motion carried.

End of public hearing # 2

Public Hearing # 3 – Annexation Petition # 327 (Director of Planning, David Rowland)

Public Hearing regarding Annexation Petition #327, Pinnacle Quik Mart, LLC, H. Brantley Powell, Kelly P. Gould and Kimberly P. Atkins, owners/petitioners; petitioning to annex property known as the Pinnacle Quik Mart, LLC., located on Ten-Ten Road (SR1010), containing 7.607 acres and including public rights-of-way; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning oriented to the commercial property site at the entrance to Pinnacle Park and being a small retail shopping center. An extended drive will serve the future commercial tract at US1 and SR1010. Water and sewer is available along SR1010 with gravity flow into the Swift Creek Watershed; has a shared pond. Recommends annexation.

Mayor Weatherly opened the public hearing at 7:55 p.m. With no one speaking in favor or in opposition to the proposed annexation, the hearing was closed at 7:55 p.m.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to adopt a resolution to extend the corporate limits. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

Art Clem, Beckett Crossing, expressed appreciation for continuing pick up of grass clippings and asked for budget of funds to continue sidewalks along Olive Chapel Road and for road improvements at Olive Chapel and NC55 intersection.

End of public comment



Manager Radford asked to amend the agenda to include adoption of a resolution requesting municipal revenue sources be made secure.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to amend the agenda as requested – Item # 7. Motion carried.

NEW BUSINESS

Item # 1 – Traffic Calming (Police Chief Ronald Hearn)

Discussion and possible motion concerning Town of Apex Policy Statement/Traffic Calming Device Criteria and Guidelines.

Police Chief Hearn noted the recently adopted traffic calming policy, and noted areas had been identified by the Police Department that needed clarification in Section 3 as a result of the initial experience in implementing the policy. Recommends amending the policy.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the amendment. Motion carried.

End of New Business Item # 1

Item # 2 – Fishing Permit Fees (Director of PR&CR John Brown)

Discussion and possible motion regarding fishing permit fees for Apex Community Park Lake.

John Brown, Director of Parks, Recreation and Cultural Resources, reports the Advisory Commission recommends elimination of the fee for fishing in the Town Lake; initial fee developed to help recover costs of participation in the NC Wildlife Community Fishing Program and the offset of Town's cost of maintaining the lake, and further to discourage over fishing in the lake as well as discourage fishing in the lake by non-residents (with non-residents having a higher fee). Costs have been reduced as the Town no longer has fish feeders. Police cannot enforce permits on a regular basis; some opt to fish without a permit. Commission recommends continuance of funding in Community Fishing Stocking Program. Recommendation is due to lack of consistent enforcement, relatively small cost of program and a general feeling fees may be inhibiting some families from utilizing the lake, because they cannot pay the permit fee or they are law abiding citizens who won't fish without following rules. Staff understands rationale, but feels it important to at least recover some of the costs. Staff recommends eliminating the Apex resident fee and reducing non-resident fee from \$40 to \$20. Staff's belief: Apex residents should benefit from eliminated fee. There was discussion regarding the fishing program; Chief Hearn's response to the attempt to make periodic sweeps around the lake for violators, but finds it difficult to catch all of them; more available officers this summer; violators are not sited with the first offense, but are sited with the second offense; juveniles are different due to court regulations. Park Staff continues to canvass the area as well, but has to rely on the Police Department.



New Business # 2 continued

Mayor Weatherly agreed with the elimination of the fee for residents and the \$20 fee for non-residents, and to continue to enforce the ordinance.

Bond Lake in Cary is different in that Cary is not a member of the fishing program and allows boats on the water for a fee. Options of identification for fishers were discussed.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to approve staff's recommendation to eliminate fees for Apex residents and set the fee for non-residents at \$20.00. Motion carried.

End of New Business Item # 2

Item # 3 – Fire Protection Services Agreement (Town Manager Bruce Radford)
Possible motion to approve Attachments A, B, C, and D to the Fire Services Contract and to authorize execution of the Fire Protection Services Agreement.

The Town Manager presented Attachments A, B, C, and D as a part of the Fire Services Contract. Attachment A – Equipment, Attachment B – Benefits, Attachment C – Roster and Attachment D – Debts. He expressed appreciation for the Apex Volunteers cooperation. He feels the Chief's position will enhance this relationship and be benefit to the citizens as well.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to approve the attachments as listed with finalization to allow for execution of the Fire Protection Services Agreement. Motion carried.

End of New Business # 3

Item # 4 – Personnel Committee Recommendation (Commissioner Meckes, Chair)
Possible motion to approve Personnel Committee recommendation to adopt Position Classification Plan for FY02-03.

Commissioner Meckes, Chair of the Personnel Committee, reported at the April 24 meeting the Committee reviewed and recommends approval of changes to the Position Classification Plan for FY02-03, effective July 1, 2002.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the recommended changes. Motion carried.

End of New Business Item # 4



New business continued

Item # 5 – Personnel Committee Recommendation (Commissioner Meckes, Chair)

Possible motion to approve Personnel Committee recommendation to adopt revisions to the Personnel Policy Manual.

Commissioner Meckes, Chair of the Personnel Committee, reported at the April 24 meeting, Committee reviewed and recommends approval of revisions to the Personnel Policy Manual and is necessary due to the adoption of the new pay plan effective July 1, 2002. Policy revision regarding domestic partners will be considered at a later date.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the revisions as recommended. Motion carried.

End of New Business Item # 5

Item # 6 – Appointment to the Apex Board of Adjustment

Mayor Weatherly recommended re-appointment of Jim Mead, 203 Thorn Hollow Drive, to the Apex Board of Adjustment as an Extra Territorial Jurisdiction (ETJ) member and with Wake County's approval. His current term will expire May 31, 2002. Wake County had contacted Mr. Mead considering his willingness to serve an additional three-year term. He indicated he is willing to do so. Wake County will be notified of the Board's approval for his re-appointment.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to approve the re-appointment and notification to Wake County. Commissioner Jensen noted he would like to see a short resume with the recommended appointments. Motion carried.

End of New Business Item # 6

Item # 7 – Resolution regarding Municipal Revenues

Manager Radford reported on withholdings of Local Government Revenues indicating a shortfall of \$1.2 million. He recommends adoption of a Resolution Requesting Municipal Revenue Sources Be Made Secure requesting the General Assembly enact this legislation to ensure revenues are distributed to local governments on a timely basis as set forth by the State's General Statutes.

Mayor Weatherly made brief remarks concerning this issue and called for a motion to adopt the resolution.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to adopt the resolution as recommended. Motion carried.

End of New Business Items



Mayor Weatherly called for a recess at 8:40 p.m. with the meeting reconvening at 8:47 p.m.

WORK SESSION

Manager Radford began the Work Session to review the proposed Annual Budget for FY 2002-03. Budget Message reflects \$36,550,474 Budget expenditures and does not contain many State revenues traditionally received. Lost revenues were seized by the Governor to balance the State's budget (Utility Franchise Fees, Intangible Tax Reimbursement, Beer and Wine Tax and Homestead Refund – estimated loss to Apex \$1,137,000.) Tax rate remains at \$0.40 per \$100 valuation; no increase in user fees; one additional revenue is proposed - \$2.00 per month yard waste fee for curbside collection of grass clippings, leaves and other unchippable debris. Five new employee positions are proposed and three part-time positions of the 21 requested positions. A 2% cost of living adjustment is proposed for all employees as well as the elected officials (increase of \$160,000); employee benefits costs will increase by 37.5% and will cause a reduction in benefits (increase of \$240,000). Projects and programs have been negatively impacted by loss of state revenues and unlikely revenues would be returned to local governments; impact affects construction of downtown parking improvements, installation of e-government technology, public safety staffing, replacement of vehicles and equipment, annual contributions to capital reserve funds for fire services, parks and recreation, and historic buildings. Street Budget includes \$100,000 to complete the design of proposed downtown parking improvements with first priority should state revenues become available is to fund construction of the downtown parking improvements. The Budget message and supporting budget document is attached and incorporated as a part of the minutes.

Manager Radford gave a break out of the proposed budget figures for General Fund, Electric Fund, Water/Sewer Fund and Other Funds noting increases and decreases.

An area of uncertainty for requested funding was in the request by the Apex Chamber of Commerce for \$46,900 – the increase was due to the desire to increase the hours of the Economic Development position. Chamber will present their quarterly report at the May 21 meeting. Mayor Weatherly wanted to express the budget shortfall message to the Chamber with the shortfall being shared, and noted Apex far more generous than most, and being ahead in economic development. Chamber correspondence indicates a decrease in their request by \$5,000. A request had been made to participate in the "Kids Voting" program. Manager Radford will follow through on these concerns.

There is potential for a slight decrease on commercial bulk rate in Electric and a 5% growth rate for next year. Apex rate is 8.5 cent per KW with CP&L rate being 7.8 cent per KW.

Manager Radford sees no need for an additional workshop. Proposed FY02-03 Budget will be available in the Town Clerk's Office for inspection with a public hearing set for June 4, 2002 at 7:00 p.m. The Budget Ordinance must be adopted by the Board by July 1, 2002.

End of Work Session



CLOSED SESSION

There were no Closed Session Items to be considered.

ADJOURNMENT

With the meeting agenda being complete and no further discussion, Mayor Weatherly asked for a motion to adjourn.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adjourn at 9:45 p.m. Motion carried.

The above minutes were approved on the 21st day of May, 2002.

Suzanne A. Parker
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 21, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, May 21, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Jones, Grimes and Schulze were present. Commissioner Meckes was absent.

Mayor Weatherly gave the Invocation, led the Pledge of Allegiance and rendered the Welcome.

PROCLAMATIONS AND RECOGNITIONS

Mayor Weatherly presented the following:

Proclamation in recognition of "Foster Family Month" presented to Albert and Dee Walker of Apex; foster parents of twin boys; celebration thru Wake County Human Services of N.C.

Certificate of Achievement and Recognition to Terrell Olander Bullett, May 2002 Apex High School Graduate, for 13 years of perfect attendance in the Wake County Public School System.

CONSENT AGENDA

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

Commissioner Grimes asked to be excused from voting and participation in Item # 2 due to conflict of interest.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to excuse Commissioner Grimes per his request. Motion carried.

Continued to page 2



Consent Agenda continued

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the consent agenda excluding item #2 to be voted on separately. Motion carried.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to approve item #2 of the consent agenda with Commissioner Grimes being excluded from voting. Motion carried.

1. Minutes of May 7, 2002 Board of Commissioner's Meeting.
2. Site plan – Bartlett Tree Experts, Lot 28 Pinnacle Park.
3. Site plan – Pickett and Associates, Lot 57 Pinnacle Park.
4. Site plan – Apex High School Parking Lot, 1505 Laura Duncan Road.
5. Resolution approving Municipal Agreement between Town of Apex / NCDOT Project R-2906A, Widening of NC55 from US64 in Apex to SR3014, Morrisville Carpenter Road.
6. Resolution Supporting Construction Intersection Improvements Olive Chapel Road and NC55.
7. Resolution Accepting Dedication of Public Right-of-Way and Appurtenant Property Interests regarding construction of Peakway.
8. Adopt minor change to grading permit fee schedule.
9. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows. With no amendments to the agenda, it was set as presented.

PUBLIC HEARINGS

Public Hearing # 1 – Zoning Case # 01CU12 (Director of Planning, David Rowland)

Continuation of public hearing regarding Rezoning Case # 01CU12, Spaulding & Norris, PA, petitioner, seeking to rezone 80.061 acres, located on NC55 between Reunion Parkway and Bobbitt Road, from Office and Institutional and Wake County Residential 30 to High Density Multi-Family Residential Conditional Use District; possible motion regarding same.

Attorney Kaus advised the hearing should be reopened, as it was closed from the previous meeting and those desiring to speak should be sworn in by the Town Clerk.



Public hearing #1 continued

The Town Clerk administered oaths to Director of Planning David Rowland, Planner Dianne Khin and Don Mizelle, Spaulding and Norris.

Planner Dianne Khin noted the conditions discussed in the previous meeting and the items Planning Board felt were reasons to recommend denial with a vote to deny 7 to 1.

The petitioner requested one additional condition be added to the petition (letter attached): "The maximum number of apartment units developed on this site shall be limited to 350 units. The remaining density may be developed for other uses allowed under the HDMF Residential Conditional Use District." HDMF allows up to 14 units per acre with subject property being 80.061 acres, with a maximum of 1120 units allowed. Of these, the petitioner is restricting the number of apartment units to 350, which is 31.25% of the units allowed on site. Other apartments all being 14 units per acre and being approved under the old ordinance with no RCA requirement: Archstone Olde Apex 328 apartments on 24 acres, Summit Lake Apartments 446 on 30 acres, and Chapel Glen 420 apartments on 30 acres. Other HDMF units that could be built: Town homes: Golders Green 139 on 20 acres (7 units per acre), Walden Towns 103 on 20 acres (7 units per acre) and West Haven Towns 144 on 14 acres (10 units per acre); Condo's: Crossings at Haddon Hall 130 on 10 acres (13 units per acre) all ranging from 7 up to 14 units per acre, all being approved under the old ordinance with no RCA requirement. Subject property will have 40% of the gross acreage in buffers and RCA (48 acres of the 80 acre tract can have units on them); building will be no higher than 48 feet or 4 stories; site plan items and other items to be looked at: stormwater retention ponds, parking, landscape standards - all will serve to limit the number of units that actually can be built. She notes: the 1120 is theoretical number.

Mayor Weatherly re-opened the hearing at 7:15 p.m. for those wishing to speak in favor or in opposition:

Speaking in favor and being sworn was:

Don Mizelle, Spaulding and Norris, PA, offering letter of May 15, 2002 asking consideration of an addendum to the conditional use rezoning petition filed on behalf of Stonehedge Carolinas, requesting one additional condition in regard to limiting density. "The maximum number of apartment units developed on this site shall be limited to 350 units. The remaining density may be developed for other uses allowed under the HDMF Residential Conditional Use District." He noted the 1100 figure was theoretical and felt 350 was more appropriate for an apartment development.



Public hearing #1 continued

Mayor Weatherly commented from the last meeting, applicant heard what was said about the future of apartments in Apex as far as how it is envisioned to grow and develop with limited wastewater and asked why he was proceeding with pretty stiff opposition, to the appearance of what he's wanting to do.

Mizelle commented his clients, Stonehedge Carolinas, has had the property zoned for a couple of years and was there to stay, wanting to market the property to a apartment/townhome developer; thinking for long-term, that it makes since as multi-family zoning as pointed out in the plan for the NC55 Corridor; when the commercial corridor is developed, office and institution, employment center he thinks it's logical to surround it with HD residential and is what his client is proposing.

Mayor Weatherly clarified his intent was to put this into the hands of a developer to hold as an investment long-term for development as the corridor develops with nothing being anticipated to move ahead.

Mizelle noted to the best of his knowledge there is no development plans drawn up by his firm on behalf of the client; he doesn't know of anyone interested in the property today, but can't guarantee that if it's rezoned someone wouldn't bring in a development proposal, but has no knowledge of that at this time.

With no one speaking in opposition, the hearing was closed at 7:20 p.m. Mayor Weatherly referred the matter to the Board.

Commissioner Schulze voiced, same as last time, he was not willing to approve any site plan for this property until there is an employment center at this location, for the reason there would be additional traffic dumped onto NC55.



Mayor Weatherly felt as talked in previous discussion about HDMF; Apex inventory he believes to be way high for this type housing; it's needed and good compliment to the community to have rental apartments - good folks live there that contribute greatly to the community, but as far as the overall stock in the community, there's 30% or even more of our inventory in rental units and as far as future plans, he's opposed to increase percentage but in light of NC55 Corridor Plan, and sure there will be an ordinance developed that will make this low on the priority list; not knowing what long-term for this project may be - very long if they persist in HDMF.

Commissioner Jones hated to say this is great and approve it, knowing there will be some criteria created that would place this far down the list, but at the same time, he hopes what comes as a site plan would not be just this piece of property, but a conglomeration of properties in this area that would take the Town further toward bringing an overlay district plan to completion, and not just one piece of the puzzle. He noted this in compliance with what's been adopted, and hopes when it comes to them with more detail, that's it's a bigger picture.

Mayor Weatherly expressed one other concern was increased traffic on NC55 and asked the number of trips generated by 350 apartments. Director of Planning responded a single family home generates about 10 trips a day, with apartments generating 7 or 8 trips a day.

Mayor Weatherly asked how many vehicles this would contribute. Director of Planning responded single family averages 2, with apartments probably being 1 or 2.

Mayor Weatherly asked the range of permissible density in this zoning category, low range and high range. Khin responded: maximum range was 14 units per acre but could build 8 units an acre or 10 units an acre - example: 7 units per acre times 80 acres is 560.

Calculations were not done with the RCA. Khin considered the buildable section of land at 14 units per acre, with a three story apartment and a two story townhome, looking at 350 apartments and 170 townhomes; condos 350 apartments and 350 condos and can be built like apartments up to four stories which would be more like for 450 each. Discussion continued regarding the units and on the buildable section would be about 7 units per acre. She was considering what the typical build out would be for a site without RCA. She clarified the calculations again and considered even the maximum of 700 with four stories, but not typically done due to elevators, but then it would be up to 900.

Commissioner Schulze voiced that he didn't approve of this until he knew exactly what was being done here. If they still want to push for this, he felt that's their decision.



Commissioner Jensen felt there's more control at this point than at site plan review. His concern was with the timing and it being a problem, indicating maybe homework hasn't been done to insure that there's a viable work environment next to high density. His recall was the I-540 being eight years out but if approved, believes taxes will go up due to the zoning and as a result there will be more taxes charged for something that's not being allowed for a long time and that these folks are being led down the path to higher taxes for no gain, if they do not sell this. He sees less control down the line and hates to see another Chapel Glen situation where we don't want to see what's going in if it's high density apartments. He noted the 30% apartments in Apex, and approving a situation where it's not the type stock we'd like to see, and maybe need to go back to drawing board and have staff come up with something that will help manage the timing or type of high density that goes here rather than allowing straight for apartment rental.

Commissioner Schulze noted the safety valve, if they didn't like what's being proposed they could then not approve it. Mayor Weatherly interjected in anticipation of the new ordinance, being worked on, that will clarify criteria for future residential mixed use, and being everyone's top priority and unless there's a mixed use component in this, they will not rate when the allocation ordinance comes off and we look for residential site plans, unless they meet the criteria of the unwritten ordinance that will specify the criteria for favorable approval.

Commissioner Grimes felt maybe the vote should be on item 2 before item 1. He admitted he was not aware, but should have been, but wasn't, that the corridor plan endorsed multi-family housing along the entire corridor, asking if this was correct, and if not how does it differ.

Khin responded high density residential is not necessarily high density multi-family, but could be high density single-family. The LUP has no high density, but has medium/high density. Item 2 will indicate this. When doing the corridor plan, the thinking was not just about apartments but mixes of single family, townhomes, apartments and condos allowing for a mix of different economic classes where people could live within the same neighborhood; not saying everything is apartments. She noted it up to the Board to make those distinctions where they wanted to draw the line.

Commissioner Jensen felt there should be a method to define what is wanted. TND lends itself more to defining what they would like to see, but to go to high density, he felt ... they've let the horse out of the barn and it's on its way ... and they loose control of the situation. He stated had he realized this was the situation, he would not have voted for the NC55 Corridor Plan, as it is allowing high density and possibly all apartments there and is what it looks like to him.

Commissioner Grimes commented they had proactively rezoned it something else, it's not something that they do very often.



Mayor Weatherly commented when talking about density, he assumed if going down to the low range of 700 or 750, it was more than 350 to begin with, and wouldn't accomplish what he hoped could be carved to a compromise and reduce the number of units, and reduce vehicular traffic in and out, and reduce the overall impact of having this size tract with multi-family, asking if there were conditions that could be placed on the rezoning that would accomplish what's being talked about, that would mitigate the effect of high density multi-family.

Attorney Kaus wanted to make sure he understood what Khin's answer was about the 7 units. He understood the lower classification to be medium density multi-family which is a maximum of 6 units per acre and then the requested classification was for high density multi-family which is a maximum of 14 units. He noted there's an obvious range between medium density and high density. He wasn't sure he had followed the RCA of 40% with buffers. He noted an approximate maximum of 350 units but he thought he also heard her say there would be 350 apartments potentially an additional 350 townhomes or 170 townhomes or 350 condos and wondered if there was a condition placed on the property that said maximum of 7 units per acre. He noted this was a maximum of 350 units for the property (80 acres 7 units) as opposed to 350 plus 170. Khin interjected no... Kaus read the condition indicating only 350 apartments plus then additional...Khin interjected whatever else, even as many as they can get... Kaus continued even at 14 units per acre. Kaus noted if the board would say for example, we find based on substantial and confident evidence that 7 units per acre maximum of all units regardless of type would be appropriate for various reasons, asking wouldn't that limit it to 350 multi-family units of any type whether apartments or condos. Khin noted not at 7 units per acre; 7 units per acre is what she estimated to be the 350 apartments and 170 townhomes and the reason being if you take the RCA and do gross, it's 7 units per acre but they can only build on 60% of it. Kaus noted than with the maximum units per acre, you're only looking at the buildable area. Khin responded no, you look at the whole thing, and explained she was trying to get them to think about what it would look like as it's going to be spread out over 80 acres, but it will be on 40 acres. 7 units on 80 acres spread out is different than 7 units per acre basically on that 60% and looks like 12 to 14 units per acre and is what the apartments we have in town look like. She wanted the Board to visualize and apologized for the confusion.

Commissioner Grimes asked if high density residential permits multi-family. Khin responded that high density residential has two different distinctions: high density single family and high density multi-family. HDSF is about 5000 square foot lot size.

Mayor Weatherly noted we're talking about stacking them - Khin interjected with multi-family you can stack them up. Kaus noted the four story limitation. Khin continued 48 feet in height which is essentially four stories.



Attorney Kaus noted the practical effect of the buildable area with the buffer limitations and the RCA limitations is to in effect, limit the number of units per acre. Khin agreed; there's basically 48 acres that can be built on of the 80 acres, and is where the calculations of 350 apartments plus 170 townhomes on those 48 acres or 350 apartments and 350 condos on that 48 acres and is about what could be built. Attorney Kaus continued that his question was, if this condition of 7 units per acre, if the Board were to impose this condition, doesn't it then limit the total number of units that could be built in the buildable area even to just 350. Khin responded no it would not; you could have 560 units. It restricts the area but could be put all together.

Director of Planning commented he knew the focus was on this 80 acre tract, but he is in hopes the whole picture of the plan was being looked at, in that you're looking at a major intersection with I-540, US1, NC55, Jesse Drive Extension and in the future, this he feels will be a "hot area". He hopes the Board would look at not just this parcel but how this parcel fits into the whole picture; the whole plan of this area. He sees need to accommodate high density residential and has been said in the past and thinks it holds true today, that on major thoroughfares, this is where it can be expected to have high density residential. He couldn't think of a better location in terms of being on a major thoroughfare and also fitting in with an overall look at a major employment area that's not here now, but should get ahead of that because it will be here in the future.

Mayor Weatherly clarified the location of Reunion Park Apartments on the map. Khin pointed to the location. Mayor Weatherly confirmed the number of units as 420 units on 43 acres. He continued the big picture gets worse when looking at what's already been done there and adds this as a potential, having not done anything to allow it to happen, but respects the property owner's rights to make those kinds of economic determinations for himself, but not sure it's the highest and best use of a "hot commercial" area as far as benefit to the community at large when looking at the transportation system NC55 and the outer-loop is there and can see what we've got; the highest and best for the community at large rental apartments, he couldn't answer to that being hypothetical but each person has to answer for himself.

Commissioner Jones agrees it would be a "hot" area; but a matter of timing of when it will be. He feels the timing of the Board making the decision is also important, as the corridor plan has been put into effect just recently, and looking like everything they wanted it to be and now here's someone coming in saying this fits the corridor plan, please approve it, but at the same time, they are struggling to put together criteria by which they will judge future site plans and allocate wastewater and water to those site plans, but they haven't come up with that criteria yet. He's not sure it's the prudent thing to do to rezone something, talking about 350 to 700 plus units and whether or not it's fair to the petitioner to do so without knowing what the rules would be; with the rules coming soon he hopes; such that maybe it could be held off and submitted at that time under the appropriate zoning and with the knowledge of knowing the rules that has to be played to develop this piece of property. As he said earlier, maybe this would give opportunity for some of the adjoining properties to "jump" into the issue as well.



Commissioner Jones noted it as a matter of timing, thinking it will be a high density residential area, he doesn't know if it's 350 apartments plus townhomes or whatever, but it doesn't seem to him like the right time to make this decision.

Commissioner Schulze wanted to make sure if at next week they came, and if this item is approved tonight and a month from now they came in with a plan for 560 units which is allowed under this rezoning, that he would be able to turn this down, based just on the fact that he doesn't think the traffic patterns could handle it on NC55? He asked if this were a legitimate reason to turn it down.

Mayor Weatherly responded this was hypothetical statement, cause it wouldn't even get to the Board under the current ordinance, that the Planning Department wouldn't accept the site plan because the current ordinance doesn't approve any nor are they considering any residential until the current allocation ordinance expires, as otherwise modified.

Commissioner Schulze indicated he had the exact same concerns as everyone else, and would not approve anything where there's lots of apartments, high density now, but who knows what the future may hold; it concurs with the corridor plan and still all the "chips are not in the basket", so we could still control how this develops whether or not we think it's appropriate or not. He noted it would be a certain amount of fairness to the petitioner, but that's their decision whether to pursue this, and obviously they are.

Mayor Weatherly noted you deal with legalities in the right of the property owners to determine their own destiny on this and was why he asked, that surely the representative was here last meeting and heard the huge obstacle they would have to complete this project under these kinds of guidelines but he thinks it sends a conflicting signal if he were asked how he might justify putting this number of apartments in when he clearly believes there are ample number of rental units in Apex to meet the needs at this point and to meet his vision of the future of Apex, and how could he justify being in favor of at least making a decision to do that even though it wouldn't be a site plan approval.

Mayor Weatherly asked if anyone would like to make a motion and proceed with further debate on the motion.

Action: Motion by Commissioner Jensen to deny the zoning issue with Commissioner Jones rendering the second.

Mayor Weatherly repeated the motion was to deny #01CU12 and asked for debate on the motion.



Public hearing # 1 continued

Commissioner Jones offered that if the Board did deny this, as done in the past, there's a wait time to bring this back, and was offering this to the petitioner, but if withdrawn there's not a wait time. Attorney Kaus confirmed this to be correct. Commissioner Jones continued that the rules coming may make a difference in what's requested and with a six months delay... Mayor Weatherly injected, but with a six month delay is only if they send back exactly the same request. He indicated any modification clearly would be necessary, he would think, they would have to materially change.

Mayor Weatherly called for a vote on the motion to deny. Mayor Weatherly asked if there were further comments from either the Town Manager or Town Attorney, there were not. Vote on the motion was 3 to 1 with Commissioner Schulze casting the single vote. Motion to rezone was denied

End of public hearing # 1

Public Hearing # 2 – 2010 Land Use Plan

Public hearing regarding Amendments to the 2010 Land Use Plan Update for the NC55 Corridor from US1 to Sunset Lake Road; possible motion regarding same.

Planner Khin reported on April 2, 2002 the Board of Commissioners approved the NC55 Corridor Plan with the plan recommending several changes to be made to the land uses within the corridor area. To implement those recommendations staff proposes to amend the 2010 Land Use Plan update. She presented slides of the update with the majority of land currently being shown for industrial use, with some low density residential, some commercial with the NC55/US 1 Interchange, and some high density residential land use (pointed to the areas on the map). She presented a slide showing the recommended land uses from the NC55 Corridor Plan, including changes to a large portion of industrial area to Major Employment Center (EMC) and includes having the area around Jesse Drive coming to the future US1 Interchange and would be commercial use, with the southeast area being previously shown as industrial and an area shown as low density and recommended it be changed to medium/high density residential. She noted conservation buffer for a future park in the location of an approved parks and recreation plan of October 2001. The last slide indicated recommended changes and what they would look like with the current land use plan where the existing industrial would remain industrial and where the existing low density would stay low density. She pointed out the Feltonville area and noted on the current land use plan, even thou it's on our side of the agreement line with Holly Springs, it doesn't show a land use with staff recommending it be shown as low density residential. This is not a zoning change, but a change to the land use plan which guides future rezoning. Any existing parcels could still be developed under the current zoning.

Planning Board unanimously recommended approval of these amendments at their May 13 meeting.



Commissioner Grimes asked if Major Employment Center (MEC) included residential. Khin responded it did, basically it is a planned development and percentage would be figured as the plan went through. Staff considers MEC needing major employment with any residential being secondary to and in support of the MEC which could be plain industrial, office and institutional, etc.

Commissioner Jones asked clarification of medium/high density residential. Khin noted it does not set aside areas for medium or high density but puts them all together as medium/high density residential. It would correspond to medium (6 dwelling units per acre) or high (14) in this range, and leaves a big range from single family thru apartments.

Commissioner Schulze would like to see offices go into the MEC with his understanding to attract people to build offices you want to have estate communities for the executives so they can be close to their work. He asked if we were offering up enough land to have one acre lots, etc. Khin asked if this was within the MEC; staff didn't envision the area as such. He was referring to the west of the MEC. Khin responded this area was low density and was not recommended to change, all the way to the Chatham line, and there are many areas that would be appropriate perhaps in the future for executive housing. She indicated the Planning Board had thought it would be attractive for someone to locate their business here; MEC if there could be executive housing. She continued the plan doesn't preclude it and she's not sure any executives would want to live in the present between US1 and I-540 and NC55 and would probably want to live further out in the area of "horse country".

Commissioner Jensen noted the total population for Apex, with staff roping off I-540 and what would be the growth boundaries and estimated total number of people, asking what effect this would have, as we are adding lots of high density and already looking at a possible 600 apartment units, just in this one strip. He asked the impact of adding high density, and a TND which is high density of better quality, in his opinion, than high density and the MEC which allows housing. He asked if staff had looked at the impact and how this will roll, will it be up to 43,000 or what. Khin responded staff had never expected this area to be completely built out by 2010 which is what the growth management plan shows. Commissioner Jensen thought the growth plan was farther out than 2010. Khin noted it's a 4% growth rate through July of next year when the allocation plan runs out until 2010 and was what the numbers were for. She feels it reasonable to expect this area will not be completely built out since the I-540 will probably start up 2008 and have three years for completion and looking past that time. Commissioner Jensen feels this has a substantial effect on the overall population, putting it on the other side of Research Triangle Park and hopefully will have something here where people can work (satellite RTP). His concern is the timing and with the total number coming out of here, notes I-540 being a long time off and still back to the pass through traffic coming through here and with Holly Spring's traffic through here, will degrade the quality of life here substantially. He's concerned with this block of high density development whether it develops today, or tomorrow or five years from now without the I-540, asking how we can control the population increase.



Director of Planning responded it's hard to figure the population, with the MEC, it will be done on a case by case basis – with varying numbers of residential and non-residential; it's hard to give an exact figure as to what will be built out. He thinks this area, if there is an area for MEC, it is this area due to the road system, which to him is the most important part of the aspect of this development and is the way the road system was set up to handle the future growth and development of this area; maybe having a mini RTP so people will not have to go so far but be employed and work and live in a relatively compact area.

Commissioner Jensen was happy with MEC but unhappy with high density housing situation that could well come before them. He's very concerned with the balance when he sees the number of housing units going on this plot and asked could the MEC actually absorb this type. Director of Planning's responded he didn't think we should be concerned or be afraid when we hear high density, and feels the trend is more toward high density and more compact development because that's how you create walkable communities; they are not created by spreading them out but making them more compact. He thinks the more important thing is to get good design, good compact development, and a good road system that would support this development.

Mayor Weatherly suggested to hold the public hearing before getting into discussion of the merits and then proceed.

Mayor Weatherly opened the public hearing at 7:55 p.m. With no one speaking in favor or in opposition, the hearing was closed at 7:55 p.m.

Commissioner Jensen expressed again he was happy with MEC but concerned with the balance of population within this sector and whether the MEC could absorb even one-half the people that could be looking at here in this high density housing with real jobs, where people can go home at night and not have to go to RTP and then come back and do their shopping near by; this was a tremendous concern to him. If he had his rather, he would go back to the NC55 Corridor Plan once more, but this is what's tonight and he's very concerned about the balance. He asked if Khin could explain how she looked at the balance and how she believes after this is built out that this area could possibly absorb this number of people from this high density zoning area.

Khin responded she would be happy to do this with high density. She felt the Board was happy with the rest of this and asked if they wanted to exclude the medium/high density and to have staff look at this further. She would like to see the land use plan change for the MEC for the commercial and the park, simply because there are lots of people coming in talking about this corridor and the more ammunition they have to say please don't put you self storage place here – this is not the plan – the better. She indicated it sounds like high density is the sticky point and could go back and look at and get figures; maybe high density needs to have a limitation; it could be all high density single family – example: The Green at Scotts Mill.



Khin continued these houses are high density – 10 to 12 with townhomes and everything. She feels each time high density is mentioned they think ugly apartments and maybe need to limit the types of high density, talk about the mix, maybe townhomes and single family or apartments over shops of MEC, but no straight out garden apartments. She has no problem looking at this.

Mayor Weatherly recalled the Planning Board vote of 7 to 1 in a negative recommendation on the rezoning, which the Board just denied based on too much high density. Khin responded it was based on the fact that it wasn't limited in the types of units that were there, but the fact that it was high density multi-family and not split somehow – multi-family and single family. They also were concerned with the current road situation that Reunion Creek Parkway doesn't exist to the property as yet, it will in the future (cart before the horse). They really felt the timing of the rezoning was not appropriate for now but might be appropriate once the roads were built and would probably be appropriate when the MEC came in and was why they were ok with the land use plan amendment.

Mayor Weatherly continued they were not inconsistent with their unanimous approval of the land use plan, those points were considered but unanimous...Khin responded they felt this was a timing issue and didn't know if there was anything legally that could require some property not be developed until the other property is developed; it's probably easier to limit the types of units that could be there.

Action: Commissioner Grimes felt the proposal was a good one and moved to approve the proposed changes to the 2010 Land Use Plan with the exception of the portion allocated to medium/high density residential and asked staff to re-evaluate this area from the stand point of the proper mixes of residential. Commissioner Jones made the second to the motion.

Commissioner Jensen personally agreed noted his intent to vote yes; but looking at the plan he is bothered that the high density is on the north east side of NC55 and unfortunate those people have to cross NC55 to the MEC. He noted he lives 1.7 miles from work and hates to admit he goes by car everyday. It seems to him it may be too late to judge this, and he personally will vote for it, but it's another thought.

Mayor Weatherly noted the motion was to approve with the exception of medium/high density and with no further debate, moved for a vote. Vote on the motion was unanimous. Motion carried.

End of Public Hearings

OLD BUSINESS

There are no Old Business Items to consider.



PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

Herman Jaffee addressed a letter calling to stop nuclear trains that travel through the entire state sent to Senator John Edwards, and Representative David Price and NRC Chair Richard Meserve and Governor Easley. Letter requests delay of shipments of fuel rods until complete and comprehensive investigation of how real this threat is a complete emergency plan in place of Shearon Harris. Jaffee suggests Town of Apex endorse the letter and forward this to appropriate people that may can take action. He indicated there maybe a July 4 Nuclear Power Plant attack perhaps in the north east quadrant of the US (where 1/3 of the people of the US live) and indicated maybe we're safe, you never know.

Manager Radford asked Chief Hearn be allowed to come forward and address the parking situation and those of the general public to follow.

Chief Hearn shared information regarding his reason for action regarding parking at Purple Glory Drive and Silky Dogwood Lane in the Dogwood Ridge Subdivision. Photo's indicated the area as cars are parked within an area of concern being the Purple Glory circle and with the fire unit making the turn (a vehicle that would respond to almost all calls - fire and first responder). He hopes this will explain his theory behind the parking decision as it was a safety issue and his decision was based solely on this. He noted the vehicles park due to not being able to get more than two vehicles in those driveways and lends towards vehicles parking in this area. Photo's showed a vehicle parking today allowing only 14 inches of clearance to the fire truck, and a vehicle police brought out to demonstrate a larger size vehicle. The fire truck length is 33 feet and he had concerns with the turn radius where the back is in the turn. Photo's indicated mailbox positions. His decision was to address this problem as a safety issue with fire and rescue apparatus needing to get to people in the community and the need of safe passage to do so. Driver of the fire truck had to drive slow and maneuver his truck through this area and should not have to do this, but be able to get to the area quickly and respond to assist those people there. A police vehicle can get through cleaner than fire apparatus. He didn't include mirror widths, but vehicles are wide with mirrors being higher on fire and lower on rescue and would come into play. He felt this was a safety issue and his job was to bring it before the Board to make necessary corrections.

Chief continued the same issues exist on Silky Dogwood having bigger radius of a curve – there vehicles were parked on either side of the street – making area tight for other vehicles. Other vehicles parked on one side, you still must wait to pass a parked vehicle. If wheels are on curb, it gives more room, most do not do this. There it was recommended no parking on one side.



Public comment continued

He had never seen, with the exception of today, a vehicle parked on the outside of the circle; it appeared to be a service vehicle. He thinks people living there try to protect their mail boxes so there would be no blocking mail delivery.

Manager Radford clarified the Chief had recommended and the Board had passed a "No Parking Ordinance" on the inside of the circle where photo's showed where the Chief steps in front of the cars (Chief stated toward the inside of the circle).

Chief Hearn noted an ordinance where you can't park within 15 feet of a private drive in residential sections which protects mail delivery and to have safe exits from driveways and in effect for several years. There is "no parking" on the outside of the circle already – unless you have a compact vehicle that would fit in between one of those spaces, other than the drives to the homes.

Ed Scholze resident on Purple Glory didn't know there was a problem until the Chief stopped by his residence. As a taxpayer, he felt he should have been notified – before signs were put up and streets were painted and felt there should have been courtesy of telling the association there was a problem and asking what to do to resolve this. He understood the safety situation and was for it.

He continued if there were no parking signs put up on the inside of Purple Glory, it was tight, cars were parked out a foot from the curb and residents do because they know the situation. He noted all parking was taken away and now they can't have guests, or family. When he purchased his home three years ago, there was nothing saying there was no parking in the street. He doesn't understand how Apex can issue a building permit knowing the streets are too narrow for fire trucks, asking how this happened. He took an Apex map and within one hour he came up with 55 streets in Apex narrower than these streets, noting then also having safety issues.

He noted there are 11 "No Parking" signs on Silky Dogwood alone in an area of 150 feet in front of every house – sidewalks are painted red and big signs will be there all in a row. There are 6 around his and 17 with 2 at the front entrance a total of 19 "No Parking" signs in a block and one-half; he felt this was ridiculous. He felt the sign "NO Parking" could be placed on the side of the street or no parking between signs. He takes pride in his house and now has spray paint on the concrete; he doesn't feel this was handled right by the Town and should have been notified to see if something could be done. He's glad the Chief did come around with the fire truck, it did get around. They do park one or two cars there, but try to keep them off. In looking at the streets and the driveways, some houses can't fit two cars – an average person has two people working – now they can't do anything here. On Silky Dogwood he noted the parking signs are placed on the wrong side of the street – should have put them on the other side where they could park on this side as there's almost 100 feet where there is no homes or driveways. He asked why it wasn't placed on that side. He doesn't understand why his community was singled out, obviously there were complaints, but he wants to know what's going to be done with the rest of the streets in town as far as safety goes.



Public comment continued

Mayor Weatherly responded he was sure if the Chief comes to the Board with a recommendation regarding safety issues on narrow streets, they would be treated similarly.

Chief Hearn responded his reason for this:

The side of the street was optional, and he chose this to prevent sign clutter directly in front of those homes on their side, as there were mailboxes there. There is space between those homes with exception of one location where there is a fire plug and you can't park there. There were cars using that today.

He continued there are a couple of extra postings and once he sees there are too many, they go back and correct this – noting a couple of places – also on the entrance to Purple Glory, it was tight. He felt this was the straight of way coming in and has no post there yet . The paint is a chalk and will wash away after a while and not paint. He can't speak for the locators but hopes they do the same; after a rain, and it's been a long time, the chalk will wash away.

Mayor Weatherly asked on a normal weekend when there may be guests, how many cars are typically parked around the circle? Scholze responded two cars and if a concern they would move the cars should they have too, but they would have to have some notification and could probably park at the pool area and have no cars there. When someone visits he could have them park there, they can't keep an eye on everyone that comes, but indicated the residents try to protect the area that's there. He noted another situation was the same, White Dogwood. Most people can fit two cars in the garage and in the drive, but they have single garages. The drives are cut at a small angle; behind them is new cluster homes and it's the same situation there.

Mayor Weatherly responded, if it's a safety issue, and Chief of Police comes and expresses a concern in his professional capacity, he's got to air on the side of safety rather than convenience. He didn't know if he misunderstood but there's obviously no opportunity if someone has had a heart attack and is trying to get a rescue vehicle in there or someone had a fire call, people can't go looking for who owns those cars to move them. Scholze responded it can be done and gave an example.

Mayor Weatherly continued they could not be available and worse case scenario would be what could happen and need to air in the side of creditable and sees this from the photos'. He asked if there were any middle ground to allow additional parking in this area, airing on the side of safety of the people who may need emergency vehicles.

Scholze interjected if parking and those signs are put up on the inside of Purple Glory and there's room to park in front of their house and they do that after 3:00 p.m. can he park there?



Public comment continued

Chief Hearn noted two reasons for the 15 foot rule for parking at private drives: to see clearly to back from the drive and the majority of mailboxes are placed at the driveway to protect your mail.

Scholze indicated if they have too they can park on the other side of Silky Dogwood where there are no signs and asked if this was correct? Chief Hearn responded if it's outside the 15 foot. Scholze responded this kills the entire neighborhood. If he finds a spot on the circle and can park the car within the premises of the 15 feet, can he legally park there? Chief Hearn responded yes. He said he did that, he's parking the car on the inside of the circle and referred to a tighter radius the more room the truck needs by coming on the outside of the circle where it comes down, a less tighter radius than going on the inside. He created another safety situation, asking where this was going. Scholze continued: on Purple Glory, 90% make a left turn onto Silky Dogwood, with Chief Hearn agreeing. He noted any kind of truck would do the same. He noted his street different from Silky Dogwood. He felt things could be done to minimize this situation and he was glad the truck came, garbage trucks never complained, the refuse trucks didn't complain, they are careful where they park on Purple Glory. By putting up signs in front of the houses, they can't be given away, there's no parking within 100 feet of your house.

Commissioner Schulze indicated the mail boxes were an issue as well and asked if it were possible to locate central mailboxes for the neighborhood and rid the individual boxes. Scholze informed this had been looked at but the drives are so close that 15 feet comes into play on almost every single home – Chief reiterated safety to exit driveways. Scholze noted this was not just his community, but half the Town of Apex that were not up to date. He noted any party and a fire; you can't get down half the streets and was a big issue.

Commissioner Grimes addressed Scholze, noting he had said something could and should have been done rather than doing this proactively – he asked what could and should have been done. Another person indicated they could have been notified. Another suggested this same committee is the one that designated the width of the road so every street should be made wider even if you shrink at the Town's expense – take 5 more feet off the sides of the radius come in and put in another curb and you will pick up footage, even if you have to do Silky Dogwood, it's the same thing. Take the grass strip where the mailbox is, then the sidewalks. When he bought his house he asked and takes pride in his house, he parks out front on the loop and the car's there every night and it's an eye soar and he's embarrassed he parks there; it's not a safety issue.

Mayor Weatherly asked if the street is narrower than the current ordinance. Director of Planning noted a 50 foot right-of-way - typical residential street width 23 foot. Tim Donnelly Director of Public Works noted dedicated street width of 27 feet with 23 feet not standard. Dialog continued. Commissioner Jensen asked Scholze if he preferred signs be placed on the opposite side of the street. Scholze indicated if there had to be no parking in the circle, if he wanted them put near the mailboxes – no body parks with the mailboxes - if saying they can't park by the mailboxes, why put the signs across the street? He sees it as a waste of money.



Public comment continued

Chief Hearn responded mailboxes don't solve the problem on that side of the street cause there's no parking now. Commissioner Jones noted turning radius should not be inside but outside. Scholze commented a truck could come in either way on that circle and the fire hydrant was on the corner.

Mayor Weatherly asked the Board to remand this issue to the Planning Committee with the Chief and interested homeowners (Commissioner Grimes, Chair and Commissioner Scholze) and staff – to allow the committee to develop options and notify homeowners (Scholze on Purple Glory and Schneider on Silky Dogwood).

Mayor Weatherly advised the action that had been taken: Ordinance adopted by the Board. Manager Radford reported based on the concerns raised and the velocity of attacking this problem, the signs were not put up today. Mayor Weatherly noted the ordinance being held in abeyance until such time as the committee will meet. There are posts, but not signs. Ordinance stands as adopted with enforcement in abeyance until such times Committee develop options.

End of public comment

NEW BUSINESS

Item # 1 – Apex Chamber of Commerce Economic Development Report

Presentation of Economic Development Report by Karen Byrd, President Elect, Apex Chamber of Commerce. Report attached outlines recent activities of the Economic Development Program addressing Recruitment, Marketing, Economic Development Meetings, Existing Business and Industry, Meetings attended, Additional Economic Development Activities and New Businesses in Apex. The Chamber Board approved two additional hours for this position, with an average work week of 22 hours – with a cost increase of \$2000. The Board feels the impact is essential to Apex. Recent Budget request includes the salary of the Economic Development Director.

Commissioner Schulze asked the reason for some going elsewhere rather than staying in Apex. Sheryl Bynum reported sometimes she gets no feed back, but some know the land prices may be higher and can go elsewhere for maybe cheaper prices especially when looking at lots of land. Manager Radford responded other states offer incentives. Sheryl reported North Carolina is working on package changes.

End of New Business #1



New Business continued

Item # 2 – Mixed Use Development Committee

Mayor Weatherly recommended appointments to the Mixed Use Focus Group attached and incorporated as a part of the minutes. Commissioner Jones asked if there would be opportunity for other members to have input, there will. Mayor Weatherly recommends Bill Sutton, Former Town Manager, be appointed Chair due to his knowledge of the Town's growth and development.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to approve the appointments of the individuals listed to the Mixed Use Focus Group with Bill Sutton serving as Chair to the group. Motion carried unanimously.

Manager Radford reported a seminar will be held for this group along with members of the Planning Board and Board of Adjustment on June 5 – 6, DPZ will host the seminar. The goal is to design an ordinance for presentation.

End of New Business Items

CLOSED SESSION

Mayor Weatherly asked for a motion to enter into closed session to consult with Town Attorney regarding potential litigation.

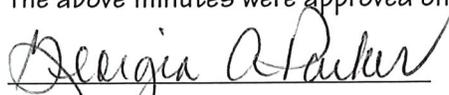
Action: Motion by Commissioner Jones and second by Commissioner Jensen to do so at 9:03 p.m.. Motion carried. Minutes of closed session are recorded separately. Closed session ended at 9:17 p.m. Motion by Commissioner Grimes and second by Commissioner Jensen to return to open session at 9:18 p.m. Motion carried.

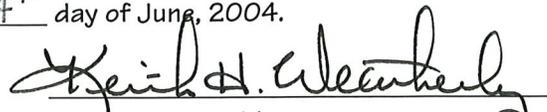
End of Closed Session

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Grimes and second by Commissioner Jones to adjourn at 9:21 p.m. Motion carried.

The above minutes were approved on the 4th day of June, 2004.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of June 4, 2002 meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, June 4, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Commissioner Jones gave the Invocation
Mayor Weatherly led the Pledge of Allegiance and welcomed those in attendance

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Manager Radford asked to amend the consent agenda to include request from Downtown Business Association for street closing.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to amend the consent agenda as requested. Motion carried.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to approve the consent agenda as amended. Motion carried.

1. Minutes of May 21, 2002 Board of Commissioner's Meeting.
2. Minutes of May 21, 2002 Board of Commissioner's Closed Session (separate cover)
3. Findings of Fact and Conclusions of Law and Decision denying Rezoning and Conditional Use Permit # 01CU12, Spaulding & Norris, PA, agent for Stonehedge Carolinas, L.P. located on NC55 between Reunion Parkway and Bobbitt Road containing 80.061 acres. (Request was to rezone from Office and Institutional and Wake County Residential 30 to High Density Multi-Family Residential Conditional Use District).
4. Resolution Authorizing Condemnation of Portion of Parcel of Land for Public Street Right-of-Way.

Consent Agenda continued on page 2



Consent Agenda continued

5. Annexation Petition # 328, Wake County Board of Education, owners/petitioners; petitioning to annex property known as "Wake County Board of Education Property Apex High School Parking Addition" located on Laura Duncan Road (SR1308) and containing 15.01 acres and including public rights-of-way.
 - 1) Resolution directing Clerk to Investigate Annexation Petition # 328;
 - 2) Certificate of Sufficiency of Petition by Clerk, and
 - 3) Resolution setting date of public hearing for June 18, 2002.
6. Resolution Accepting Dedication of Public Right-of-Way and Appurtenant Property Interests regarding construction of the Apex Peakway.
7. Request from Downtown Business Association for street closing Friday, June 21, 5:30 p.m. to hold a street dance with a rain date of June 28, 5:30 p.m. to 9:00 p.m.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as follows.
With no amendments, the meeting agenda was set.

PUBLIC HEARINGS

Public Hearing # 1 – FY2002-2003 Annual Budget

Public hearing regarding proposed FY2002-2003 Annual Budget.

Mayor Weatherly made brief comments on the public hearing process for the proposed budget and opened the public hearing at 7:03 p.m.

Christine Craig, Kids Voting, requests \$1500 be budgeted to benefit the program for kids K-12 and including home students the opportunity to vote. Attorney Kaus advised this could be included as it falls as a Civic Education Project.

Susan Lopresti, Apex Chamber Director, requests \$41,900 be budgeted to support the Economic Development position – work hours will increase from 20 hours to 22 hours a week.

The public hearing was closed at 7:12 p.m.

Manager Radford will present the Budget Ordinance for adoption at the June 18 meeting and asked direction regarding the requests for budget funds.

Consensus of the Board was to include the requests in the proposed budget.

End of Public Hearing

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item. Mayor Weatherly will recognize those wishing to speak at the appropriate time. Please limit your comments to 3 minutes to allow others to speak.

No one spoke during public comment.

NEW BUSINESS

Assistant Town Manager Mike Wilson addressed the following items regarding contracts with Waste Industries. Contracts will be renewed for three years vs. former one year renewals.

Item # 1 – Waste Industries Contract

Possible motion to renew Contract with Waste Industries for Curbside Solid Waste Collection.

New contract provides for a 14 cent per month decrease (reduction from \$8.63 to \$8.49).

Item # 2 – Waste Industries Contract

Possible motion to renew Contract with Waste Industries for Curbside Recycling.

New contract provides no change in the \$1.95 monthly rate and fixed at this level over the course of the 3 year contract. Recyclable items have been expanded to include paper, pasteboard, and corrugated cardboard.

Item # 3 – Waste Industries Contract

Possible motion to renew Contract with Waste Industries for Commercial Dumpster Service.

New contract renewal provides for a 1.5% decrease in monthly wholesale rate to Town and will be held constant over the three year contract.

New rate: 4 CY \$100.14 - 6 CY \$135.37 – 8 CY \$176.72

Brief discussion covered the quality of service with Waste Industries, the quote prices being in line with other companies, education regarding expanded recycling products, incentives appealing to three year contract vs. one year contract. Commissioner Schulze commented on enterprise fund type service with Assistant Manager addressing differences with current proposals.

Waste contracts continued

Commissioner Jensen agrees with the recycling and noted it up to the State to make the rules grow for recycling. Mayor Weatherly commented on the transfer to the N. Wake facility from Feltonville and the need for a future Western Wake County Landfill. Assistant Manager Wilson noted the continuance to use the county landfill, as it would not be beneficial to pay the premium to move waste outside the county.

Commissioner Meckes commented on the sorting process now being done at the sorting facility vs. by hand when picked up.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to approve the renewal contracts with Waste Industries for three years as recommended. Motion carried.

End of New Business Items 1-3

Item # 4 – July 2 nd. Board of Commissioners Meeting

Possible motion to cancel the July 2 nd. Board of Commissioners Meeting.

Manager Radford noted it traditional to cancel the July 2 meeting each year.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to cancel the July 2 meeting. Motion carried.

End of New Business Items

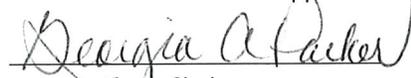
CLOSED SESSION

There were no closed session items to consider.

ADJOURNMENT

With no further business to come before the Board, motion was made by Commissioner Jensen and second by Commissioner Schulze to adjourn at 8:35 p.m. Motion carried.

The above minutes were approved on the 18th day of June 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, June 18, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Pro tempore Mike Jones called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, June 18, 2002 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Grimes and Schulze were present. Mayor Weatherly and Commissioner Meckes was absent.

Invocation by Commissioner Jensen.

Mayor Pro tempore Jones led the Pledge of Allegiance and welcomed those in attendance.

INTRODUCTION OF TOWN EMPLOYEES

Manager Radford introduced Fire Chief Mark Haraway, former Chief in Elizabethtown, N.C. Public Works Director Donnelly introduced Lineman Thomas Knight and General Services Employee Steve Maynard.

CONSENT AGENDA

Mayor Pro tempore Jones presented the consent agenda to be set and asked for a call for action.

Manager Radford asked to amend the agenda for a closed session to consult with the Town Attorney, and to move Item # 11 from the consent agenda - Agreement with Xerox, for consideration as a New Business item.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to approve the amendments to the agenda. Motion carried unanimously.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the consent agenda as modified moving Item # 11 to new business. Motion carried unanimously.

Continued to page 2



Consent Agenda continued

1. Minutes of June 4, 2002 Board of Commissioner's Meeting.
2. Minutes of June 11, 2002 Personnel Committee Meeting.
3. Budget Ordinance Amendment # 9 recognizing garbage costs (\$170,000) and lease payment on New Hill Fire Station (\$57,549).
4. Resolutions: Grant requests for Enhancement funds from NCDOT for the Greening of the Peakway and N. Salem Street Strollway from Hunter Street to near US 64.
5. Amendment to Town's fee schedule to add an application fee for tree removal and non-structural development plan – Section 2.3.15(d)(1) of the Unified Development Ordinance; application fee \$100.
6. CDBG Subrecipient Agreement with Wake County.
7. Site plan – Reunion Park Phase 2, NC55 and Reunion Parkway containing 21.79 acres.
8. Festival Commission request for rain date procedures for Peak Week and Today and Yester Year Street Festivals for day after festival (Sunday).
9. Personnel Committee recommends reclassification of one Senior Utility Maintenance Worker position to new position classification of Lead Utility Maintenance Worker, Grade 15.
10. Resolution regarding FY02-03 appropriation to Apex EMS that will restrict its expenditures to capital expenses such as vehicles, major equipment items, or facility additions.
11. (Moved for consideration under New Business) Lease Agreements: Document Company Xerox (Centre 460) replacing current leases for copiers 5345 (Planning) and 5355 (Administration); Authorization for Town Clerk to sign documents.
12. Resolution authorizing Wake County Director to collect taxes on behalf of Town of Apex.
13. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the regular meeting agenda to be set as follows being amended with the inclusion under closed session, to consult with the Town Attorney, and from the consent agenda Item # 11 - Agreement with Xerox, for consideration under New Business. The meeting agenda was set as amended.



PUBLIC HEARINGS

Public Hearing # 1 – Beaver Creek Commons (Planner, Dianne Khin)

Public hearing regarding major site plan for Beaver Creek Commons, Phase 1, located at NC55 and US64; possible motion regarding same.

Staff Planner Dianne Khin introduced the proposed site plan for Beaver Creek Commons Phase 1, located on NC55 at US64; Applicant being JDN Development Company, Inc.

Slide presentations noted the site and vicinity; much of the site is wooded with Beaver Creek running through the site, wetlands, a portion being the old auto mall on the northeast portion of the site and identifying surrounding land uses, streets and roads (paved portion of Zeno Road); and phasing plan.

The proposed use: Phase I includes two big-box retail stores (Lowe's Home Improvement and Wal-Mart) (Phase 2 will be presented to the Boards as a separate site plan and not being considered for approval at this time and will consist of village shops and out parcels) – road improvements to Beaver Creek Drive, Zeno Road and NC55; and stormwater retention basin.

Consistency with Town Ordinances and Plans: Meets requirements of the Planned Commercial zoning district providing two minor conditions are met under the Unified Development Ordinance. Proposed retail use is consistent with the 2010 land Use Plan.

Project Data for the approximate 80 acres is covered by the revised staff report that is attached and incorporated as a part of the minutes (building elevations for Lowe's Home Improvement and Wal-Mart Supercenter; Landscape/Buffer Requirements; Resource Conservation Area; Floodplain/Watershed; Parking Spaces; Street Access; and Lighting).

Staff recommends approval of the site plan with the following conditions:

1. In order to have exactly 25% RCA, an additional .335 acres needs to be added (total 18.754 acres). Applicant agrees to add acreage to the RCA.
2. Slight adjustment to lighting plan is necessary to meet spillover requirement. Maximum spillover level of 1.0 fc onto adjoining non-residential properties and rights-of-way and 0.3 fc onto adjoining residential properties must be met for both Lowe's and Wal-Mart; can be done at construction plan stage.
3. Reddish-brown brick used in Lowe's building be included as accent brick on Wal-Mart building and same color (preferably green roofs and canopies) be used on both Lowe's and Wal-Mart buildings.

The Planning Board reviewed the site plan at their June 10 meeting and unanimously recommended approval with the above conditions as well as three additional conditions:

4. Construction of Phase 1 will not begin until a second major access is approved.
5. Work with the Town and the residents to investigate traffic calming on Zeno Road.
6. Mechanisms such as raised tables in crosswalks to encourage pedestrian use within the development.



Public hearing # 1 continued

Commissioner Jensen asked for clarification regarding recommendations by the Board of Adjustment (BOA):

- Provision of significant more landscape in the parking lot - (trees are upsized – requirement of significantly more landscape, not significantly more trees – 3” caliber trees are proposed in parking lot with mixed varieties – minimum size is 2” caliber – code requires 50% of the islands to be covered in shrubs or ground and are covering 100% of the parking islands).

Commissioner Grimes asked about the variety of trees, particular the islands within the parking lot – (there will be varieties).

Commissioner Jensen asked clarification regarding the following:

- Oversized islands. (Applicant had submitted oversized islands and in review they can't have oversized islands and still meet the requirement that you can't be further than 40' from the trunk of the large type trees - evenly spaced islands and can't combine them to have larger islands – can't have double sized island with two trees and still meet the 40' requirement to the next island because the islands are basically bunched together and applicant was advised to space them evenly in order to meet the UDO requirement .

Commissioner Schulze asked the width of the islands – (10 feet, some larger with those being shaped differently are oversized – mostly at the end of the road).

Commissioner Jensen commented to oversize the islands and to move them one parking spot closer together you would still get the minimum 40' spacing and achieve what the BOA was requesting. Khin responded if you oversize the island – they were doing double islands – you would have to have the same spacing between the islands – you can't have two trees to one island and make a larger island, skip 8 spaces and have another set. Khin continued there are some islands with double trees out front and at the end of each row – referring to the parking for Lowe's Home Improvements – the oversized islands show spacing twice as far apart but twice the island size but does not meet the UDO and not acceptable.

Commissioner Jensen continued this was not the way he read the BOA ruling – which said: oversize islands on the plan exhibit (Khin interjected: this is what the map to the BOA showing double islands but further apart and what the BOA was looking at didn't meet the UDO requirements). Khin continued the plan does have oversized islands and meets the UDO requirement for the evenly spaced islands.



Public hearings continued

Commissioner Jensen continued that it seemed to him you would not have to go to doubled sized planting zones to achieve what they were after and then space them, putting the same number of car spots in between. Khin responded some islands are larger but not double sized – maybe 10% larger or 50% larger – they do have those at the end of each row.

Commissioner Jensen read from the BOA, the objective would be to possibly put two trees in each island on the far end getting maybe 150 or 180% more coverage of the tree and we seemed to be concerned with the number of square feet that needs to be open for the trees and is probably based on a 12" diameter tree trunk and thinks these trees will never make that big and best if they were spaced out and cover more parking area with shading. Khin responded in order to meet the letter of the UDO, you have to have 350 square feet to have a large tree in the island, therefore, you have to have a doubled sized island to put two trees on it and is difficult to do and still meet the 40' from tree trunk requirement. She continued there may be a need to look at this in the UDO, but is what is required and the end result is evenly spaced trees and basically the same size islands in most cases. You would have to have a double island before you could put a second tree.

Commissioner Jensen responded, "we need to look at the UDO, because that's wrong – it's too bad. We're getting more and more parking lot and more and more micro-climates that are soaring in temperatures as a result and this will be another one of them. Khin responded we have to go by what's in the UDO at the time of plan review.

Commissioner Schulze called attention to the following:

- The RCA is short with a need for basically one-third of an acre and asked where this will come from? Khin responded it's in the area of existing – the line for the RCA has wetlands along this property line and recommends it come from here. All water features are the highest level needing protection – they don't need to own the piece, basically as long as they get an agreement from the property owner to use it, they can. Applicant proposes to do this.
- He referenced the 50 year storm and a 100 year storm discharge and how many inches would this be – what rate of rain? Khin couldn't answer this – the Town's engineers had reviewed this – Construction Manager Director Jackson responded he felt the applicant could best answer this.
- He referenced the shoe box lights and the more decorative lamps and where they would be located. Khin responded they would be located basically where pedestrians walk, along the sidewalks, fronts of buildings and be in tandem with the shoe box lights out in the parking lot - the BOA required they use decorative lighting throughout the site and felt if they only used it in the pedestrian area, would not be acceptable – they are required to put them (arm lights on larger poles) out in the parking lot.
- Phase 2 of the project – was it perceived to be detached buildings or connected? He was concerned with the out parcels along the US64 ramp. Khin responded those would be individual buildings as described to staff and would be individual site plan approval like other out parcels within shopping centers in town.



Public hearings continued

Commissioner Grimes questioned what additional buffer if any was there between this project and neighboring residential? Khin responded between this property and Carriage Downs, there was a specific requirement by the BOA there be a 50' buffer width plus a six foot tall wooden fence and have both been provided along the entire southern property line, not in the RCA area but starts where the development starts so it actually is the same protection for Beckett's Crossing as well as Carriage Downs, even though the BOA requirement was just for Carriage Downs – the fence was furnished as well as the 50' buffer.

Commissioner Grimes asked if this were existing residential – Khin noted Beckett's Crossing a phase not built out but under construction with Carriage Downs which is also under construction – there are some townhomes built and sold and maybe a house or two further down, built and sold. The townhomes are the closer to this property in Carriage Downs. Beckett's Crossing is single family homes.

Commissioner Schulze referred to the floodplain and watershed and noted it's not required to meet Section 6.1.3(H) of the UDO, it still meets the terms of the 100' buffer; asking if there were any terms it doesn't meet. Khin responded it meets everything, with the main concerns are the buffer and the stormwater retention pond.

Commissioner Grimes asked why the range of heights. Khin responded there is a parapet wall and is the highest point of the building and noted the lowest point; Wal-Mart doesn't have as much a range – about 4 feet.

Commissioner Jensen noted in regard to the Carriage Downs townhomes, the BOA required a significant buffer along those with the single family homes having a 40' undisturbed type A buffer and a 10' type A buffer where the townhomes didn't rate and get a 20' undisturbed type B buffer and a 30' type B planted buffer and asked the difference. Khin responded staff looked at the UDO requirements and is considered to be a class 3 use which is two steps down from a retail which is class 5. Single family homes are class 2 use which are 3 steps down from a class 5 and the buffer that is required by the UDO, is only 30 feet type A for the single family homes and a 20 foot type B along the townhomes. Having 50' of type B is significant compared to what the UDO currently requires. A 50' distance is what they have said such as having a 40' natural plus a 10' planted plus the fence. Khin continued they didn't know what they wanted in the area, and were told them 50' and is what is shown here. She continued a 6 foot fence pretty much makes a type B a type A buffer, and makes it opaque from the ground to a height of 6 feet.

Commissioner Jensen commented but the buildings in the line of sight would require a taller buffer type item than a 6 foot fence. Khin noted the difference between type A and type B buffer is opacity from the ground to 6 feet. If you have a fence that basically would make it close to a type A buffer. Commissioner Jensen commented this was fine, but was talking about what visuals people will see from their townhomes. Khin asked if this was as far as taller trees. Commissioner Jensen continued, not what the UDO says, but his concern was what the people will see. Khin indicated she was trying to explain this was coming from the ordinance.

Commissioner Jensen continued the BOA had given a variance for these folks and was one of the requirements, he would think, we would go as tight as we can with respect in trying to mitigate any problems from the townhomes that are backed up against there. He doesn't want to see another home depot situation. Khin thought their buffer was almost a type A and doubts they wouldn't mind having a type A. It's probably a type A any way even though it's called a type B, given the amount of vegetation that's back there; she doesn't think if the Board wanted to make that condition, she didn't think they would be adversely to that. It wouldn't change a whole lot. Commissioner Jensen indicated he would like to make it that.



Public hearings continued

Commissioner Jensen referred to Commissioner Schulze talking about the pre-development run-off rate being the same and what it's based on – truly undeveloped property or the car dealership as being the pre-development for this. Khin deferred this to the engineering department and the applicant for that.

Commissioner Jensen asked if the Town folks have access to the retention pond. The BOA wanted it to look pleasant, and he agrees to that, he's not keen on fountains, and doesn't think this will happen. He asked if we are going to set it up to have access for the kids of the neighborhood to be able to fish there if they wanted to, etc. Khin didn't know that, the greenway path is public and will have access on it, the retention pond, the way they had read it and the way she understood the discussion went at the BOA was that it shall not be surrounded by chain link fencing. It didn't say it couldn't be surrounded by fencing but not chain link fencing. She didn't believe the applicant at this time was proposing to have any fencing, but could speak to their insurance requirements, and is one of the things they had said to them that they may be required to do some sort of fencing there, but would have to be an attractive fencing, could not be chain link because of this requirement. Khin noted they could speak more of their intention for this pond is and could answer this better. Commissioner Jensen stated he could see ornamental fencing where it's dangerous, but to try to bring up close to the water, you get utilization from these and it looks to him like a fairly good size retention pond. He referred to the Surry Meadows where the kids use that retention pond as a place to fish; bring a little of the old town situation back to the young people of the town.

Commissioner Jensen asked if there were any irrigation proposed on any of the buffers. Once again, he looked at the Home Depot / Walden Creek buffer situation and things are stunted in this growth zone because there is no irrigation. Khin referred to the applicant, they didn't review irrigation as part of the site plan, if they plan to do this then they can speak to this. She noted they are required to keep the landscape alive and if they don't, they have to replace it and is up to them as to how they want to take care of this, but they could tell what they are planning to do. Commissioner Jensen continued, it was not just to keep it alive, but to grow to actually become a true type A buffer so they work within a life time. Khin noted there is no requirement to install irrigation systems at this time. Commissioner Jensen noted this needed to be discussed too.

Commissioner Jones asked questions relative to access and Zeno Road improvements that were conditions from the Planning Board, but would wait to see if they are addressed in the presentation. Khin responded the applicant had been told they would respond to the questions, unless there is something she had missed. Commissioner Jones felt there had been enough questions and give them a chance to answer the questions in the public hearing situation.

Commissioner Jensen had one more, he had requested a larger area map showing US64. Khin provided a map that had already been produced and showed the existing transportation map which shows existing and future planned roads and also an arial photograph.

Commissioner Jensen pointed to the frontage road that seemed to stop at the northwest end between the parking lot and the out parcel, and asked the intent – Khin asked if it were Hyacinth Way – and it wasn't it was the surface road – Khin noted this as Zeno Road as it continues to the west. Khin responded that Mike Horne, Kimley Horne could respond to what staff has been working on – the area to the west.

Commissioner Jensen continued he had thought a while back there was going to be a study about possibly this having a connection on to Kelly – just entire things dumps out onto NC55, even if we get another access.



Public hearings continued

Mike Horne, Kimley Horne and Associates noted they were actually in the process, he believes this Board and a letter of the Mayor desired what he was calling the breaking control of access along US64 – an actual resolution. They are following on the resolution, and meeting with NC DOT . They have actually had one meeting and several follow-ups with them to look at what they see as the “breaking control of access” across from Green Level Church Road on US64. Green Level Church Road, as they are well aware, is an immediate opening and comes down un-signalized. He indicated a possibility of signalization there very soon – traffic is increasing both on that road as well as US64. They have asked the NCDOT to consider putting essentially the fourth leg which was there some time ago, looking at the old aeriels, the road did cross at this location, there was a fourth leg, When US64 was put in that leg was severed; why they severed only one side, they are not sure but are pursuing this. They have asked the applicant to provide them with additional information in the form of a traffic study that looks at the impact of the area with this “breaking control of access” and not. With this information, they will go back to NCDOT which is a request of theirs, He will provide this information to them.

Commissioner Jensen was concerned with Zeno going straight across to Green Level Church Road in terms of the traffic load that will be onto Green Level Church Road which also goes by Walden Creek Subdivision and they are already hit some what with the Home Depot situation. He asked would it not be better to try to carry this down to Kelly where it doesn't impact the subdivision and their quality of life.

Mike Horne responding looking long term, they understand the outer loop will be in place with part of the outer loop in the public hearing map, he didn't bring and apologized, but Green Level Church Road gets essentially severed and will get relocated to the north of there. He's not sure he sees traffic utilizing Green Level Church Road in the future. There could be some in the interim, until such time the outer loop is built, Green Level Church Road clearly will exist, however, as far as when the outer loop comes in that connection is not a direct correction as they would think. He referred to Commissioner Jensen's question taking it over to Kelly Road, clearly is a desire of everyone, getting across either under or over the outer loop will prove to be another discussion they will have with NCDOT – they think it's a very good idea to get it to Kelly Road. He continued: understand Kelly Road as shown on the NCDOT maps actually put it very close to the ramp term nod for I-540 are working hard with them, they do not like the placement of it. Commissioner Jensen continued he could see Kelly Road in an interim situation, because it could be eight years before they see I-540 . Mike Horne continued that Kelly Road is a major thoroughfare on the plan, the Town's designation as well as Campo and is an excellent route. They are fighting with them, probably not the right word, but discussing with them; they have desires right now to put what's term as leftover at Kelly Road and US64; not a good idea for a major thoroughfare.

Attorney Kaus interjected on a procedural matter, pointing out that the applicant in effect is requesting a variance from the Board, hearing earlier from Khin, the 100' buffer that would normally be required on the ramp – the UDO specifies the criteria that you should be considering. He wanted to remind them, so they could be thinking about them when they heard the testimony from the applicant. Under the UDO, Section 8.2.6 (f), essentially when an applicant requests a reduction in this buffer, you should consider whether there is a case of hardship here as defined in the statute, and he indicated he would tell them what they are, and some of the things to think of, to figure out whether there is a hardship: topography of the area – that they heard from the applicant, that they are resting on; surrounding land uses; existing and proposed land uses; the actual location of the corridor which would be US64 in the case; and the sizes of land parcels affected by the buffer and finally whether the buffer requirement would render the entire property unusable.



Public hearings continued

Attorney Kaus continued, again, they should focus on the topography that the applicant will address the criteria. The statute 16B-388 says essentially two important things, that in order to grant this – what he would call a variance, even though we don't use this phrase, you need to determine if there is practical difficulties or unnecessary hardship that would result from enforcing the 100' buffer rule. Finally under that statute, requires a four/fifths super majority – and would require four votes from the Board and doing a quick head count, there are four members present and would only have to have three votes in order to approve the site plan over all. Procedurally having said this, they may want to consider them separately or then they could wrap this all up in one vote. He wanted them to be thinking about this.

Commissioner Jones asked clarification, indicating the Board may or may not be relevant, asking if they hadn't voted on this once before when there was a site plan for a portion of this property. Director of Planning noted it was for the car dealership. Commissioner Jones asked again if they didn't vote on a variance for this property on the site plan a year or so ago? Director of Planning indicated this to be correct, but for a different site plan, essentially a variance that was site plan specific.

Kent Jackson, Director of Construction Management, wanted to follow-up comment about the access, and to give a segment into what would probably be the applicant's engineer's discussion about stormwater.

Transportation: He thinks Kelly Road idea has merit and should pursue this, but hopes to keep the main focus on US64; seems to him US64 more well suited to receive this potential volume of traffic and he would want to evaluate closely with a Kelly Road connection would be the potential for this pressuring us to expand that road and then we've created another impact.

Stormwater: They found themselves in a position of defining what the storm would be. The UDO spoke to the point of having to have pre-post controls, but didn't specify for a particular storm. A little of the thought process staff went through, you look for industry standards. It's common in municipalities across our state to require this calculation be based on a ten year, in the engineering world, is called a ten year storm event and believes the city of Raleigh requires for only a two year storm event. He, himself, Robert and David got together to discuss this appropriate storm for this project considering the sensitivity and the magnitude of it and the close adjacent residential and came up with the 50 year storm as a very high mark for them to hit for their goal on retention, so they feel comfortable that this is a very conservative design they have. He thinks the numbers that the applicants engineer will talk about, slightly exceed a 50 year storm. Commissioner Schulze's question regarding intensity curve is he believes 10.92 inches per hour and is what is referred to as a 50 year storm.

Commissioner Jensen asked how long this would be, if it were a half an hour storm, 5 inches or one hour storm, usually it's intensity plus time. Jackson responded he would have to look at the chart equation; thinking the applicants engineer had the charts with him and could pull this for him.



Public hearings continued

Mayor pro tempore Mike Jones opened the public hearing at 7:52 p.m. calling on Applicant Chris Richter to give answers to some of the questions.

Chris Richter, Project Manager of JDN Development Company, addressed his list of the questions.

Fence around the basin: He doesn't envision the retail customers using the basin for fishing and intends to protect it with either split rail or some ornamental fencing. He understands there are residential communities in the neighborhood, not knowing if they have their own detention ponds or what water features they have, but from their perspective, from the liability perspective, it's their preference to fence off the base and leave it as a visual amenity to the site. It will be attractive and well planted. Based on the elevations of the greenway path, there will be some exposure to it, but thinks they can effectively deter the use of it as far as people climbing into it, etc. with some type of ornamental fencing; that's our preference.

Irrigation; they do envision irrigating portions of the site, those buffers along the rear of the property; they will consent to irrigation of those. The water supply would come from the detention basin, and is his understanding they cannot tap into the city water for irrigation purposes. Subject to obtaining any of the appropriate permits necessary to do this they will consent to watering the buffers along the residential property lines. It is not their intent to water the individual islands throughout the development.

US64 access: They have funded a traffic study, have supplied all the traffic impact analysis necessary to support the Town's proposal to NCDOT and are certainly behind it. They have very little influence with NCDOT and they are here to support the Town with whatever can be done to get the US64 access.

He noted through all of Khin's comments: All of the conditions, they will agree too and will comply with those, as they were relatively minor adjustments in the project itself as far as lighting, RCA, brick use in the Wal-Mart and the canopies, they are all reasonable conditions they will comply with.

As far as the drainage study, he knew there were a number of questions and he asked them to repeat those again, so he can assure if any weren't answered, they could respond to those.

Richter continued their Civil Engineer Consultant, Architects and Traffic experts were present and any questions could be deferred to the experts.

Mayor Pro tempore Jones asked how he would address the two conditions from the Planning Board relative to a second access prior to construction of beginning Phase 1 and traffic calming on Zeno Road.

Richter responded they had offered the first condition, because there appeared to be a lengthy discussion; they are fully committed to supply the second point of access. They are wishful the Town can generate some firm commitment from US64, but they way the work with their time frame is they need to take control of this situation themselves and have been successful in expanding their projects slightly to the south to allow them to hopefully design a second point of access; they are in the middle of the process, with their goal to submit their Phase 2 application with a second point of access to NC55 to comply with this condition. Accepting the condition that they will not start construction seemed to be a fair compromise to allow the process to move forward.



Public hearings continued

Commissioner Jensen asked him to repeat that. Richter restated: accepting the condition not to start construction until a second means of access, second major means of access, was provided seemed to be a fair compromise. This will be on their Phase 2 submission.

Commissioner Grimes asked how they would handle the roof and canopy color. Richter responded Wal-Mart, many of the buildings they build for Wal-Mart, they are part of their centers, and their colors are blue. He honestly didn't know how they got green on the plans. Commissioner Grimes was wondering about that himself. Commissioner Grimes asked if blue were fine. Richter indicated blue was fine.

Zeno Road; Richter noted the item raised regarding Zeno Road, they will work with staff and whatever to work with the neighbors to come up with some solution – it is a state road, so it's going to be difficult situation, but will do whatever they can to work the neighbors on this issue.

Commissioner Schulze asked as far as the RCA requirement, where would the one-third acre come from? Richter responded it would be a conservation easement from the remaining lands from the Seymour tract. They are subdividing the Seymour Tract down Beaver Creek, with the subdivision line being down Beaver Creek, and then Seymour will remain owner on, he's guessing, about 14 acres on the north side of Beaver Creek. Much of this is wetlands which they are in the process of obtaining the conservation easements over this land. They will increase it slightly to accommodate that acreage.

Commissioner Jensen asked him to clarify if they agree to the type A buffer along the whole back side for the townhomes also. Richter stated yes, they will gladly comply with this and certainly any issue with buffering, they think it is a very dense buffer and there is also some natural vegetation there, cedars along the rear property line that they will try to keep, and their goal is to walk the line, prior to construction and flag those trees to assure the mature evergreens back there will stay but the landscape in a sense of nature, that line, they will spend that money and enhance that buffer to whatever is necessary.

Commissioner Jensen asked if the trees, he noted in the parking lot, seemed to be mostly deciduous, if not all deciduous; is there going to be evergreens out there too, because winter comes along, Richter responded the evergreens exist mostly within the buffers and he thinks evergreens in parking lots are basically a hazard and need the visibility. The purpose of the shade trees is to allow the lower growth to extend above the drivers eye and evergreen materials usually are kept below drivers-eye heights. You need those clear site distances throughout the site. He continued it certainly was not their preference to have the higher evergreen material within the landscaped islands. Khin interjected it's a large type deciduous tree, and is what is required in the BUA ordinance 8.2.5.(c)(2); the perimeter doesn't have to be but in the island has to be deciduous and that's to provide shade, the evergreens don't do as good of a job in providing shade. Richter noted there is a substantial amount of evergreens throughout the buffer area throughout the perimeter of the site.

Commissioner Grimes says he's actually seen, usually, but has seen wax myrtles that were essentially configured the same way as a crape myrtle, so you have a canopy of wax myrtles above and the limbs that form a multiple trunk – looks like a crape myrtle, and is evergreen, but takes a long time to get that big, but is very attractive.



Public hearings continued

Bob Atkinson, applauds this plan, and thinks there's been a lot of work put into this project, more than he's ever seen. He's seen the McKim and Creed Plans, Kimley-Horne, and Blain East in putting this together. He attended the Planning Board meeting and some of his neighbors are present, those that live on the other end of Zeno Road. The comments from two weeks ago, was near the Olive Chapel Shopping Center where there's a lot of traffic because it's drawing people. They live on the other end. He has a long history of buying homes and fixing them up and moving out into the country. He bought his house three years ago on Zeno Road just to do that very thing. He's improved it and a horse barn, he has horses, and the last three years, it has changed, but it's inevitable. He's in commercial real estate business and obviously should expect all this to go nuts, but necessarily. He's been in opposition to the Board many times, but he really thinks staff has done an excellent job on this. They have seen this project for a long period of time and he thinks it's time to get on with it and give Mr. Richter, JDN, the opportunity to do it. They have a great reputation and from Atlanta. He's working with Stephens Property Associates, from Atlanta with an excellent reputation and feels they will do a good job. He commented on something from three or so years ago on the Olive Chapel Village improvements that it would cause a problem – we have to create a problem before we can solve some problems – thinking it was Commissioner Grimes, but maybe Commissioner Hilt – in talking about the road there. He continued we all know this will create traffic problems, but the important thing, if Mayor Weatherly were here, is getting I-540 built. It doesn't matter what's done to NC55, it's not solving the problem. He thinks this will help western wake county to get the clout, Mr. Radford needs to get the road built. He indicated he's doing an excellent job, it's not a smoke job, he thinks all are doing a good job, but he knows staff, Rowland and Khin have done an excellent job. He indicated if some of his neighbors wanted to speak in favor, he thinks we need to give these gentlemen a hand.

Art Clem, Beckett's Crossing, spoke in favor of this project, mainly because of the shopping and convenience it brings to the citizens of Apex. He has concerns, since the first BOA meeting, about buffers, sound, noise, light emission reflecting in the neighborhood, and feels a lot of those has been taken care of in subsequent meetings and as this project moves through the different phases. He is the President of the Beckett Crossing Homeowners' Association, and has talked about this project within the neighborhood and says in general, there's a favorable response from all the neighbors, about this project. He addressed two areas to be taken into account as this project is proposed to be approved – traffic, not NC55, not US64, but talking, pointing to a map, through Beckett Crossing. There are present developed houses and houses not developed along the back of Wal-Mart. He noted the Zeno Road, where it's proposed to come out and Red Barn Way that will go down and pick up Fairfax Woods Drive and down to Olive Chapel Road. He contends, unless something is done differently, this will be a major cut through; he's complained about the intersection of Olive Chapel Road and NC55 and already starting to see traffic coming through the development because of this intersection. He sees one third of the population of Apex driving through their development. He feels there has to be something done within Red Barn Way and Fairfax Wood Drive to do something to curve traffic through those particular neighborhoods. He noted the same situation in Surry Meadows, now putting in the Peak Way and hoping to relieve some of that. The situation in Cameron Park, cutting around the intersection – there's a couple of things that could be done – start with traffic calming devices through out Beckett Crossing, or take a unique approach and cut off traffic at this point on Zeno Road and make it for residents only and a gated area that would go through there and give the residents of Carriage Downs and Beckett's Crossing and those along Zeno Road the opportunity to go through there with a card reader, or something, but limit the traffic through there. He does know that as soon as it opens up, and it's even started now, people making this cut through to NC55, they will need something within the residential communities.



Public hearings continued

Commissioner Grimes asked him if his concern were with people will cut through there to get to NC55? Clem noted it's started; the road opened two week ago or a week ago, they've just finished the road through Beckett Crossing and now the traffic has started through to Zeno Road and now by the car dealer up to NC55. As soon as this development opens up, they will have a continual flow through there. He thinks something has to be done, either traffic calming devices or some kind of gate to only let residents through there and would help with the Zeno Road problem that was before the Planning Board.

His second concern is with run-off. Beaver Creek comes through the site – Fran was a major storm event and there was major damage to the back of Beckett Crossing to the greenway. A new greenway has just been put in because it was totally washed out. It was reconstructed. That was a major storm event, but at least on five or six occasions, he's stood up to where Beaver Creek comes into the Beckett Crossing area and all the drainage from all this whole area comes in there and Beaver Creek overflows its banks; it just can't handle the water. This retention pond, he's talked to the developers a number of times about it, hopefully it's going to keep or get most of the water, but he's concerned about the run-off and hopefully this retention pond will take it. He's concerned that the proposed greenway system and their greenway system that is demolished, should be connected and there be some drainage control so it will not get washed out again. Eventually it will fall upon the homeowners association to maintain this part of the greenway.

He's in favor of the project, but has some reservations, and hopes these will be addressed as they go through this deliberation.

Mayor Pro tempore noted there would be lots of discussion, and wanted to give due process, but if asked to avoid unnecessary redundancy.

Cy King, Art Farm Road, has seen what's proposed and thinks it's time for Apex to move forward, being in favor of it. Because of where he lives, and the traffic that has grown over time, the key concern is traffic and access to US64. He noted it a plus, but work on the traffic and the access.

Karn Parkhurst, noted the largest parcel of land to the west that joins the wetlands – having a farm there for 27 years. He noted one couldn't live in this area and have it not change. He's seeing it in the entire Triangle area; he's enjoyed living there kind of by himself, but he's in favor of the plan. He thinks it means more good to Apex than it might do to anyone as an individual. He's in favor of it.

Michael L. Jones, working with Mercury Development, the company that developed Carriage Downs, pointing to the first phase, completing all construction of the entire site, but has not recorded these plats yet. What is constructed has already been accepted by the Town. He is for the project, thinking it's a good project, and has sold 26 homes in this community, starting slow, but has picked up pace. This is his front door and has no doubt why the majority of the people living here bought, because of access to NC55 and US64, those going to Pittsboro, Raleigh and RTP. It came to his attention and he's not verified this, but this will be closed down – their front door as to how people get here to US64, he has a real concern and asks that any approval of this project would seek to keep this access open. NCDOT does it all the time on roads, but he has a real concern that anyone that comes out, matter of fact they paved Zeno Road all the way to Hyacinth and this will be torn out now.



Public hearings continued

He understands and it's not a problem, but access for the residents currently living there having to come out and get on a dirt road and get off at Olive Chapel and back up to NC55 and take a left to get down to Hyacinth Way is a real concern and he truly thinks it should be something that should be kept open during the construction process and some time limit if it had to be closed, be a short time period, where they did their work, but certainly thinks it's something – he knows the residents just found out today about this possibility of it being closed and asked if it were going to be closed for some period of time during the construction.

Richter responded they would provide continuous access to NC55 during construction. He noted if he looked at the site plan you would see that basically Zeno Road is being re-aligned to come to a t-intersection with Beaver Commons – their goal is to build Beaver Creek up to the first intersection, build Zeno Road up to a point where traffic could be reverted onto it and then remove the existing road bed.

Jones continued he would hope any approval would consider keeping this, being the first phase, to keep this access here, installing this first and then taking out what is currently there, so these residents always have access which he knows is one reason a lot of them bought in this area.

Billy Clark expressed concern with the traffic that would flow through Beckett Crossing that would be to the homeowners in this area. He's not against this project, but asked consideration to restrictions: Deliveries between 8 a.m. to 8 p.m. 7 days a week, and also public address systems to be utilized between 8 a.m. – 8 p.m.

Commissioner Jensen responded the BOA had put restrictions from 7 a.m. to 11 p.m. on deliveries and no outside public address systems.

Herman Jaffee, a 6 year resident of Charleston Village read a report on Wal-Mart's tack ticks in towns where they go out of business and abandon the buildings. He noted Eckerd's in Town looks garish. He wanted the appearance to get in there and be careful, and requiring same color roofs. He noted the one entrance on NC55 would be a problem with traffic noting the light and traffic on Zeno and asked if it would succeed? Big box stores fail and can't be recycled standing until torn down and at the end of time, taking money. He noted Charlotte was requiring a bond or escrow fund so money will be there 10 or 15 years to protect themselves if big box is abandoned, noting we need to do the same and asked what's the number of homes to make a big box to survive. He noted two other stores closer, but a big box could hurt our tax base and we need to strengthen it to survive not weaken it. He commented on the road improvements with the main problem on US64 west desiring a left turn lane now if NCDOT will let it be done, and maybe light, noting NCDOT wants US64 to be an expressway. He commented on a Laura Duncan under pass. He gave a list of stores, asking to be careful what we allow and have money to correct it. He noted Beaver Creek comes from where it stated and down through the woods, Charleston Village, and across US64 and floods because it's a short creek and would be a problem with any big storm, we would not be prepared for it.

Rich Ferrell, Art Farm Road, is for the project, and has a small business there. His concern is with access on NC55, and access to the homes there and in the wetlands area. One consideration he mention was to minimize the impact that it will have to this area and the need on NC55 for traffic control, noting it almost impossible to get in there now, but with the reroute of Beaver Creek Road and changing it from Zeno Road, delivers and mail will need good access to the far end; hopes they will try to minimize the amount of impact to this area. He's all for the project and have done a great job.



Public hearings continued

Mike Shore, President of the Haddon Hall Community Association, when finished out would reach approximately 800 families and around 1600 voters with concerns. He's explained how community planning works to his neighbors and he appreciates what's going in here and knows these folks are trying to make an honest living and a good job but has concerns on the project and it's impact to him and his neighbors on a daily basis because of the traffic on NC55. He's not happy with the lighting situation noting most of the area as deciduous during winter months and a good chunk of the year. From NC55 you can see the homes and Amhurst will see the other way and any light from this site will spill into them, even if they are over a tiny bit, it will impact quality of life like Home Depot's impact with the quality of life. During the winter months when the trees drop their leaves, they are lit up all the time and he requests as part of the approval of this project, the lights be clearly identified and made part of the plan. He feels it's inappropriate for "light pollution" and unnecessary and should have proper engineering and light illumination; noting it as an ongoing problem in our society. His concern with a 50 year storm; that Fran and things that had happened here would make you step back as folks should be responsible for planting and protecting the community is a 50 year storm sufficient? Noted: Princeville; that we are this close to experiencing a severe storm that impacted a lot of folks. He would like the engineering department to look at a 100 year storm and knows those numbers to be pure engineering numbers, asking to consider what has happened in the last six years with Fran and thing what it means. He expressed concerns with the dam in his neighborhood and whether it's sufficient for this kind of storm and the liability it brings to the homeowners association. His last topic is the traffic generated by this facility. The previous president of the association was heavily into retail, regional Circuit Manager, since moved to Atlanta and is how he became the President. One of his concerns, a couple of years ago, was the level of traffic to keep these big boxes in business – the NC55 entrance to Haddon Hall, doesn't take a rocket scientist that at some point that traffic will block their entrance for residents getting in and out – will block the entrance for emergency vehicles. He's also had discussions with Khin about the possibility of Phase 2, the secondary exit and entrance in and out of this facility being lined up with Haddon Hall Drive and has the same concerns that the gentlemen from Beckett's Crossing had. Once people realize where Haddon Hall Drive is located, and the proposed Phase 2 entrance comes into play, and they could cut through this neighborhood and get to the other side of Apex they will (Brittley Way connection up to Salem). He has concerns with the overall traffic flow and the traffic management this site will receive and the impact to the whole community. They all know, NC55 and US64 is a mess, whoever designed it, it was designed a time when the traffic was smaller than now, trying to exit on to US64 from NC55 during peak rush hour or on a weekend, once the facility goes in, will be a nightmare. Half the time he avoids the intersection by going down Kelly Road and coming in on the other side, because, it's impossible to get through the intersection. This facility will make the problem worse and there's no plan from NCDOT that anything will be done to this intersection, and with the idea of adding another cross street across US64 goes against everything NCDOT has been talking about. The chances of this are minimal. He thinks we will wake up when this is done and say, I've let a Crossroads be built right in his front door. He thinks the traffic needs to be looked at more thoroughly and as far as how it impacts the surrounding area, not just this one spot on the map. He thinks it needs to take into consideration, the issues of Beckett's Crossing, through streets being created through residential areas that are not designed to handle this traffic; it will have a negative impact on the quality of life.



Public hearings continued

Philip Myers, Zeno Road, spoke at the planning board meeting and is grateful for the traffic calming provision. He reiterated his comments, and now realizes Beckett's Crossing has been paved, people will figure them out, and will impact him on Zeno, in the Lowe's Food area, and Haddon Hall. He noted a solution was to not allow access to Shopping Center from Zeno Road, forcing them onto NC55 with those coming from the shopping center being forced onto NC55. He felt the Zeno Road problem would go away, once people tried it, and realized they wind up on NC55 will not do it again – it can be done, not a big deal and meets the criteria of access into their neighborhood as well as into the shopping center. He was assuming Haddon Hall would be the likely entrance to be picked and could same all the traffic from Beckett Crossing as well as Zeno Road. As a resident, if he needed to go to Lowes or Wal-Mart, he'd be glad to get out onto NC55, which would mean giving this up, but getting his sanity back because he lives on a dirt road and there is absolutely no plan to pave Zeno Road, no one is planning to pave Zeno Road, that he could find. The State, paving a dirt roads project from what he understands is that Wake County has such a high percentage of paved roads that they are way down on the list. All the rural counties get the money and we're not going to get it. He's been told that it will only be paved when it is developed and the developer will pave it. It's not going to happen anytime soon that he's aware of and no one's agreed with a bunch of money, but he's glad the people have talked. There are ways to fix these things; he's not against the project, thinks a good job has been done, trying to address the concerns, but the traffic is absolute key and you don't forget that even if they get the Haddon Hall entrance, it's only 800 feet down from Hyacinth Way entrance, in essence, it's not a second entrance, all it will do is create a back-log, making 800 feet and two feet beyond Haddon Hall entrance is two lane. There's no development there. His concern is there are ways and hopes they have them talk to the residents and work out ways to do the traffic calming, and he knows it's difficult on a dirt road, but notes there are sections of it that are paved and part of it will be paved, and he thinks there's a way that you could prevent entrance into the shopping center from Beckett Crossing and other areas on Zeno Road – just don't allow it – they'll do it once and never do it again and there will not be problems on his side of the road. The folks in Haddon Hall, he doesn't know. Remember, no traffic studies were ever done about or on Zeno Road and when the studies were done, the Lowes Food was not there, Beckett Crossing thoroughfare was not there; there are major issues here now that were not addressed at all in the traffic studies done a few years back. No one has any concept as to what will happen with the traffic that will impact Zeno Road. Staff required it to be a secondary entrance, they say minor, I say major for the reasons stated.

Roger Stormer, President of the Walden Creek Homeowners Association, 600 homes. Their concerns are traffic, with the vast majority of people of being in favor of some development, but the encouragement is to make it smart development. He thinks we are trying to put a square peg into a round hole. To pay the price for the land, you have to get a certain payback, and to get a payback, you have to put so many stores and buildings in and then so much traffic to keep those people in business. He thinks looking back at the big picture, there's something wrong with this. Development is good, and he'd love to see the shopping, but needs to be smart development. The roads can't handle it, they would be dead set having a cross over onto Green Level. All this means is that yet more houses will have cut through in developments to find a back way into the shopping center. They have similar set up, as the water drains through a creek into wetlands and crossing underneath one of the roads is 3 culverts – 6 foot in height and side by side; a small creek, not a fulltime creek, and yet during a good storm, but not a five year storm, he saw those three culverts with not much room at the top, they were completely full and water was going through, and with much more, there would be flooding and houses damaged. He noted with Home Depot, they have spent a couple of months working with them and has put in more landscape as it wasn't adequate, noting it not a blame thing but is what happened. It looks terrible, Walden Creek was not an example on how to do things, but how development should be done, and he noted it too late for them, it's done with, but don't make the same mistakes over again.



Public hearings continued

Mary Ann Lawrence, Walden Creek, she agreed to this being a square peg in a round hole, not against development but feels this particular plan is a bit larger than this location can handle. As she looks at future growth plans for Apex, she can't help but notice that when 540 comes in to the south of US64 is another commercial location that would be large commercial within the next five to ten years, thinking we've solved the traffic problem, somehow now, but it will only get worse when the other comes, if we don't address that now as well. The two combined will close to each other onto US64 two entrances, but there will be a lot of traffic. Traffic is a big issue – NC55 now, no matter how much it's widened above or below US64, there will always be a two lane location at the bridge at the railroad, unless that is addressed and widened, no matter what gets done, you'll always have a bottleneck, so when looking at traffic, there is still that problem. Now, we're adding a whole lot more traffic north of the bridge for both locations going either way. All knows NC55 is a big thoroughfare to get to RTP, it's not going to change until we get 540 – 5 to 10 years realistically 10 to 15 years, but it will eventually happen and we're still going to have traffic problems. She urges the Town to not only look at what's now and what's on the board, but look ahead as well, because, we're trying to plan the city and don't want downtown to go out of business, because of these large big box shopping, think smart, what does the town need and where does it need it. Dictate to the developers what we want in Town and where, rather than them telling us we want this here, so we can get Cary business, Pittsboro, and all the other business in the area because of this particular location. There are great places in Apex for this different development, think smart so 10 years from now, we are still happy to live in Apex.

David Kettrell, Carriage Downs, had concerns with the noise and lights, as well as the other concerns addressed. He noted the main loading dock at the Lowes delivery trucks 7 a.m. to 11 p.m. and doesn't want to hear the beeping of the trucks during the night. He's concerned with the buffer zones, and with respect to the residents of Beckett's crossing, he can see they would want the stores there, but there were no representatives of the people and he knows the homes are built, but it's hard to represent the people who haven't moved in yet. He's concerned with the entire buffer zone and asked to widen it; he didn't mind the stores being there, he doesn't want to go to Cary Wal-Mart, not go to Cary ever, but thinks the buffer should be carefully looked at to block the noise and the lighting, anything to protect them from this.

Mayor Pro tempore Jones closed the public hearing.

Commissioner Grimes asked to hear from the traffic study people, thinking the most frequent concern was, the one all had predicted would be a serious problem was the traffic. He would like to hear from the study, and address those concerns. He noted if someone couldn't address those concerns, there is a problem.

Chris Richter felt there was some non-technical issues raised that deals more with cut-through situations that we have. He's glanced at the circulation plan but noted them as planned systems and thinks the residents are concerned with the ability, but one important issue to understand is that Wal-Mart has a program of expansion and they will put stores everywhere they can, every five to ten miles apart. When looking at this site in relation to whether it is Wal-Mart or Home Depot, or Lowes, people who come to this are the residents of Apex. Cary has a Wal-Mart, there will be Wal-Marts in the surrounding communities, so you are dealing with residents of Apex, yes, in certain circumstances, you may see some other customers, but as far as joining residential communities, you have the Peak Way being planned and constructed soon, you have the 540 bypass, and thinks there's been a good job done of doing regional planning to get the traffic by-passed around the residential communities and thinks when looking at this plan, there's been a much better job done than in most communities as far as trying to protect the corp residential neighborhoods.



Public hearings continued

Richter continued when looking at the interconnections to the site that to him is good planning. He's an engineer and planner and has done site plans all his life. To avoid traffic, having to come from those residential communities, onto a state highway and back into a site, is not good planning. Those people should have a direct route in and he thinks those interconnections are a benefit to those neighborhoods as well as for the project.

With this being said, he felt he had written most of the questions down, but thinks the ones he had were critical issues, that dealt with the Haddon Hall access point, based on the present plan and the impact as far as blocking their driveway was one of the issues. He asked his traffic engineer to address the extent of the NC55 improvements to provide a clearer understanding to what was proposed for NC55 to see the magnitude of the work they are doing. From North to South explain the improvements and why and the end result – there are a lot of concerns with preexisting traffic and the problems getting on and off US64 and NC55 and explain what's being done to solve the problems.

Eric Strohacker, Ramey Kemp & Associates, traffic consultants hired by JDN to study this project. He displayed a map of the roadway improvements US64 west bound ramp and NC55 on the north of US64. They will complete the five lane section headed southbound, two through lanes in the southbound intersection – currently there is one and would pick up a Vision Drive – Hannaford Plaza, but not Hannaford anymore. They would signalize this intersection, build dual lefts off the ramp, and continue the two southbound lanes across down to the eastbound ramp of US64 and basically between both ramps would complete a five lane section, most important aspect of that would be existing structure across US64 can support this. Great efforts were made with NCDOT to be assured they were all in agreement as to what could be done there, there would be no actual widening of the deck and at this point have an agreement with NCDOT that the five lane section can be accommodated on that structure.

He continued at the eastbound ramp US64 heading south towards the main site entrance, they will build a six lane cross section which will continue between the two intersections, providing left turn into the Apex Professional Center so there will in essence be seven lanes at this cross section. South of the main site entrance, they will continue with a five lane cross section. There are still issues here as it gets into Phase 2. This has more to do with where the Phase 2 site entrance will be located, and he's really focusing on Phase 1. They are committing to all that he had explained between Vision Drive and the main site entrance under Phase 1. Analysis of Phase 1 traffic conditions indicates that these intersections will operate at an acceptable overall level of service under Phase 1 build out traffic conditions.

Commissioner Schulze asked what he considered acceptable with Commissioner Jensen asking what grade? Acceptable is level service D, there's also a level service E and a level service F. He wanted to be sure the actual levels of service that they will have at Hannaford Plaza or Vision Drive/NC55 will operate overall on level service B, under Phase 1, but not discussing Phase 2 at this time. NC55/US64 westbound ramp will operate under level service B and NC55 eastbound ramps will also operate under level service B. The main site entrance from NC55 will operate on level service C. When he says B is acceptable, it's typically how they approach it from a traffic study standpoint, but in this case is C or better. Existing traffic conditions are much worse than this and he's sure they drive the road frequently and will understand at an un-signalized intersection, basically NC55 is two lanes is carrying approximately 20,000 vehicles per day.



Public hearings continued

Typically NCDOT will look at multi-lane facility, five lanes at 15,000 a day. You can see there is serious traffic on NC55 with the existing conditions. The ramps are basically operating at an un-acceptable level of service today, and with the improvements and site traffic added on, they will provide an acceptable level of service.

Commissioner Schulze asked if Phase 2 had been considered at all and to what it would do to the traffic counts so you don't make improvements now with Phase 1 and then find your self having to make additional improvements. He said they are doing this and at this time, the improvements he has just discussed between the main site entrance and Vision Drive will be full build out improvements. Richter said they would not start construction until the access issue is resolved.

Commissioner Jensen noted that in looking at Phase 1 with the number of parking spots available, in terms of traffic, there's going to be 80% of the traffic load will take place with Phase I and asked if this were correct. The traffic engineer noted this was not correct. The ten out parcels plus the additional shops will account for about 40% or 50% of the traffic. The out parcels generate a significant amount of traffic. Commissioner Jensen asked if this were taking in account the first phase. He answered yes, as far as the improvements on NC55, between Vision Drive and the main site entrance, this was correct.

Commissioner Schulze, didn't feel as if he were getting the big picture of the traffic situation, that he's only got one page to work with and was pretty much it. He would like to see all the surrounding intersections and what the current level is now and what it will be at Phase 1 – with the improvements and any anticipation of Phase 2 also. He feels like he's way short of information. Commissioner Jensen agreed.

Mayor Pro tempore Jones asked if the traffic study gives any indication of the levels of service surrounding, with Commissioner Schulze asking if Haddon Hall entrance was considered. The engineer stated it has been looked at as well. He pulled the existing traffic conditions from the original traffic study – one thing that had to be considered was that all the study intersections except for all traffic on Olive Chapel, Hunter Street and NC55 are un-signalized intersections under existing conditions. As traffic engineers, he noted when they analyzed an un-signalized traffic condition, really what matters is the side street approaches – particularly left turns off side streets onto the main drive – they are the lowest in the priority. They have the last priority at those intersections. Operation of these movements becomes what they use to judge how the intersections are operating. Except for the Apex Professional Center and Haddon Hall operate "now" at level service E on the side street approaches which is a step below acceptable conditions. Hyacinth Road and US64 eastbound, US64 westbound are all operating at level service F.

Commissioner Schulze had a problem with all this being thrown out and asked if this were on paper and if he had a copy of the study? He said this was complicated stuff and you just couldn't just throw it at them. The engineer noted copies had been supplied to the Town. Khin indicated it was a large amount of material and weren't sure they wanted copies of all of this. The engineer continued this was essentially what is talked about. Commissioner Schulze continued that if they couldn't read it on paper, how they expected them to understand by telling, it was too much to absorb.



Public hearings continued

Commissioner Grimes noted one way perhaps to mitigate some of the concerns would be that the Town has retained it's own person to review and evaluate what the engineer is saying, and he wanted to hear from them also, as to whether or not they agreed with the analysis.

Mike Horne, Kimley Horne and Associates, a licensed engineer with the state of North Carolina, having practiced for over 20 years. He was retained by the Town to review the traffic study prepared by Ramey Kemp and Associates. He noted it an extensive amount of documentation, and under three separate reports, an original and two addendums. He wanted to be clear as to what was being looked at and what they were asked to look at. They are asking approval of Phase 1 which is the Wal-Mart and the Lowes. The out parcels as of this date and the shops are Phase 2. They are providing substantial off-site roadway improvements. They have agreed to provide all of those off-site roadway improvements for Phase 1 even though the traffic that was analyzed has been for the full development, Phase 1 and 2. Essentially, we get all the road way improvements that the engineer had said, upfront. He didn't want to talk too much about Phase 2 because they are not sure as to what Phase 2 is. They see the map, but it's going to look different. They are not sure yet, what it will look like.

They do concur with the analysis with Phase 1 with the full improvements as has been identified that things will work at the levels of service that the engineer has indicated. Traffic is a concern and is a problem – NC55 is a very heavily traveled road and he's had a long discussion with the Planning Commission about this, it has to be understood.

Commissioner Grimes asked if this would exasperate the problem. Horne believed with the substantial roadway improvements that they are putting forth, it will alleviate a lot of the concerns, but will it solve all of the problems – no, reason being there is a considerable amount of traffic on NC 55. He thinks they are clearly doing, when he reviewed the reports, he looks to see if they are fair and equitable, and he thinks they have gone above and beyond that point to provide the off-site roadway improvements on NC55 all the way to Vision Drive, both the interchange ramps down to their purposed accent points on NC55.

Mayor Pro tempore Jones asked if there would be any synchronization of the signals. Horne stated it unfair to equate un-signalized level of service with signalized level of service. He continued the engineer was trying to do this, but it was unfair and that he had wanted to equate that signalized and un-signalized level of service – un-signalized level of service was unacceptable, actually an un-signalized intersection level of service on the main line, they like it. Here on the main line of NC55 with no signal, you don't stop, but if you are the person in Haddon Hall trying to turn left out, you don't like it. It's not fair to equate that to a level of service for a signal. To answer the question, when they see multiple signals going in as they are seeing here, one a Vision Drive further to the north and two new signals at the ramps and at another location, clearly, he sees NCDOT making that a requirement of them when they come through with these additional signals. Yes he sees synchronization of the signals. Mayor Pro tempore Jones thinking they would almost have too. Horne continued if there is a second point, with Phase 2 again, that will be driven by this as well.

Commissioner Schulze still was comfortable with this and wanted something on paper to look at the big picture. Horne responded he was serving as his traffic engineer and he said he could ask away. Commissioner Schulze answered this was the problem, he didn't know what to ask, because he needed to look at everything and come up with questions. Horne responded, he could understand and appreciates that, but he was trying to say when trying to compare un-signalized level of service, and the signalized level of service, you almost can't do it.



Public hearings continued

Horne continued it was not fair, with Commissioner Schulze agreeing. Horne continued he did believe with the road improvements indicated, he will have a level of service B and C and Horne concurs with this. Commissioner Schulze said he wanted to see it on paper. Horne responded, he understood, he was not trying to take it from him, he would be happy to sit down and help him go through this at any time, not that he couldn't understand it, but that un-signalized traffic analysis is not a fair tool to look at.

Mayor Pro tempore Jones asked if there were other traffic questions.

Commissioner Jensen said a lot of concern was in regards to cut-through traffic. He asked if this had been looked at. He can see the quality of life in these neighborhoods deteriorating whether there were signals on NC55 or not to allow Haddon Hall to get out when you had cut-through the neighborhood like Surry Meadows and still does to a degree, asking what can be done – what recommendations can you give to help this?

Horne responded he had heard several new concerns regarding cut-through of neighborhoods; two are Red Barn Way and Haddon Hall, depending on what happens with Phase 2. The Planning Commission dealt with Zeno Road and as he understood it, there is a condition set forth that they will look at traffic calming along this road. It is a gravel road with some portions paved with a majority of it being gravel. He has found that when talking about cut-throughs you typically see people that are using this are the people in that development, people in the area that know it and use it. It doesn't mean there is not an occasional person that goes from point A to point B but quite honestly, he believes that Red Barn Way, the Haddon Hall, will be used by people of those neighborhoods, majority wise; and that interconnectivity, which is what they are really talking about, is a good thing to do. Without interconnectivity, as much as the gentlemen would like to agree that he could go out onto NC55 and then come back into this development, will only clog those major roadways more. Horne, continued this was his opinion and his advice to them.

Commissioner Jensen commented it was suggested by one of the speakers to have a gate of some sort on the roadway which would make sure the neighbors were the ones that use it rather than a cut-through, asking if this were done elsewhere in other places, is it designed in or do they actually not want to do this. Horne said he has seen a drive that comes back of a retail development gated and it is done. As far as qualifications, he reminded them this was Phase 1 with two buildings with an access point. Zeno Road they will construct as a portion, but essentially it goes to an unpaved road. His professional opinion is that with Phase 1 there will be an impact on Zeno Road, but not a substantial impact that he would be concerned with. Will they have additional traffic, yes. He is not concerned with Phase 1. He's waiting to see what Phase 2 looks like and the access that is proposed back and only then can he comment to him on the question, should it be allowed or not. The burden has been put back on the petitioner, basically, they want two points of major access and they are seeking this out. He indicated, they would and we all would love to have the US64 access, thinking it's the number one priority, the number one choice, but if it can't be obtained because of the breaking control of access, then they are looking for a second one. He's not sure he could tell them at this time, that he would approve it or not. He has to see it and until he does, he can't tell him.



Public hearings continued

Commissioner Jensen accepted his professional opinion in regard to what Horne was saying, but his concern is that we approve Phase 1 and then maybe they can't do anything about US64 but maybe Haddon Hall comes in and we half way down the path, then what do we say – you have your two big boxes here, which really doesn't carry the development but the out parcels that makes the bucks on these things. He would like to get a better feeling about the access situation. He's hesitant, asking how long we had been working in trying to get access on US64. It was determined it was between six months and two years. Commissioner Jensen wanted to see the probability of going down to Kelly in getting the other access, he just doesn't see the second access buying a lot if people are going north onto NC55.

Horne responded his task was to look at Phase 1 which is what is in front of them, indicating he has as many questions about Phase 2 as they did. The request as he understood it was for Phase 1 for these two department stores with the access onto NC55. They do concur with the analysis, it does work.

Commissioner Grimes recollected that as far as Zeno Road and Beaver Creek Drive access, that there was one group or one subdivision that wanted it and one subdivision that didn't want it. You have a conflict there was well. One sees it as necessary and desirable and the other sees it as a problem. We have to do a balance there. As far as traffic calming is concerned, there is some fairly simple technology to do that, and he doesn't see this as a problem, as long as they can meet the criteria which have been applied recently in several situations. Traffic calming should not be that much of an issue in his judgment.

Commissioner Schulze noted it mentioned that the study was done prior to development of Beckett Crossing and one of Carriage Downs, asking if this were true and when the study was done. The original study was done in September 2000 with an addendum pertaining to Phase 1 was done May 9, 2002. The most critical point was when the counts were conducted. They counted these intersections in 2000, but as part of the initiative to start this over again, they recounted these intersections and found there was not much growth on NC55 between the original count and 2000 and those of 2002. Commissioner Jensen noted they counted economy.

Horne noted NCDOT has gone further up on NC55, Davis Drive, toward the RTP and what they are seeing is a reduction in traffic volumes along those roads, which is unheard of in Wake County.

Mayor Pro tempore asked if there were other traffic related questions and thanked the engineers, and asked the Commissioners if they had any further questions.

Commissioner Schulze asked staff that he had a concern with the amount of materials that are stored in the parking lot at Home Depot, asking if there were restrictions, that there could be no outside sales. Khin couldn't respond to this. Rowland responded its contained within a fenced in area and have tractor/trailers and it is contained in a chain-link fence. Commissioner Schulze seemed to think there was a lot of materials, carts, etc. beside their property and he doesn't care of this situation, it looks terrible. Khin responded in accordance with the UDO, they have an entire section on outdoor sales and storage, and is only allowed within an enclosed area and under the canopy in front of the store. Lowes has an outdoor sales area that will be surrounded by wrought-iron and brick fencing and Wal-Mart will have the same wrought-iron and brick enclosure. Wal-Mart does not have a canopy and are not allowed to have anything out front. Lowes does have a canopy and are allowed to have items under the canopy but not extending past this. The applicant has been told if at anytime there is anything out in the parking lot, or outside those designated areas, it will be a code enforcement violation and they will be fined.



Public hearings continued

Khin continued when Home Depot first opened, they were threatened with fines several times. Commissioner Schulze said they are doing this now, selling lawnmowers on the island – Rowland had not noticed this, but would check it.

Commissioner Grimes asked the petitioner how critical the reduction of the buffer along the access ramp to Phase 1. Richter responded it was a Phase 2 issue, a Phase 2 out parcel, and guessed there could be an argument that it's not really part of this application now and not gotten into that much detail, but as far as their critical nature of it, he thinks its very important as far as the depth to width ratio as part of the out parcel as far as making them suitable and viable out parcels. You look from a practical perspective, you're dealing with an off ramp from US64 to NC55 and right now, they are supplementing the buffer substantially more than what exists today. When it comes down to it, Beaver Creek is set based on the hardships discussed in the petition. That buffer enables that land between Beaver Creek and the off ramp to be usable. Without the buffer reduction, their concern is the usability of that land. He thinks you get your balance of these variances, there's no adverse impact, you're dealing with an off ramp, it's not a residential community and no commercial uses there, basically an interstate system.

Commissioner Schulze asked that in regard to the article Jaffee brought up on abandoned boxes, asking if there was anything we could require now as far as a bond or money in escrow, asking if this isn't an assumption. Rowland responded there was an N&O article that they were thinking of doing this, but didn't think it had passed yet, and recommending it be done. Commissioner Schulze noted there's nothing we could do about this, has to be in the UDO. Rowland noted in theory, it does talk about the Board being and can impose conditions on a site plan, but doesn't know how extensive those can be.

Mayor Pro tempore Jones noted he would think this would need to be discussed in great detail before applying this, feeling there were economic and legal issues.

Commissioner Jensen came back to buffers and parking lot trees, noting there was only one tree and to him doesn't meet what the BOA was requesting. He continued as far as irrigation, they had mentioned they don't plan on irrigating in the parking lots at all, and if there's only one tree there, he thinks it please them all to see those trees get up to size as fast as possible. There would be some sort of irrigation. He noted Cary has wastewater facility water in trucks and can water when one didn't want to run the irrigation system there, but thinks those trees are not meeting the BOA request, that something along this line should be done. We need to get the buffers up quickly, he thinks. It was mentioned along NC55 by the Haddon Hall folks to get those buffers up with some sort of evergreens and any of the buffers he feels should go in immediately as soon as grading is done so they are up and running. One of the reasons he looked at the 100 foot buffer along the highway is for every 100 meters, you get sound pressure reduction of 50% and is substantial. Unfortunately, the year adjusts that, but it is a reduction in noise and it's not just light pollution that was mention, its noise pollution too. He's from a big town and knows what noise pollution is, you sleep with your windows closed. He would like this to be considered from the buffer situation.



Public hearings continued

Richter responded he thinks with the trees, they are going from two inches to three inches and doesn't know exactly how long it takes a tree to grow from two inches to three inches, but is going to guess about three to five years, so they are jump starting the process. The species they have selected for the islands are tolerant to those particular conditions without irrigation. They are willing, if this became a threshold issue in irrigating those front island, is not they are overly concerned with, it's just not necessary based on the landscape architects decisions. Where they do want to protect it, they are willing to irrigate those critical areas within the buffers and thinks this is a good plan, but again, if those islands are critical issues, they will consider them.

Commissioner Jensen continued he could see not requiring pipes running there, but he looks at Kroger and lives close by there and those trees were stunted early on as a result of not having adequate water and he appreciates they are going to the larger diameter trunk, on the other hand, in five to seven years, you'd probably see the same size tree as if you had started the smaller one, it just works out that way because they are less impacted. It helps early only, but doesn't by anything long term. The landscape architect that was on the Board made that point a number of times. He would like to see trucked in water to get things going.

Richter responded from a contract management perspective, they require all their landscape contractors to provide them with a one-year maintenance guarantee on all the landscaping; he's not sure what the Town requires, but certainly their contractors are required to water that material and assure its longevity after the first year. Quite often, they go under a separate contract with some truck watering to make sure it's irrigated if need be. Commissioner Grimes responded you have to replace it anyway if it dies.

Mayor Pro tempore Jones agreed it needs to look nice and grow appropriately, and have made policy decisions to encourage draught tolerant plants and discourage irrigation systems for use of water, being contradictory. Commissioner Jensen agreed with the draught tolerant. Commissioner Grimes continued we had tied their hands as far as what they could do with the parking lot with our own ordinance, unwittingly have made so you can't use quite as much creativity as perhaps we prefer, in a given situation.

Richter indicated the Town's ordinance protects us, because they have a lot more landscape in this parking lot than they have in 99% of their other shopping centers, and feels the Town's in good shape as far as the attractiveness of the parking lot.

Mayor Pro tempore Jones asked if there were other questions or discussion.

Commissioner Schulze referred back to his point with the traffic and didn't feel comfortable with making any decision, at least not in the affirmative without more traffic information.

Commissioner Grimes indicated it was in a way, a shame that they didn't have the full compliment of Commissioners, because they would hate to hear all of this over again for their benefit, but addressing Commissioner Schulze, said if he didn't feel comfortable making a decision, then they shouldn't make one and could postpone it for couple of weeks if need too.



Public hearings continued

Mayor Pro tempore Jones asked if anyone would like to make a motion at this point.

Action: Commissioner Schulze made a motion to continue the hearing, Mayor Pro tempore responded the hearing had been closed. Commissioner Schulze restated to table this item. Attorney Kaus advised any motion would need to specify the date certain, with the next meeting being July 16, if in the Board's discretion. Commissioner Schulze restated his motion to table this item until the July 16 meeting. Second by Commissioner Jensen.

Commissioner Jensen agreed with Commissioner Schulze that the folks had done a lot a work and a lot of effort but was still troubled with the US64 access and what could be done in two weeks, but certainly wanted to get a better feel for that aspect and if need be would be happy as a Commissioner to go down and talk with NCDOT just to get his own better understanding and maybe that would help if one or two of them did this, he didn't know. He's certainly concerned with this, and still with the cut-through traffic and would like to get some sort of a understanding of what the impact would be on these neighborhoods because this is certainly a quality of life issue for a large number of people living in these subdivisions and if it's just the subdivision traffic that's going through there and then it is a cut-through, we don't have to worry, but if it is, then we need to take a good look at this because I know the people in Surry Meadows, their quality of life is not there on that long road that goes through there and you see houses going up for sale all the time as a result of that. People go in there and don't know what they are facing and then they decide to bail out. We don't want to see this with Haddon Hall or Beckett Crossing or any others. He would appreciate this.

Commissioner Grimes noted other than the fact that obviously the people in the surrounding neighborhoods that have appeared here have been in favor of this petition, with some concern about traffic regulations, but again the traffic can be regulated, that's not an issue as far as he's concerned. They can do whatever it takes to discourage traffic or slow down traffic or whatever in regard to this neighborhood interconnectivity. He doesn't see this as a big problem.

Mayor Pro tempore Jones stated he was generally very supportive of the project as a whole, that it was a good project. He thinks they have done a good job of presenting it, but it's the first time its been to this Board and is a significant project for the Town of Apex, that he thinks will have a very positive impact on the Town and if they can through dealing with some of these issues over the next four weeks, minimize any potential negative impacts, then, that's a good thing for us and he does appreciate everyone's participation for the patience and participation in the process. He thinks we will end up with a good project when all is said and done.

Commissioner Jensen indicated he agreed with this, that we have a good shot at a good project, but need to get these last items ironed out before we go in. He doesn't think it would be fair to the developer to charge ahead and then at Phase 2, we need to know now, with Mayor Pro tempore Jones agreeing with this.

Mayor Pro tempore Jones called for the vote on the motion and repeated the motion to continue this item until July 16 meeting because there is no meeting scheduled for the week of the fourth of July. Motion to continue was unanimous.



Public hearings continued

Richter added traffic studies would be provided. Mayor Pro tempore Jones noted this was a point he was going to make, asking if everyone was clear on the questions and things needed to clarify in the meantime. He continued if they would get together and try to get some information to us in the mean time, and also to Commissioner Meckes and to the Mayor. Rowland responded they would work through the Manager as to how he wanted to handle this. Commissioner Jensen asked the Manager if he wanted them to write down their questions. The Manager stated they would take them down from the notes of the minutes. He noted any additional comments beyond those, he would be happy to have those. Mayor Pro tempore Jones noted once they got the minutes, if there are questions, make sure they got them to the Manager and they would be forwarded to the others.

End of Public hearing # 1

Mayor Pro tempore called for a 10 minute recess at 9:25 p.m. and returned at 9:35 p.m.

Public Hearing # 2 – Amendment to Unified Development Ordinance (UDO) (Planner, Dianne Khin)
Public hearing regarding amendments to certain sections of the UDO; possible motion regarding same.

Staff Planner Khin presented an ordinance to amend certain sections of the UDO in Articles 4, 5 and 8 and outlined in staff report and incorporated as a part of the minutes.

Planning Board reviewed the proposed amendments at their June 10 meeting and unanimously recommends approval.

Mayor Pro tempore Jones opened the public hearing at 9:45 p.m. With no one speaking in favor or in opposition to the proposed amendments, the hearing was closed.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the amendments to the UDO as presented, by adoption of the ordinance. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.



PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item. Mayor Weatherly will recognize those wishing to speak at the appropriate time. Please limit your comments to 3 minutes to allow others to speak.

Mike Shore expressed concern regarding water usage and having been without rain and surprised some form of conservation has not been established to limit water usage, noting the impact to Jordan Lake and the surrounding properties of residents living there.

Manager Radford responded and noted several days of water usage of 4.9 mgd, with the idea there is an additional capacity from the water plant and would not run out, but understands his concern. He noted it's not the scarcity as much as the amount to IDT from Cary and Apex, and with EMC recreating a need for future negotiations. Public Works Director responded to questions from Commissioner Jensen regarding net flows.

Shore further asked the Board to take a harder look at traffic and the human element, that all traffic levels would impact people.

End of public comment

NEW BUSINESS

Item # 1 – FY2002-2003 Annual Budget (Town Manager, Bruce Radford)
Possible motion to adopt the FY2002-2003 Annual Budget Ordinance.

Manager Radford presented the Fiscal Year 2002-2003 Budget Ordinance, noting no significant changes from the proposed budget and recommended adoption.

Commissioner Jensen noted:

- Costs associated with painting the water tanks (cost was for outside and inside with the inside being more costly for materials associated with water quality and being a ball-park figure).
- Trash pick-up fee of \$2.00 more per month.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to adopt the budget ordinance as presented. Motion carried unanimously.

End of New Business Item # 1



New Business continued

Item # 2 – Personnel Committee Recommendation (Commissioner Bill Jensen)
Personnel Committee Recommendation to adopt revisions to the Personnel Policy Manual.

Commissioner Jensen reported the Personnel Committee had met on June 11 to discuss amendments to the personnel policies regarding rewording the definition of "Immediate Family" to include domestic partners for inclusion in the sick leave policy. He asked to defer this item back to the Committee to re-evaluate the recommendation to consider suggested additional language.

Action: Motion by Commissioner Jensen and second by Commissioner Grimes to defer this item back to the Personnel Committee for re-evaluation. Motion carried unanimously

End of New Business Item # 2

Item # 3 – Neuse River Compliance Association (Director Tim Donnelly, Public Works)
Possible motion to adopt a Resolution to join the Neuse River Compliance Association.

Director of Public Works Donnelly reported on negotiations by the Lower Neuse River Basin Association, Inc (LNGA), the State of North Carolina, and the US Environmental protection Agency to develop an implementation strategy consistent with the state's management approach regarding nitrogen reduction in the Neuse River Basin. He answered questions and reviewed the key points of the proposed by-laws, recommending approval of a resolution to allow Town to become a part of the Neuse River Compliance Association, that allows greater control of the compliance approach and for the by-laws of the corporation; noting the association would provide framework for nutrient trading and could prove valuable to the Town.

Attorney Kaus advised the by-laws were not finalized but would be adopting the concept, and being a member would provide opportunity to get in on amending the by-laws.

Donnelly reported adoption of the resolution would allow the Town to be a charter member of the newly formed corporation for group compliance to protect resources and to sign the initial NPDES Permit Application.

Action: Motion by Commissioner Jensen and second by Commissioner Grimes to adopt the Resolution as presented. Motion carried unanimously.

End of New Business Item # 3



New Business continued

Item # 4 – Grounds Maintenance Contract (Director John Brown, Parks & Recreation)
Possible motion to approve Grounds Maintenance Contract.

Director of Parks, Recreation and Cultural Resources Brown presented a grounds maintenance contract for Fiscal Year 2002-2003 recommending contract be awarded to Jones Landscaping at a price not to exceed \$250,126. Various Town departments have worked with Jones Landscaping on projects this year and have found them to be responsive and efficient. Green Level Gardening, the current contractor, submitted a bid in the amount of \$274,300. Award to Jones Landscaping would be an approximate cost savings of \$24,000.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to award the grounds maintenance contract as recommended. Motion carried unanimously.

End of New Business Item # 4

Item # 5 – Parks & Recreation Equipment/Facilities (Director John Brown, Parks & Recreation)
Possible motion to approve revised policy on non-departmental use of Parks & Recreation Equipment and Facilities.

Director of Parks, Recreation and Cultural Resources Brown presented changes to the existing policies and procedures regarding non-departmental use of Parks and Recreation Equipment and Facilities. The Advisory Commission reviewed the policy and fee schedule at their May 29 meeting and recommends approval (attached). Revisions allow flexibility in negotiations with Wake County School System in use of facilities; will keep costs down to participants. Policy does not supercede any policies governing rentals and fees for picnic shelters at various parks or rental policies at the Community Center, and further does not preclude a group of people from showing up to use a park facility which is not in use for Town sponsored/organized activities and only applies where a reservation/rental is requested. Proposed fee schedule has been developed after research of similar fees and comparisons and consideration was given to current fees charged to the Town by Wake County School System. Staff recommends if approved, this policy become effective immediately due to several pending requests already submitted by the school system.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the revisions as recommended. Motion carried unanimously.

End of New Business Item # 5



New Business continued

Item # 6 – Resolution – Mason Street (Town Attorney Jason Kaus)

Possible motion to adopt a Resolution to Accept Offer of Dedication of Public Right-of-Way for Mason Street.

Attorney Kaus presented a Resolution to Accept Offer of Dedication of Public Right-of-Way for Mason Street widening improvements. He noted the offer was 20 years old, but law allows acceptance to maintain Mason Street. One lot had changed hands several times with the other lot still with the original owner. Recommends acceptance for the full amount for improvements and construction easement. Later abandon it and part would revert back. Total is 28.5' from line to existing line, and valuable to the Town with Town not having to pay. Property owners have not been contacted, not wanting to call attention to a mechanism to potentially withdraw.

Commissioner Jensen wanted to assure Town would call and discuss this with the property owners and not just send a letter and show up with the plans in hand and a good idea to tell them this is not permanent. Attorney Kaus noted Construction Management had done an excellent job with citizen contract.

Action: Motion by Commissioner Grimes and second by Commissioner Schulze to adopt the resolution as recommended.

Item # 11 from Consent Agenda: Lease Agreement with Document Company Xerox

Attorney Kaus noted a subsequent lease agreement with Document Company Xerox had been distributed, replacing the one received in the agenda packet; and allows for an upgrade for new copiers. replacing existing copiers in Planning and Administration. Current Xerox lease will expire June 30. Two different versions of the lease agreement were presented with staff feeling the subsequent agreement with revision of the purchase option (FMV) and revision for tax exempt status is the more appropriate agreement. He recommends if the Board were comfortable with this the Town Clerk and Town Attorney be authorized to approve any further subsequent revisions, and authorization for the Town Clerk to sign the documents.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the lease agreement as recommended. Motion carried unanimously.

Commissioner Schulze asked if the Board reviewed lease agreements. Manager Radford noted past history didn't reflect so, but understood, the Attorney should review agreements and contracts and Board give approval, unless further authorization was give to staff to sign a lease on behalf of the Town up to a certain dollar amount.

Under the purchase option, it was clarified the reason being, if there was an option provided to buy, the formal bid process should be followed. Discussion continued regarding lease method.

End of New Business



New Business continued

CLOSED SESSION

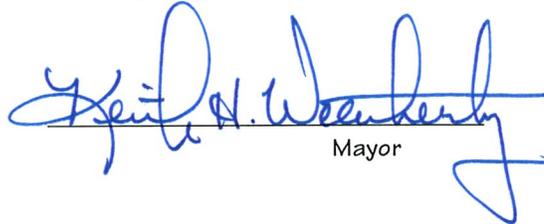
Action: Motion by Commissioner Grimes and second by Commissioner Schulze to moved from the regular meeting into a closed session at 10:25 p.m. to consult with Town Attorney. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Grimes and second by Commissioner Jensen to move from closed session back into open session at 10:33 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Grimes and second by Commissioner Jensen to adjourn at 10:34 p.m. Motion carried.

The above minutes were submitted by the Town Clerk and approved by the Board of Commissioners on the 16 day of July 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of the Special Meeting
Tuesday, July 9, 2002



Web site: www.apexnc.org

Mayor Keith H. Weatherly presiding
Commissioners: Don Grimes, Bill Jensen, Mike Jones, Doug Meckes, Gene Schulze

SPECIAL MEETING AGENDA

Mayor Weatherly called a special meeting of the Town of Apex Board of Commissioners to order on Tuesday, July 9, 2002, 7:00 p.m., Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present. The purpose of the meeting was to consider a Watering Schedule and to hold a Worksession to discuss Beaver Commons Phase I.

Commissioner Meckes led the invocation.
Mayor Weatherly led the Pledge of Allegiance.

NEW BUSINESS

Item – Watering Schedule (Town Manager Radford)

Possible motion to adopt a mandatory alternate day watering schedule for Town of Apex water utility customers.

Town Manager Radford commented on drought conditions experienced throughout the region that has affected all of the counties in the Cape Fear River Basin. Apex is the only Town that has not instituted some type mandatory water conservation restrictions, trying to hold out to the next regular meeting, however, as a result felt it best to act, suggesting the Town implement a mandatory water restriction which mirrors the one adopted by the Town of Cary – for all Apex water customers (residential and non-residential) for use of sprinklers or automatic irrigation systems on alternate day, based on odd/even address, to water grass, shrubs, trees, flowers, gardens, etc. The alternate date watering schedule follows:



Addresses ending with 1, 3, 5, 7, 9 – waters Tuesday, Thursday, and Saturday
Addresses ending with 2, 4, 6, 8, 0 – waters Wednesday, Friday and Sunday

No sprinklers or automatic irrigation systems on Mondays.
Hand watering will be allowed at any time.

According to the Town's Water Conservation Ordinance, this action will activate the first stage of mandatory restrictions or Stage II – Moderate Mandatory Conservation and will become effective upon approval by the Board, with notification to the customers within a week to 10 days; there will be information included in the recreation bulletin sent to each household. Public Works employees will police the area for offenders. Schedule includes commercial entrances and residential subdivision entrances (have metered addresses); excess water run-off on sidewalks, curbs, and streets are considered violation.

Mayor Weatherly commented on the education process to the public regarding the watering with Manager Radford noting to water once deeply was more effective than watering three times shallow. Commissioner Grimes noted continuous drought may cause more severe conservation measures.

Manager Radford commented on the peak usage of 5.1 mgd and the amount of water that would be saved by this reduction in the amount of water being used should this stage of implementation take effect. Discussion followed regarding reduction in release of water flow from Jordan Lake pass Fayetteville and saving water inside the Lake itself; current water level of the Lake is 211 (one level at 207 and the other at 204); should the water be taken from the lower level, greater the potential result in doubling the efforts to make standard water (long term effect) with a plan to treat the same amount of water with the same quality.

Commissioner Jones assured these restrictions were moderate and not the severe level to eliminate irrigation all together. Commissioner Meckes thought it a good idea to review Stage 1 of the Conservation Measures when all are notified of this implementation. Commissioner Jensen felt this situation should be a flag to future installation and expansion of grey water system and plan for this possibility.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to activate Stage II – Moderate Mandatory Conservation. Motion carried unanimously.

End of New Business



Mayor Weatherly closed the New Business portion of the meeting and moved into the Work Session to discuss Beaver Creek Commons, Phase I.

WORKSESSION

Item - Beaver Creek Commons, Phase 1 (Planning Staff)

Discussion regarding a major site plan for Beaver Creek Commons, Phase 1, located at NC55 and US64.

Manager Radford noted the public hearing for Beaver Creek Commons was held at the last meeting and this meeting was to discuss and answer questions since the hearing. JDN Developers, Ramey Kemp traffic engineers, Town's planning staff, engineering staff and the Town's traffic engineer Kimley Horne were present to address any further concerns prior to taking action on this project.

Director of Planning Rowland presented an overview of the project: Phase I – two box stores (Lowes Home Improvement and Super Wal-Mart); Phase II – out parcels and shops. The presentation for Phase I will address traffic concerns; traffic flow and traffic through subdivisions of Beckett Crossing, Carriage Downs and Haddon Hall.

Eric Strohacker, Ramey Kemp and traffic consultant for JDN, presented a micro-scopic illustration of generated traffic showing data believed to occur once Phase I takes place, which includes roadway improvements to be completed; the main site entrance for Phase I being one full access; US64 eastbound ramps; NC55 between the entrance and ramps with three additional lanes making 7 lanes; north on NC55 to Vision Drive will be full build-out improvements (no additional improvements will be done for Phase II north of the main site entrance). The illustration demonstrates Phase I traffic conditions: 15 minutes peak period of the PM peak hours – north and south bound traffic on NC55 as well as the eastbound traffic coming out of the site and does not account for Phase II traffic conditions as well as additional improvements south of the main entrance. There will be a second full site access entrance for Phase II aligning with the entrance of Haddon Hall.

Commissioner Jensen asked if "Trackside" had been taken into consideration. Strohacker responded Haddon Hall had not been completely phased out and additional traffic had been added; but was uncertain of the development in which he was asking about. Staff Planner Khin responded "Trackside" was not an approved development and they do not ask to include things not approved in the traffic studies.

Strohacker responded to Commissioner Jones question concerning traffic conditions being that Phase I, the main site entrance onto NC55 would operate at an overall "C" level of service. To account for background growth relative to this development; existing traffic was drawn at 3% to the build-out year of 2004 and accounts for residual growth.



Commissioner Jensen asked to see the Phase II traffic illustration of the second entrance proposed across from Haddon Hall. Strohacker responded he could not show this at this time – the focus was on Phase I and its approval; Town staff had not had a chance to review the latest submittal of Phase II and until finalized, was hesitant to show anything at this point because of potential changes.

Commissioner Jensen confirmed Phase II entrance would be across from Haddon Hall with nothing being considered to Kelly Road or anywhere else. Strohacker responded not at this time. Commissioner Jensen noted US64 west of the development being only 4/10 of a mile – the end of Beaver Creek Road to Kelly Road. Strohacker responded the developer is looking for approval with a second site entrance across from Haddon Hall.

Commissioner Meckes asked if Commissioner Jensen were saying to extend Beaver Creek over to Kelly Road. Commissioner Jensen responded it would be a back entrance and not two entrances side by side.

Mike Horne, Kimley Horne, believes additional access off Kelly Road would be desirable, even if there was a secondary access across from Haddon Hall, and alternates should be pursued. US64 access is being pursued and suggesting to NCDOT the thoroughfare plan for Apex be modified to show the things desired by the Town. He indicated anyone coming to Town (i.e. JDN) is not sure if this is a good idea, because, it's not on the thoroughfare plan for the Town or NCDOT. Kimley Horne thinks it's a good idea, but getting it and obtaining it is a long-term venture; it will take time to work with NCDOT to modify the thoroughfare plan and there would be difficulty in doing so and obtaining any kind of break-control of access on US64 would also be a very lengthy process.

Commissioner Jensen responded it's not a big process in comparison, to extend Beaver Creek Road to Kelly Road; needless to say when I-540 comes through all will have to be altered, but at least in the interim (8 years) this will be a back access.

Commissioner Jensen confirmed the access being considered on US64 was across from Green Level Church Road. Horne responded they are seeking it. Commissioner Jensen feels this would place a burden onto Walden Creek Subdivision.

Commissioner Jensen noted the off US64 off ramp onto NC55 going east could be easily modified and thinks NCDOT would accept it as access into this development fairly quickly – he explained the ramp coming off US64 going east and coming onto NC55 could be widened one lane with signage that brings people into the development rather than bringing them up to NC55 and then down NC55 and back into the development; it doesn't help any subdivisions locally, but would help the traffic flow on NC55.



Horne responded with access to US64 is more of an egress movement as opposed to ingress movement. Commissioner Jensen agreed, but felt it should be gotten earlier on. Horne continued a dual right lane is proposed at the ramp and NC55 is being widened to the main entrance drive and further south. He believed what Commissioner Jensen was saying was different and believed he was talking about a ramp off of a ramp, and was not possible through the federal highway administration. This being a US route they would not and have already removed whatever was allowed some thirty years ago – taking ramps off of ramps. He noted it's a rare adventure to go after; with the breaking control access off US64 is easier to obtain than a ramp off of a ramp.

Commissioner Jensen asked him to describe a ramp off of a ramp – the ramp is up and going and has a ramp coming off or would there be a double lane coming off US64, going wide with a slow down zone for both ramps. Horne wasn't clear with what he said, but wanted him to understand the ramp is being widened and provides a dual right at the current ramp and when flowing onto NC55, there are two lanes to accept and showed this on the map; he believes what is being pursued is the best roadway widening that could be obtained through NCDOT. He thinks everyone would love to have additional access on US64, a ramp off a ramp, but through NCDOT and the Federal Highway Administration, it's just not possible.

Commissioner Meckes responded this is the least traffic coming – Horne interjecting US64 traffic, that's correct.

Director of Planning noted staff is in the process of updating the Town's thoroughfare plan and this is one of the roads being considered to be added to the plan - Zeno Road to extended out to Kelly Road.

Commissioner Jensen asked how long this would take. Khin responded it is to be considered by the Planning Board in September and Campo in October; workshops are being held now; if approved the length of time to extend this road depends on the money and development and the right-of-way.

Horne notes cost per running foot (4 lane \$1 million per mile – 2 lane \$600,000 a mile or 4/10 mile being one-quarter of a million dollars not including right-of-way). Horne stated what's being seen in Wake County in some parts of the country, right-of-way is costing as much as the roadway.

Commissioner Jensen asked the cost including right-of-way. Horne responded he's not an appraiser and unqualified to say what the cost of property is. Horne noted some people are willing to donate property to have the road and would depend.



Commissioner Schulze asked what would happen with Phase II, if we find out we need additional road improvements, shouldn't we look at doing them all at one time? Horne responded they would, but the phasing aspect was more of a process issue than an actual construction of site. He understands the developer intends to construct the site in unison, in a very quick manner. Horne continued the analysis has been done, and feels with what is being shown here with additional improvements south of the main site entrance, feels Phase II will work. Commissioner Schulze asked Horne when Phase II is submitted, does he feel all intersections and roadways will be at an acceptable level of service. Horne responded subject to their review, yes.

Commissioner Schulze asked if sidewalks were being considered, assuming there's an entrance at Haddon Hall, so people can walk across. Horne asked if he meant a pedestrian crossing, and this would have to be addressed with NCDOT and imagines the Town as well, but could be addressed; they provide minimum green time to accommodate those kinds of things later down the road. Commissioner Schulze referred to the High House Road Plaza, asking if we couldn't do the same since Haddon Hall is a subdivision that could use it; with Commissioner Meckes noting even riding bikes across.

Director of Planning Rowland noted it may work to have some type rest stop, median or something to get across two lanes and then stop and negotiate another two or three lanes to get across. Commissioner Schulze asked if this weren't worth looking at; with Rowland agreeing. Commissioner Schulze asked if this was the proper time to look at this. Rowland thinks if this is something the Board would like to see, with Khin saying Phase II, and Rowland continuing that we need to know now. Commissioner Schulze would like to see this.

Commissioner Jones asked the traffic engineer to describe what he was seeing on the screen with improvements to the westbound ramp. Strohacker responded dual lefts will be provided off the ramp onto NC55, a single left as well as a traffic signal; they are committed to signalizing both ramps, providing a five lane crossing across the existing structure over US64; they have visited this with NCDOT and feels the existing deck is sufficient width to accommodate the five lane section being proposed.

Strohacker continued the five lane section would widen to a seven lane section south of the eastbound ramps and carry on down to the main site entrance; and are sure the transition of a dual left into the site headed northbound to a five lane section toward Haddon Hall, not seeing the full implementation at this time, because the second site entrance not being shown on this illustration. The five lane section will continue down to Haddon Hall at which time, there will be additional improvements south of Haddon Hall to provide the appropriate utilization to the southbound through movement. There will be two lanes headed south for approximately 1000 feet.



Commissioner Jensen asked with the bridge improvements across US64, did this mean taking out any pedestrian walkways over the US64 Bridge. Strohacker stated pedestrians will be provided a way to cross the bridge by walkway on the outside of the existing structure. Horne noted it an NCDOT requirement (ex. Harrison Avenue, Cary, when widened over I-40 – built-up sidewalk on each side and will see this here, instead of a shoulder – a curb and walking on the guard rails further out) the deck will be the deck and you wouldn't know the difference.

Commissioner Schulze asked to see the Olive Chapel Road Intersection, and had noticed no improvements are recommended at this intersection, implying, there's nothing needed; even today, there's something needed. He was not saying they are responsible for this, but he finds it contradictory to everyone's opinion. Strohacker stated the site traffic that was added to this particular intersection was not significant enough, as well as the level of service. Commissioner Schulze notes it shows a left turn lane there that isn't there – northbound left turn on Olive Chapel Road headed west bound. Strohacker notes traffic conditions are at a "B" level of service at this intersection. Manager Radford noted the intersection functions this way, because people make it that way, but those lanes do not exist.

Commissioner Jensen would like to see anything that has been done regarding the road through Beckett Crossing connecting Zeno to Olive Chapel and what this development would do to this, considering Dogwood Ridge and the other developments on Olive Chapel Road.

Strohacker asked if he were talking about a short-cut on Red Barn Way. Field measurements have been done – a travel time study of the existing conditions, at this point in time, for each potential route. Residents at the hearing questioned the potential for shortcut for people trying to enter or exit the site (map showing this);

Fairfax Woods Drive into Carriage Downs – loops and Red Barn Way tees into it onto Zeno Road – (2 spots he used were the entrance and at Hyacinth Way – several runs at the speed limit, obeying all laws – another down Olive Chapel and down Zeno to the same spot – then Olive Chapel to the signalized intersection, making a left. (Times – Red Barn Way – 3 minutes 5 seconds; Zeno Road – 3 minutes 30 seconds; for the Olive Chapel to NC55 – 3 minutes 9 seconds) He indicated there was no significant difference in time for this particular movement; to say shortcut would be a mistake - there's a chance people will go this way seeing it as a potential shortcut.



Commissioner Schulze saw this as a problem, not taking into consideration any signalized intersection for the entrance. Strohacker noted this was correct, that this was existing conditions, what was known to be the case; not to be too in-depth with a signalized operation and to figure out delay; probably 120 or 140 second cycle at this intersection. You could say at a bad time up to 170 seconds – a hefty delay, with an average delay of about 30 seconds, but still not a significant difference from the other routes.

Strohacker continued with the travel time study for: Haddon Hall Drive to Brittley Way to North Salem Street (first route through Haddon Hall – 3 minutes 40 seconds – 2nd route (Peakway does not exist, so he went down to Hunter Street and over to NC55 and back down) 3 minutes 40 seconds – third route (Up US64 down US64 and up the ramp back down) – 3 minutes 26 seconds. Haddon Hall route does have traffic calming devices – 5 four way stops – not something he would want to go through. Zeno Road, Red Barn Way and Haddon Hall were three potential routes identified at the last hearing; time of day was between 2 p.m. and 3 p.m. – both studies. This was actually a picture to see what kind of savings there would be for these potential cut throughs which was marginal at best.

Commissioner Jensen asked at this time of day, if he saw any delays at Olive Chapel Road and NC55. Strohacker responded the most significant delay he incurred was coming down N. Salem Street to the Hunter Street traffic signal and over to the NC55 signal. The US64 route delay was not so significant; the Olive Chapel Route delay was not so significant, although, he did come to a red light each time.

Commissioner Jensen asked if there was a problem with Beckett Crossing, what calming devices would be recommended besides stop signs; could a gated community be considered if there is a real problem (ex. Cary – one trying to push the gate out). Strohacker responded this would definitely calm the traffic; it's easy to say this would slow the traffic, but there's a lot involved in getting an agreement to put in such a device, not to mention the residents. Some may not want traffic calming devices in there, he doesn't know. Some were concerned with cut-through traffic and may welcome this. There are many homes there.

Horne commented we need to be careful, people say they do not want cut-throughs through their neighborhoods; they have found in past studies, asking, who are these people – an important question that should be asked prior to doing any cut-through. They have found lots of times people cutting through are people in the neighborhood beside them; even in the same neighborhood they found a way to go out now that wasn't before. If you are trying to discourage that route, you now put those people out onto Olive Chapel Road, out onto NC55 onto roads that are already congested. Another issue is if someone is from another part of the county and going through a neighborhood, impacts the neighborhood unfairly in his opinion and that's when you need to look at traffic calming and what to do to discourage this route.



Horne continued traffic calming is lumped into a big category and everyone wants to use it, sometimes to lower the speed, sometimes to discourage it totally so before going into what do you do, he'd like to know who it is first. If he knows, he could probably develop a proper procedure for this.

Commissioner Jensen asked for an example of a proper procedure, assuming Beckett Crossing petitioned or the Town petitioned with 95% of the people wanted a calming device through this route, what would he recommend. Horne responded he would have to know how many people/cars that are truly perceived to be cut-through. He recommend one thing for 10 vehicles, with 100 it could be different and couldn't sure he could give an example without knowing the criteria to give a solution. He didn't want to through out a solution.

Commissioner Jensen asked if he would go as far as a gate. Horne responded he had seen gates and recommended them for communities that have had problems, but have to be careful with gates because of fire/rescue that you do not want to impede; you present the problem with people who have to enter onto the major roadway network and get out to Olive Chapel back down to NC55 and clog more of the arterial system. Traffic engineers see it everyday; interconnectivity is good for everyone else, but please don't put it in my neighborhood.

Commissioner Jensen continued maybe we're not talking about the same type of gates, he was thinking a swish car gate where the people in the subdivision have access...with Commissioner Grimes indicating you could do that if in fact it turns out to be a problem - we don't even know that it will be a problem...Commissioner Jensen continuing he realizes that and he wants to get a feel for what is down line and maybe he had gone to far on this. Horne stated we take a road and make a section one lane; but may not be what needs to be done there. If it becomes a problem, it needs to be studied and come up with a solution.

Commissioner Meckes asked Horne what he considered to be a cut-through; if he lived on Scotts Mill and came up Townside Drive and through Cameron Glenn, he asked if he were cutting through? Horne was not sure if he were asking him to define it, that he could give him a definition, this was brought forth by the public and his position as a traffic engineer was there needs to be interconnectivity; interconnectivity is good, but not everyone is going to like it, but you need to do it. He would say that if you run into an instance that there is a problem, you need to address it, and would know when it's a problem.

Commissioner Jones commented they have known and attempted to address it with Commissioner Jensen noting this as a very similar situation and was why he was plugging away at it.



Commissioner Meckes added Surry Meadows was different than what they see here; Surry connects to two main thoroughfares, whereas this, if looking at interconnectivity between all these neighborhoods, in order to go to the Lowes or this new shopping center, he would go through his neighborhood and the next neighborhood, because it's the obvious way to go; it doesn't make sense to go back the other way and come up Old US1 and onto NC55, if he's going through, I go at 25 mph.

Horne responded yes the number of vehicles makes the difference, it's the speed of the vehicles and typically if someone is doing a short-cut, they are usually speeding, meaning the perception is how you really get there faster; you go down the street because you know you can speed and get there quicker, beating everyone else. Traffic calming then takes this definition, how do we slow them down, different than, how do we push them to get them away. He likes the idea of slowing them down, why is there a speed limit, it's very simple.

Commissioner Jensen felt that would obviously be the first step; he wanted to see what the extreme would be. Horne responded extreme would be to sever it, just to cut it off.

Commissioner Schulze noted the ramps on US64 that the state would do it in 2002 but now 2009; but the plans call to do this asking if this was correct. Strohacker responded it was correct; their schedule has been changed again and is on the front burner again, and they will work with NCDOT and any potential roadway improvements that might be able to fit in the schedule with what they are trying to do. What he has shown today, has no NCDOT committed improvements in it. He's committed to putting in those signals, whether NCDOT is there or not. Commissioner Schulze confirmed before Phase I was opened up, those signals would be in. Strohacker responded this was correct.

Horne stated he believed they are committing to providing traffic signals and will fund the traffic signals; understand only NCDOT will make the decision if a traffic signal will be installed or not. They are guessing at the traffic, making an educated guess, the professionals are, but only NCDOT will make the decision if it warrants signalization. He would only tell them, the offer of funding the signal when warranted is the best you could ask them for; requiring that the signal is in, is a catch 22 and have to be careful with it.

Commissioner Schulze asked if NCDOT looked at projected traffic counts as warrants; they don't have to wait until the problem exists, do they. Horne responded he worked with NCDOT on a daily basis and asks them this question; their answer is they only warrant signalization based off actual traffic volume, that projected volume, they will not let you put in a signal. What they are saying is they will not let Strohacker go out there; install a signal, meanwhile, there's no dirt that has been overturned. They will wait for him to come out of the ground the building is built and the road is there and its about ready to open and they will put him to the last second and say we guess, you're going to do what you say, we'll let you do this and it's on a development this size.



If he was coming in with a 30,000 square foot shopping center, they would say, you put it in and we'll look at it after it's done; this is different, it's a large center. Commissioner Jones noted in this case some signalization was already planned in 2002 that has been pushed back, but now is on the front burner again, what they had planned already, regardless of whether this shopping center is there.

Horne continued two traffic signals would go in, but he doesn't want them to tie – they could go to NCDOT and say here's my money. Commissioner Schulze asked if this held true for the road improvements also. Horne stated no; NCDOT loves for others to widen their roads. Commissioner Schulze noted theoretically, there would be road improvements with no signals until NCDOT says you have a real problem here. Horne responded NCDOT does not look a "gift horse in the mouth." Commissioner Schulze continued they do not do the work; they contract it out as far as NCDOT is concerned. Horne wanted to point out that making a requirement they are actually in place, all of them he thinks, when warranted is the best wording that could happen there. Commissioner Jones commented when NCDOT allows it to be done; in this case if they hadn't already planned to do and someone is going to pay for it... Horne continued NCDOT doesn't want it to look like someone is buying a traffic signal.

Mayor Weatherly asked if there were other questions.

Commissioner Schulze asked how we deal with the issue of the crosswalk at Haddon Hall. It was pointed out this was Phase II; Commissioner Schulze noting it's not the issue now and was fine.

Mayor Weatherly asked Manager Radford how he wanted to proceed with this. Manager Radford asked if there were any further questions, they would respond to them.

Commissioner Jones asked if the 100' buffer along the eastbound off ramp on US64, noted this should be a Phase II issue and asked is this off the table as far as what's being acted on or being asked to be acted on next meeting.

Attorney Kaus advised he understood this to be staff's recommendation and if he agreed with this, along with the passenger issue, could wait for Phase II. Commissioner Jones thought this would be appropriate.

Commissioner Jensen commented this was considered in Phase I by the Planning Board and also by the Board of Adjustment. Khin responded the Board of Adjustment included the whole site and doesn't think they talked about this buffer and the Planning Board did consider it and recommended approval of it, but as pointed out, its part of the Phase II out parcel and staff agreed any part of the Phase II out parcel should not be considered for the reduction until Phase II, not part of Phase I, and the letter should not be included. They have asked it not be considered, and they have agreed it should not be considered as it's not a part of Phase I.



Commissioner Meckes commented we should be mindful of the fact that Phase II has to come back for process and review and approval, whatever the issues that is passed over on Phase II, they will be revisited. Khin noted it has to be to have their out parcels.

Commissioner Jensen asked if the variance is specifically allowing the parking lot in front of the buildings. Khin noted yes, the 50% parking rule variance is for the entire property, Phase I and Phase II, because at that time, there was no Phase I or Phase II, just one project. It was noted the variance runs with the land and covers more than parking and issues regarding post/pre development run-off and hours of operation. Khin noted the variance was only for the 50% rule although conditions were based on this request.

Commissioner Jensen asked if it were on Phase I and Phase II...Rowland noted its for the whole site, with Khin noting they didn't get a variance for the 100' buffer on the US64 because the UDO for whatever reason was a hold-over for the old ordinance, allows the Board to do that reduction and doesn't state that it goes to the Board of Adjustment. The Board of Adjustment didn't consider the 100' buffer along US64.

Commissioner Meckes commented they could go down to a 40' buffer if there are circumstances or hardship, with Khin responding yes.

Commissioner Schulze addressed the greenway through the site; at the last time discussed were not going to hook it up to Beckett Crossing greenway, asking if this were correct. Khin responded it's noted there, because she understands the greenway at Beckett Crossing has been substantially washed out in the area where the connection would occur. She's not sure there's anymore information, but knows the gentlemen from Beckett Crossing has been there trying to get the Town to do something about it. The note basically says the connection would be made in conjunction with the Town and Beckett Crossing determines where it should end on their property; they are not required to go off their property.

Commissioner Schulze wanted to make sure it could be connected. Khin responded now, they have them going up to the buffer line which she thinks is three feet off and you can't tell them where its to be connected because the Beckett Crossing greenway doesn't exist. Commissioner Schulze stated the plan is to have them connect it eventually and are committed to doing this, with Khin responding this was correct.

Khin read aloud the connection to Beckett Crossing greenway to be coordinated with the Town of Apex during construction; staff had them do this, because they didn't want them to show it all the way to the property line and have it go into someone's back yard, wanted to make sure it was in the correct location.



Commissioner Jensen noted two trees he had requested in the islands were not recommended by the Planning Department Arborist. His thoughts were: some trees in the islands of the Town Campus parking lot there's two in a number of places outside the door; his question was, if it works here, why it doesn't work there. Khin responded when the arborist first saw it she didn't agree it was a great idea, and had asked could some of them be removed in the parking lot, because she didn't feel the space was big enough; as stated in her response, it works for short term, but not long term when in 15 or 20 years, these trees would have to be replaced because they basically run out of room to grow and will die back. She suggested you have one tree with enough space for it grow, it will last 30 or 40 years and will twice as long before it has to be replaced. Commissioner Jensen responded this was fine.

Commissioner Jensen noted the end islands appear to be some that could accept two trees over one tree. In looking at the parking lot and going back to the variance notes, it says additional or more landscape; he knows the developer mentioned more mean more bushes, but not more trees, is what he had interpreted it as. Commissioner Jensen asked and everyone thought more was more, period. Khin responded she had gone back to the display that was shown to the Board of Adjustment; they were shown 32 islands with 4 of them being double islands (700 square feet), not including the ones on the ends – the ones in the middle of the parking lot. The current plan shows 50 islands, no double island in the middle. Wal-mart showed 61 islands at the variance with 13 double islands with the current plan showing 61 islands, but no double islands. Khin repeated this for Commissioner Jensen; noting Wal-mart has about twice as many trees around the outside; more trees than required with basically what's talked about in their letter. In their thoroughfare buffers, they have three large trees per thousand square feet of area rather than one large tree and two small trees. Commissioner Jensen noted this not a step up in number but a step up in caliber. Commissioner Meckes noted in the grow out, they are all big trees; Khin agreed, and in looking at what the Board of Adjustment looked at, they have significant more vegetation shown on the current plan than what they showed the Board of Adjustment. When it went to the Board of Adjustment, the staff didn't review it for site plan approval at that time; they were looking at it in terms of what things should be conditioned to mitigate not having the parking split up. Basically, what the Board of Adjustment was looking at was significantly less at that point and didn't meet the UDO requirements.

Commissioner Jensen noted in comparison to UDO requirements, what does this do. Khin responded they meet the UDO requirements and then the additional is in their letter – 3 items that are greater; the proposed number of shrubs exceed the general landscape requirement by over 60%; the thoroughfare buffers have all large trees and no small trees; they are using a variety of shrubs and some nice ornamentals rather than typical wax myrtles – these items are above and beyond the UDO requirements.



Commissioner Grimes noted the comment under the landscape narrative that says some species of live oaks might work, but the UDO would have to be amended to allow them, and asked why. Khin responded according to the Planning Staff Arborist, a live oak is not a deciduous tree, but an evergreen; with Commissioner Grimes noting comments were they wanted evergreen trees but the base of the trunk of the live oak would be comparable to any other...Khin interjected that's the only thing she could think of that would work as a parking lot tree, but currently the way the UDO reads, it says it has to be a large type deciduous tree. Khin continued it could be changed, but we wouldn't want to put evergreens, we don't want people sticking Cyprus in our parking lots. Commissioner Grimes noted the requirement could be waived; he's not saying there should be all live oaks in all of the islands. Commissioner Jensen likes live oaks, but says they are slow growing and thinks this would have to be considered as to how many they would want to see. Commissioner Grimes noted they are slow growing but once they get there, they are something else, with Commissioner Jensen agreeing.

Commissioner Jensen noted on the parking lot, and looking at Kroger, they have a planter between the fronts of the cars, and if the curb isn't too high, the a car from the wheels to the bumper being one and one-half foot, would allow for a three foot wide planter between the islands to assure people don't crash into each others grills and would reduce the impermeable surface and would allow more plants at no cost of parking, needless to say, it would cost a little more for curbing. Kroger allowed for maple trees, etc. - he's trying to get more shade to this black top, he's looking at parking lots as micro-climate makers and not the best in the summer. Khin responded according to the arborist and the UDO, the minimum width is 10 feet for trees, you could use shrubs in a 3 foot area...Commissioner Jensen interjecting a crape myrtle that's planted everywhere, but is a nice transition.

Commissioner Jones noted this would affect this parking arrangement...with Khin saying he was saying to take it off the length of the parking spaces...Commissioner Jensen stated he's not saying take it off, but a curb that wasn't that high, you have curb stops to run cars against, and if you have that and the width of the connecting planter between these islands was no more than three feet, you could add more, you're not reducing the parking at all. Commissioner Jones responded you still have to have a curb stop, with Commissioner Meckes noting to 18 inch overhangs come together to meet in the middle. Commissioner Jensen continued they would meet in the middle even if you don't have anything at all, that's the problem. Commissioner Meckes stated it didn't matter if there's nothing there because if there's a tree there, they will either hit the tree or shrubs. Commissioner Jensen stated you could plant the trees at the lines of the parking spots; he's trying to find a way to get more that doesn't cost any parking, beautifies the area, and doesn't have an impact, but a win-win.

Commissioner Jones stated in order to put the 3 feet in the center, they are 9x18, with 3 feet in the middle you have to back them up, and they don't have curb stops in the parking lot. Commissioner Jensen noted you would impede this, but you wouldn't reduce the parking. Khin asked if they would overhang the planted area. Commissioner Meckes when the overhangs come together, they are in the shrubs.



Commissioner Jensen wasn't saying to plant shrubs, but plant crape myrtles at the line, every other parking spot.

Commissioner Grimes felt the problem was we are finding out there are problems with the UDO and it's not these folks fault and they have complied with the UDO and apparently overly complied, maybe gone beyond compliance but he agrees with Commissioner Jensen and others that have said we have painted ourselves into a corner and don't really have a situation that may be as most conducive to a ideally attractive parking area. This parking area looks like a dot-to-dot game, it's so uniform and so predictable, its so little boxes and it's unfortunate, but apparently what has been done is meticulously complied with our ordinance and come up with this, because they can't do anything else. He thinks its unfortunate and thinks we need to do something to give people a bit more creativity and flexibility so we can give ourselves more of an opportunity to acknowledge and encourage creativity – this parking lot is boring and unfortunate, and we need to do all we can within what has been set as our guidelines to comply to make it as attractive as possible, and is why he thinks live oaks and any kind of vegetation that will be unique or especially attractive over time would be what we ought to do or what we should encourage. These guys have done exactly what our ordinance requires them to do.

Commissioner Meckes commented we are still light years away from where we have been and you have to remember there are significant breaks between the parking lot and what anyone would see from US64 and NC55, because you have the restaurant row, the trees along Beaver Creek Road. Commissioner Grimes continued that with Phase II, it will be surrounded, rather than a big parking lot and a couple of big boxes next to the woods. Commissioner Meckes stated he felt the same way when he first looked at it, but then he looked at the Type A buffer that would be along the ramp, you want even be able to see the parking lot once the vegetation grows up. Commissioner Jones noted each out parcel will be individually landscaped. Commissioner Meckes commented that was not to say that we can't still do more with it. Commissioner Grimes felt we need to do something to give the opportunity...with Khin interjected the staff arborist is very excited about doing something different than what has been required and is working on it already – for the future.

Commissioner Jensen stated yes, it's better than what been seen, but on the other hand what's seen, we felt bad about it also. When looking at the Board of Adjustment, and the variance that was let, which may or may not meet the criteria needed for a variance in the first place, he thinks we should strive to get the best we can if this parking lot is in front instead of off to the side; he thinks personally this property could have been developed without a variance, no doubt in his mind; so if we have let a variance, he thinks we should help the developer to help us put in the best we can get out of this.



Commissioner Meckes stated you have to look at the RCA as well, 26 acres, a significant amount of land that will never be disturbed on the west side. Commissioner Jensen was focusing on the planters and doesn't think that's an impact that is negative overall, other than it would cost more money for curbs. He's trying to make this a win-win situation than what he sees it to be.

Commissioner Schulze asked if the islands were going to be grass. Khin responded they will have ground cover vegetation – different plantings – staff prefers ground cover like juniper, but have different ornamental plants; they do not prefer turf grass, but other plants that are more attractive also better for drought.

Commissioner Jensen recalled former Commissioner Hilt had suggested instead of mounding, it be more flat to insure water stays there and gets – her opinion, flat to slightly below curb level is better and suggested on an NC55 development that in the future consider lowering the level of dirt in the planting areas to the level of the asphalt or below to insure they get water and let cuts through into it to allow water to go in. He asked if we are going to push for this bulged top this doom type situation, or help the developer with going flat to minimize erosion that gets onto the parking lot. Khin responded the requirement for planting islands is they protected with curb or some type landscape timbers, so they didn't discuss having depressed islands, with some of the problem being in some areas when plants get too much water, referencing an oak that died got too much water. Rowland stated they could work with the developer if the Board would like to see this to see what plants, and a consideration because these plants would be sitting in water for some period of time after a rain and we need to know what rain tolerant plants. Commissioner Jensen was not pushing for a depression all the way down, but hates to see the bulb when flat is probably better from a potential growth stand point for the trees, etc. Khin stated staff could look at the planting details and make suggestions and changes. Commissioner Jensen didn't know how detailed the town would go and referred to Kroger being humped and seeing erosion and do have grass they struggle to keep going.

Commissioner Jones asked the developer if there was any thing he would like to add to the response he's heard that's different than what has been told already.

Chris Richter, Project Manager of JDN Development Company, responded they were willing to work with staff as far as landscape, more than willing to go with whatever staff recommends as far as grading of the islands. He noted the "beating up" of the UDO as far as parking and landscape plans; he's developed a lot of shopping centers and the island space is closer than any other he's ever worked with. Usually 10 – 13 foot separation of islands, we're 7-8 and less throughout this parking lot; the UDO does a good job of adding 30/40/50 more islands than you'll see in a conventional shopping center. He thinks this parking lot is in good shape esthetically compared to other jurisdictions they've worked in. He's not sure there are any further outstanding issues. He'd love to move forward and take action on the 16 th.



Mayor Weatherly asked if 100% certainty the two boxes being talked about are locked in if this site plan is approved. Richter responded no, they are still having ongoing discussion with Wal-mart; Lowes is committed. Mayor Weatherly responded he had heard some substantial differences between JDN and the Wal-mart people. Richter responded they do a lot of projects for Wal-mart and are still talking to both.

Richter continued they are committed, and have filed Phase II application on July 1, to showing that and not starting any type construction if the Board elects to advise for approval, construction will not start until everyone has had a chance to look at Phase II application, with a secondary means of access, due the traffic studies and get 100 % level of confidence that the big picture is working.

Commissioner Jensen asked what the pond surface area was, and if it is a decent size, and approached this a little last time, could be used as recreation pond with walkway there. He asked if there was a way the Town could take responsibility for the pond and the development take the responsibility to muck it out anytime it needs to be. He would like to form a partnership to gather more recreation area for children and if we can do this. His question is to the developer has this been done before or made arrangements like this before or is it possible from staff's point of view and the developers point of view.

Richter responded they have provided green space and made dedications to townships, conservation easements, there's a number of mechanisms they had done in the past. He thinks what it really comes down too is whether that will be an attractive place for recreation; it is a stormwater management pond, its not some pristine recreational amenity, it will be attractive with greenway and will maintain it carefully but from a swimming perspective, maybe a fishing opportunity if it were stocked, but even then the water levels will fluctuate and he doesn't see this as being a great recreational amenity.

Mayor Weatherly responded he knew he had brought this up several times, but in his minds eye, he sees water retention pond at Bright Horizons Daycare which he sees everyday and shakes his head when he goes by it, and the Eva Perry Library, and this one here; he doesn't know a single water retention pond that would be suitable to attract or encourage people to go; the sides have to be too steep, the volume of holding area doesn't have much water in it most of the time; it's made to hold water and then let it go, rather than hold it to a full pool that would be an attractive place – disabuse him of that, that you could have a full pool and still function as a retention pond for stormwater drainage.

Commissioner Jensen responded he would look at this as the backside that butts against Wal-mart or whatever will be there would be steep and have some sort of decent fencing method of keeping people away, but maybe one-quarter or one-sixth of the lake area could have some sort of an access where people could come in and it be designed to have a minimum storage capacity as the one here to try to allow for passing through of water and allow the water become of better quality.



He felt it maybe too late for this one but thinks if the pond is a decent size and knows the one being talked about, he also goes by and shakes his head, because it was built really steep at the children's school, so that they could minimize the area and maximize the volume, which he's sure these folks did too because of the 50 year storm. He continued a 50 year storm doesn't come by but 2% of the time. He continued if things are planted right, maybe most of the time you could get recreation out of it for folks for a quarter of it and then when it does come up, you forced to keep people out or wouldn't want to go in.

Where he comes from there was an area called Hanson Dam, a monstrous retention pond; had the ever lasting pond in the bottom and they went water skiing in it, it was that big. Mayor Weatherly commented he could understand where a one-half foot of surface area would retain a lot of water. Commissioner Jensen continued they actually planted trees, had the park benches and once every ten years or so, when that monstrous canyon dumped a ton of water down to it, it filled up and wasn't usable for awhile until the fed it out. It's his thought that we can get - take a necessary evil and make it good for everyone and maybe have some partnership where the town helps with the liability situation for the developer to allow our citizens to have this opportunity, he's looking for the young folks more than anything else.

Richter commented he wasn't sure how it would work with the RCA land, but committed to providing it whether they can tie a portion and dedicate it to the Town; they don't necessarily enjoy maintaining wetland area for this purpose, but the township wanting to deed this land over if that's permissible from the ordinance as far as separating the use, they could entertain this.

Commissioner Jensen indicated, he would have to rely totally on staff, but thinks if there is a win value there and could pursue this, maybe something they would want to look at, whether it could be done in this time frame.

Commissioner Meckes commented the problem for Apex is that we are on the top of everything, so there's no area where, and he can understand what Commissioner Jensen was envisioning, but there's no area where we can have 15 or 20 acre pond that we could maintain at a certain level year round, it always ends up being little one-half or two acre ponds during this time of the year they are 30% of their normal capacity to hold. You have to move out further from the top of Apex to be able.... Mayor Weatherly interjecting, they haven't had any fresh water in a while and they are nasty...with Commissioner Meckes continuing the last thing he would want to do was get in it or fish from it. He understood what Commissioner Jensen was saying, but he thinks from the topographic standpoint we are going to be condemned to have a little, dinky retention ponds to help with storm water run-off, they will never be an amenity, he doesn't think.



Commissioner Jensen agreed with most of them 100%, but felt this one looks like a size that might be able to do this and is in favor of semi-regional ponds. One other thought he had regarding keeping the water level up and maybe a cost the town would bare it, is to pipe off some of the water running down Beaver Creek, which drains a good area at this point and would be a method to top off the pond to keep it up to a certain level that would allow for recreation, so at least it doesn't go down to a dry bog. He would like to have these folks consider this. Khin responded it was about two and one-half acres in size.

Commissioner Jensen continued he had looked at other areas: 3 acres on another pond possibility and is not like the pond by the school, its only maybe one sixth of an acre. This pond is of decent size that maybe could be charged with the stream thru a pipe; you wouldn't have to have a lot to charge it to keep it charged for evaporation.

Mayor Weatherly commented the liability issue should be a part of this. Commissioner Meckes stated if maintained at a higher level, then you don't have any storm water run-off capacity, you'd have to have a six acre foot print. Commissioner Jensen said, no, they design these ponds as you know to retain a certain amount of water and is what you shoot for and set the depth; our Lake Pine is only four feet deep – you don't have to be all that deep, especially if you have water recharging it from the stream if we set something like this up. He hopes they will look at this.

Manager Radford noted in regard to this request, it's a departure from what this Board has done in the past. If they want to direct staff to do this, it will take some time to the later part of the week, a significant effort and some engineering that has not been done by staff on this particular part of this project.

Mayor Weatherly asked if there was a consensus from the Board to use resources to do that on this project, not to say you can't be deferred until another time.

Commissioner Meckes asked if we were looking to make it an amenity. Mayor Weatherly responded right, either the town taking it over as a park or a joint proposal, but the bottom line to do what Commissioner Jensen suggested...Rowland interjected there are extensive plantings around the pond...with Khin noting the greenway path goes around the pond and there are wet plants going into the pond, and something they are required to do and shouldn't be too unattractive, with vegetation, but for recreational she didn't know.

Commissioner Jones commented on this particular one, he wouldn't advise it but on others he might be.



Mayor Weatherly asked for a show of hands if they would like to advise staff to look at this. Commissioner Meckes asked if this would prevent hearing this issue next meeting. Mayor Weatherly meant do you anticipate staff preparing a proposal for them. Commissioner Meckes stated if we wanted to look at this, they could look at this anytime; he didn't want to hold up the progression of events; with Mayor Weatherly agreeing.

Commissioner Jensen continued as it goes in is the time to really look at it to get the proper flow from one certain area, possibly just a little pier with a penned off area.

Commissioner Jones said in general, he's not in favor of using retention or detention ponds, whichever the case may be as recreational amenities. You can dress up the landscape and make the greenways that go by them or around them or over them, whichever it might be, as useful and functional as possible, but making these stormwater, unless they are large regional ponds, doesn't make any sense. Commissioner Jensen responded this isn't a standard pond you would look at. Commissioner Jones continued but it's accessible by greenway from the subdivision for parking in the Wal-mart parking lot, or whatever it might be and going fishing and he just doesn't think you should do that.

Commissioner Schulze agreed with Commissioner Jones appreciating what is trying to be done, but sees many issues from management standpoint, or liability standpoint, thinking the intention is good, but not practical.

Commissioner Jones continued we are dealing with trying to fish in our own town pond. Commissioner Jensen noting that was licensed fishing and thinks they have taken care of that. It seems to him that would not work on a quarter acre pond, but this is a two and one-half acre pond which is almost a semi-regional pond, you're getting up in size to a realistic valuable asset.

Commissioner Jones indicated he was some what bias by the fact that we at his place of employment have just installed a one acre pond that's been there for three months and is dry and it's a retention pond. Commissioner Jensen commented that it didn't have Beaver Creek to feed it. Commissioner Jones indicated a spring was suppose to feed it, but it's a dry spring; a required retention pond they are using for parking.

Commissioner Meckes was willing to look at this for the future...with Commissioner Grimes thinking we can look at it after it's done and if there's any potential then could act on it...with Commissioner Meckes agreeing that whatever could be done to make it work, he would look at it, but wants to see what it looks like.



Commissioner Jensen hopes the developer would make it so there is potential for this, an opportunity...with Commissioner Jones noting if there was an opportunity, he would agree...with Commissioner Jensen continuing, let us make the decision; at least it doesn't cost much money to try to do this, he would appreciate it. Commissioner Jones felt this was a bigger policy decision.

Commissioner Jensen noted in terms of quality coming from the pond, when filling the pond with water and getting the flows equal to pre-development, in which pre-development is considered to be with the lot already paved over, he asked what's the quality of water coming from it over time; will it be gray or are we improving the quality of water.

Richter responded he had done a number of studies himself and this meets the legislative standards regarding water quality, for this size storm and retain it for some period of time to allow particular matters to settle out, by filtering along the banks and some petroleum in the parking lots, but doesn't think you can say, it wouldn't be as good as what's on the site now, it's just part of developing a site, but the method certainly is far better than what occurs in all the residential subdivisions in the area which is every thing from the road, just goes straight to the creek. Commissioner Jensen stated his answer would probably have to come from his engineer.

Staff engineer Robert Gron that surface area ratio of this pond more than well exceeds the guidelines set by NC DEHNR. They could not improve the water quality coming out of the pond, but dare says the total suspended solids of discharge from this pond are far less than what you would expect than if you captured water from Beaver Creek just up stream from this pond.

Commissioner Jensen stated this depends on what storm happens to come through and how long the water is retained.

Gron continued that the water retained, with the design of the pond, discharges over a two to five day period.

Commissioner Jensen asked if we have the capability for a 50 year storm with a certain amount of swing, do we really want to discharge that quickly in a three to five day period when we haven't reduced the nitrates that are in this water probably more than 20%. He continued if we have the capacity in a pond of this type, would we want to try to design the outfall ...it's a variable rate of discharge, you have a big storm and you have to drop it, but towards the end for most of the storms, do you want to try to retain that water for a longer period of time, would this not be a good approach to maximize the utilization of a pond of this size.



Gron responded yes, he agrees, but it's almost impossible to regulate the discharge from a pond with a single ordinance, it's the way the pond is designed. The riser from the pond, with the difference in elevation of the water from the riser changes the amount of flow coming out.

Commissioner Jensen commented there are constant volume discharge capabilities, that you could get a floating type device to release the water.

Richter responded you could design multiple type ordinances, but thinks the issue is your water quality issues are dealing with your high frequency storms, the quick storms gets oils off the parking lot, and goes into the basin; shorter frequency storms and 50 year run-off, after you get that first off, you're dealing with water, not with the contamination, you're dealing with higher frequency storms, your design as far as water quality to hold approach as far as water management says, take the 50 year storm and do what you can to hold this back, and the water quality issues are addressed in short duration.

Commissioner Jensen responded this was the point he was trying to make, being we do have the volume, why would we want to try to discharge a one inch storm over three to five day period and this is probably more a town situation than JDN. Why would we want to discharge that so fast if in all likely hood, we are not going to see another big storm, certainly not a 50 year storm after a one inch storm; why would we not want to retain that water as long as we can so that we can get the utilization out of the oversized pond. He's trying to make better water quality for the one inch storm. Richter responded they are already doing this; they are exceeding any standards in place. Commissioner Meckes responded he's right; this is not their issue, that's the towns. Commissioner Jensen indicated maybe adjustments could be made and is asking the town in this situation if we have some folks that are willing to put in an oversized pond, there must be ways to use it to get better water quality than they can get from a smaller pond. Gron responded, it is in deed oversized to extend this time period that you want to release the discharge water; the pond size goes up and is not proportionate, as water is coming into the pond, you have water coming out; he's seeing it difficult, seeing the pond going up in size and retaining for a longer period of time. Commissioner Jensen said he didn't, you use multiple ordinances to allow what he's thinking of doing. Larger levels in the pond, then it's not that high.

Commissioner Meckes asked if the pollutants heavier than the water, so they would automatically go to the bottom. Richter stated is was a retention time issue, with particular matter settling to the basin – they are exceeding any standards for the retention pond, and was confused as to what the problem is. Commissioner Jensen stated when he read the term 3 to 5 day discharge. Richter responded in some residential areas, it's 18 hours and 36 for commercial. Commissioner Jensen told him he was not picking on him, but the town, he guesses. He's saw the three to five day and when you have a situation where w could allow the ten day period instead of five; we have an opportunity to reduce the nitrates from 20% to 35% reduction. He'd let it go, but once again, he wants staff to look at this, if it's in agreement with the Board.



Mayor Weatherly asked the standard for municipal holding time, three to five days. Gron responded three to five days to discharge out, but during that period of time, you would have settled out within two days, you settle out 85% of the total suspended solids and is based on your retention pond – that's the standard. Mayor Weatherly then restated so most municipalities adhere to this, Raleigh. Gron responded yes, this is the guidelines set forth by NC DEHNR, with Raleigh being similar. Mayor Weatherly continued this would be considered this is reasonable as to what to expect. Gron responded he would have to agree with this.

Commissioner Jensen asked how well are the nitrates possibly reduced out of this water during the three to five day period. Gron said he couldn't tell him about that, we don't have a policy or provisions to account for the nitrogen reduction and only address totally suspended solids. Commissioner Jensen continued if practiced by the state, it's like 20%. And would think to extend that time, are looking at water that is going into our water source at Jordan Lake and the better we can do to reduce the nitrates in this situation, the better off we are. He asked can we look at this, does the Board want to look at this.

Commissioner Meckes asked how significant are nitrates, realistically run off from the parking lot in the shopping center. Construction Management Director responded the proper opinion should come from the Environmental Programs Coordinator. Commissioner Meckes stated it seemed nitrates would be more of an issue from bigger subdivisions that goes through yards, and streets, and then with Commissioner Jensen agreeing with this...along with Gron agreeing.

Mayor Weatherly asked if there were any further issues or questions. Being none, he directed to Manager Radford this concludes what he had intended to be done. Manager Radford agreed.

End of Worksession

ADJOURNMENT

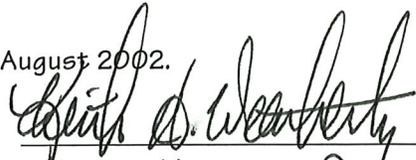
Mayor Weatherly asked for a motion to adjourn the Worksession.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to adjourn at 9:00 p.m. Motion carried.

The above minutes were approved on the 6th day of August 2002.



Town Clerk



Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, July 16, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m., Tuesday, July 16, 2002 in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

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

APPEARANCE AWARDS

Mayor Weatherly presented the following Appearance Awards.

Residential: Barbara Beasley, 106 Waddell Court

Commercial: Summit Lake Apartments, 600 Park Summit Boulevard

Mayor Weatherly presented a Proclamation to the family of Blonza M. Holleman Smith in honor of her 100th Birthday, July 20, 2002.

CONSENT AGENDA

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

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda as presented. Motion carried.

1. Minutes of June 18, 2002 Board of Commissioner's Meeting.
2. Minutes of the June 18, 2002 Board of Commissioner's Closed Session (separate cover).
3. Minutes of the June 27, 2002 Planning Committee Meeting.
4. Budget Ordinance Amendment – (FEMA Grant; Fire Truck; Police console)
5. Banking Agreement with Central Carolina Bank.
6. Revert unpaid lots and plots in Apex Town Cemetery back to Town for resale
7. Resolution to Establish Clean Water Day in Town of Apex - #02-0716-25.
8. Resolution Accepting Dedication of Public Right-of-Way and Easement for Mason Street Widening Project - #02-0716-26.



9. Resolution Authorizing Town Clerk and Deputy Town Clerk to Sign Public Notices of Special and Emergency Meetings of the Town of Apex Board of Commissioners - #02-0716-27.
10. Changes to hours of operation for Apex Community Park and Kelly Road Park.
11. Ordinance amending Section 20-171 of Apex Code of Ordinances Deleting Designated "No Parking Zones" – #02-0716-09.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed.

Manager Radford asked to amend the agenda for Closed Session to consult with the Town Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to include the closed session as requested. Motion carried.

The meeting agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 1 – Annexation Petition # 328 (Director of Planning)

Public Hearing regarding Annexation Petition # 328, Wake County Board of Education, owners/petitioners; petitioning to annex property known as "Wake County Board of Education Property Apex High School Parking Addition" located on Laura Duncan Road (SR1308) and containing 15.01 acres and including public rights-of-way; possible motion regarding same.

Director of Planning stated the property is within the ETJ and has been purchased by the school to expand the parking and recommends approval of the annexation; a site plan has been received.

Mayor Weatherly opened the public hearing at 7:10 p.m. With no one speaking in favor or in opposition to the annexation, the public hearing was closed.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to adopt an Ordinance to extend the corporate limits by the 15.01 acres including public rights-of-way. Motion carried.

End of Public Hearings



OLD BUSINESS

Old Business # 1 - Major Site Plan Beaver Creek Commons, Phase I (Planning Staff)

Major site plan for Beaver Creek Commons, Phase 1 located at NC55 and US64; possible motion regarding same.

Manager Radford noted a series of meetings with staff addressing issues and concerns regarding the site plan for Beaver Creek Commons, Phase I. Developers and staff were present to address further concerns with the Director of Planning David Rowland giving a general overview of the plan. An email had been received by the Manager from Art Clem, President of the Beckett Crossing Home Owners Association, concerning cut-through traffic within the subdivision. Construction Management Director Kent Jackson and Police Chief Hearn and Town Manager Radford had visited this subdivision and note ideal places for which calming devices and stop signs may be appropriate. Developer has agreed to pay up to \$5,000 for such devices, with an estimated cost of installation being \$4,000. Planning Arborist Rosetta Radtke will address issues regarding plantings.

Mayor Weatherly noted an extensive Public Hearing and Worksession held regarding this site plan. The public hearing had been closed, but the Mayor allowed several people who wished to speak an opportunity to do so after the general overview.

Rowland gave a general overview of the site plan for US64 and NC55; Zeno Road (to be connected with the existing drive), Home Depot, Lowes Foods, Haddon Hall (south on NC55), Beckett Crossing and Carriage Downs. Overall plan: Two Box Stores (Wal-mart and Lowes Homes Improvement), shops and out parcels and preservation of wetlands. Committed road improvements for NC55 and US64 ramp are found appropriate to serve Phase I; Phase II will have a second ingress/egress (right-in/right-out). Traffic study was conducted for the entire project with an addendum being considered.

Commissioner Jensen asked if traffic study would be updated for Phase II. Staff: Phase II is planned to immediately follow; no construction will begin for Phase II until second entrance is obtained; Phase II application was submitted July 1. He further asked to address traffic through Beckett Crossing and understood there was a difference in traffic time from Clem's study than the one submitted by the traffic engineer.

Mayor Weatherly allowed the following to speak:

Art Clem, President of the Beckett's Crossing Home Owner's Association, stated all residents were in favor of the development in the area, as it benefits citizens and the Town, but was concerned with traffic in west Apex. His comparisons with traffic route travel time didn't agree with traffic travel studies conducted by the engineer; Clem's study added seconds to complete the routes, with average time doubling when going around Beckett Crossing; his concern - cut-through traffic in the subdivision going to the site.



Clem was comfortable with stop signs and traffic calming devices to slow traffic and deter cut-through. He could see additional relief with improvements to NC55 and Olive Chapel Road intersection (takes 10 to 15 minutes to get through this intersection during school times). He asked a second entrance for Phase II be established by access to Kelly Road, only a short distance from Zeno Road, and would divert west Apex traffic.

He addressed flooding issues on the west side of Beaver Creek where construction would take place. Beckett Crossing greenway had flooded three times and hopes the retention pond would help prevent further flooding; would like the flood issue reviewed again after completion of the retention pond; would ask the greenway be reconstructed or be relocated (may have to abandon it all together) – but would like the walking access. The greenway for the project is shown abutting one of the properties and would like the greenway to be connected.

A fence is shown along the property area of the proposed development, and asks it meet the fence standards of Beckett Crossing. Staff Planner Khin responded the fence is solid wood with gothic detail at the top; this was placed by the Board of Adjustment and is in keeping with the UDO and will conform to UDO standards.

Mayor Weatherly noted a vast majority of support for calming devices by the developer and asked if this were a wait and see or an initial desire upfront. Commissioner Jones commented the locations of the devices are the most important impact on how residents felt. Commissioner Meckes noted increased noises with stops and starts.

Clem advised a petition from a year ago had all but one resident signing, but did not meet the standards. Stop signs were included in the development plan and doesn't think there would be objections, but would get signatures if need be. He would like to see this implemented immediately, to stop current speeders through the subdivision, and discourage cut-throughs before it becomes a habit.

Mike Shore, Haddon Hall, felt information presented had overlooked realities of the way people drive, and expressed concern with spill-over lighting onto residents living on the west side of Haddon Hall; indicating lighting was over standard, and once built out, would be hard to undo lighting pollution, which is worse during winter months.

Shore addressed the assumptions in the simulation presented and didn't think the traffic was equal at rush-hour and didn't agree with the behavior of the vehicles (no passing). His concern during rush hour traffic would cause back up when going from multiple lanes to a two lane section, requesting NC55 be four lanes to Olive Chapel Road. His view of the proposed road improvements were not acceptable and would impact the quality of life. The plan as it is would cause Haddon Hall to become a cut-through for traffic, just like Beckett Crossing and doing so to avoid a bad intersection. He felt statements made lacked understanding of the community, asked the Board to re-look at this, not wanting a Crossroads situation; reconsider the design for traffic.



Commissioner Jensen asked Shore if he had looked at places for calming devices within Haddon Hall. Shore noted a couple of places and if properly designed and engineered speed humps would not impact, and asked the same consideration be given to Haddon Hall that Beckett Crossing had received. To get this at the beginning would stop problems, advising Haddon Hall was already being used as a cut-through (more commercial vehicles).

Commissioner Jones responded it looks as if this situation was already occurring, even before this site plan. Shore's response was to place more stop signs would make the situation worse, and keeping traffic slower with speed humps was the way to go at the two locations. He again asked consideration for the lighting and four lane of NC55 up to Olive Chapel Road.

Commissioner Jensen asked Shore if he had preference for the extension of Beaver Creek to Kelly Road vs. Haddon Hall entrance. Shore responded the problem exists whether it's extended or not, but wouldn't aggravate the situation; was unsure about Kelly Road situation, but knew it was already congested.

Joe Karvarsky, Beckett Crossing, stated speed humps and stops are common to all communities; children play in the streets and can't always be seen by oncoming traffic; there is no play ground in Beckett Crossing; wants to slow traffic, not overdo signs but make it noticeable; supports a greenway for walking and biking. He said truck drivers know how to get through and wants to keep "Apex".

Phillip Myers, 1407 Zeno Road, resides on the dirt portion not included in the traffic study, but required to be used and asked why. He continued if there was no access from the shopping center onto Zeno Road, this would calm the west side of Apex, without speed humps; forcing traffic onto NC55 would solve the problem of cut-through neighborhoods, but could still get from NC55 to Zeno Road. Lots of traffic comes down the Zeno Road dirt portion to avoid the traffic lights; requests traffic calming take effect by not allowing access from Zeno Road; considerable traffic comes thru Zeno Road by Hyacinth Way. State surveyors say Zeno road is ready to be paved but will make it worse - speed limits would slow down traffic, but not the number of vehicles; asked Zeno Road not be made a dead end; make right turn onto NC55 only, with no left. He knows fire departments don't like speed bumps because it's rough on engines.

Director of Planning advised Zeno Road connection was needed to provide multiple entrances if NC55 were to become blocked. Drainage: Board of Adjustments decision to decline to grant a variance due to what had happened in the past (pre run-off equal or less than post run-off) and hopes it takes care of the problem. Greenway: could be adjusted with that of Beckett Crossing. Director of Parks and Recreation John Brown noted Beckett Crossing Greenway being a part of the public greenway system, with the Agreement stating the homeowners association would maintain it. Commissioner Meckes commented the retention pond would make a difference with the run-off and flooding would be less.



Commissioner Jones asked staff to address the lighting issue. Khin responded there are conditions to make slight adjustment in the light plan for both stores at construction plan stage and wasn't difficult to do.

Commissioner Jensen referred to the large amount of impermeable surface and in regard to the greenway flooding asked the percentage of drainage. Director of Planning noted it specific to this development and couldn't address what's up stream as far as problems with the greenways. Commissioner Jensen responded up stream will do the same. Director of Planning advised the plan was developed in accordance with the UDO and goes beyond, and the UDO would have to be amended in regard to "post/pre development run-off". Commissioner Jensen responded this could be discussed later.

Commissioner Schulze asked if there would be a traffic light on NC55. Chris Richter, JDN, advised there will be a signal at this intersection.

Commissioner Grimes stated this was the first he had heard regarding Zeno Road paving (there were right-of-way issues to be resolved). He asked about improvements on the west side of Olive Chapel Road with Manager Radford informing NCDOT will make improvements, but have not said what. Construction Management Director Jackson stated the plans had been given to NCDOT and the Board of Transportation had provided matching grant funds of \$230,000 and direction is needed from the Board to proceed with the improvements.

Commissioner Grimes confirmed second access into the site would be a part of Phase II. Director of Planning confirmed planned access across from Haddon Hall Subdivision. Richter stated this is under review and showed the map, providing provision of signals for the second access; traffic study had been submitted. He advised Zeno Road was a State road and could not be shut off, with "no" option to do so. Mike Horne, Kimley Horne, stated this to be an accurate statement.

Director of Planning Rowland advised an amendment to the updated thoroughfare plan would include extending Zeno Road into Kelly Road when developed, providing another connection, giving multiple accesses, and not creating a Crossroads situation.

Mayor Weatherly commented this was on a smaller scope compared to Crossroads and to compare it, to him, misses the mark. Director of Planning advised staff is looking ahead as far as the corridor over to Kelly Road.

Commissioner Jensen viewed it critical to get access from the other side than to have two entrances dumping onto NC55, and to extend over to Kelly Road should be part of the criteria for this development. Director of Planning commented the Phase II connection would help at the other end, but all the connections are needed to make this work, with Commissioner Jones agreeing. Commissioner Jensen stated there are lots of homes and lots of people at the back entrance.



Commissioner Jones confirmed Phase I would not be constructed until Phase II is approved for the second means of access...Eric Strohacker, Ramey Kemp, responded this was correct...asking if this were a condition from the Planning Board recommendation. Commissioner Jensen desired it be a condition for second access to Kelly for the second phase.

Richter expressed they had no control of this; traffic studies were conducted; they had met their burden and obligation and were not obligated any further; they were being asked to go above and beyond and not willing to do that. He stated their application stands with second access on NC55 and was not fair to ask them to go above and beyond, with all studies having been done and having met their obligations, and as far as Kelly Road, they have no control there and can't access it. Commissioner Jensen asked if they had talked to the residents. Richter stated they had not but the commercial development was money to the neighborhood.

Commissioner Schulze questioned access on US64. Director of Planning Rowland noted NCDOT was reluctant to place any more access onto US64, but wanted to close access.

Mike Horne, Kimley Horne, agreed it was correct to obtain other access points; west developers would be encumbered on to find a way to Kelly Road; proposed improvements shown are found to operate at an adequate level of service; additional access would help everyone; for the Town to update the thoroughfare plan would set the tone. He's stated he was working hard with NCDOT to get them to understand access is needed and to get as much access as possible.

Commissioner Jensen asked if the Town had hired a traffic engineer to look at extending a road to Kelly Road, thinking they had done so; asking about the study and the update to the thoroughfare plan – or the interchange option. Horne responded the Town had retained him to assist with the break-of-control of access on US64/Green Level Church Road. He agreed other options along with the connection of Kelly Road was an excellent idea, and to get it on the thoroughfare plan and get it in progress and to look at the area more. Director of Planning Rowland advised a number of options had been sent to NCDOT to make a decision down to Kelly Road. Horne indicated one of the requests was break-of-control of access of US64, authorized by resolution about one and one-half years ago. He could not say NCDOT is proactive in the way they work but to persuade them was a good option.

Commissioner Jensen was not happy with the cut on US64 but views Kelly Road a better chance. Horne indicated he's exploring all traffic signals and interchanges.

Commissioner Grimes asked if there would be a bridge at I-540 and if so, this would be extra expense. Horne noted the entire area difficult to work with because of I-540 and Kelly Road.

Commissioner Jensen was concerned with the traffic analysis and hoped the right-in works in terms of flow, and hopes to get a west connection before Phase II. Commissioner Jones agreed, but noted that's not what's before them, but could keep this in mind when they got to Phase II, that this was not this developers responsibility for all solutions, but some of the Towns.



Commissioner Jensen felt if the property owners could work with what's being put through, the opportunity was there. Commissioner Jones responded the development meets and exceeds the requirements for improvements on NC55 with signalization and would be making NC55 better, whether anyone was going to the shopping center or not.

Commissioner Meckes noted when trying to find solutions, one goes through the process and during process no one had mentioned connections between Kelly Road and NC55 other than US64, and now that this has come to pass sees wisdom behind a connection to Kelly Road from this particular area. He noted Planning staff had stated the next step being to get it on the thoroughfare plan, having everyone knowledgeable of it so when going through a process, it comes to pass – and feels this is what it's all about, with no one wanting anything to diminish traffic, but from studies that's been seen, is what the Board has to rely on, the information given that NC55 and US64 traffic will be improved with the improvements that will be made. Commissioner Grimes stated, "all will be able to tell", with other Board members agreeing.

Mayor Weatherly noted the floor was open for a motion. Commissioner Jones asked the conditions that are part of the site plan be clarified. Manager Radford interjected, although, out of order as there was no motion on the floor, he asked the Town Attorney address the conditions.

Attorney Kaus advised as a point of clarification, the previous agenda packets gives two categories of conditions, those recommended by the Town staff, not in the current agenda packet but a matter of public record; most of them were non-controversial and have now moved on to the outstanding issues that are separate and apart from those conditions. There were a series of conditions recommended by staff and a series of conditions in addition that were recommended by the Planning Board. The only condition he had heard being discussed in addition is the voluntary condition suggested by the developer to add traffic calming devices in the town's best judgment and discretion in places and in the manner the town decides and contribute up to a maximum of \$5000. He advised a potential motion may be approve for example the site plan with the conditions recommended by staff, conditions recommended by the Planning Board and the additional condition suggested by the developer.

Mayor Weatherly noted the floor was open for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the site plan with conditions recommended by staff, by the Planning Board, and as presented tonight relative to the traffic calming conditions in Beckett Crossing.

Mayor Weatherly asked if there were debate on the motion.



Commissioner Jensen wanted to see 20% of the islands tied to planters, in a few spots, not taking a lot of spots with a planter-bumper type device to get a few more trees; he referred to the Board of Adjustment statement of more, understanding what the Planning staff had said, they have done more. He feels this could be a safety situation if you could put some of the islands together and put a few crepe myrtles in them to prevent people from cutting across the parking lots (ex. Wal-Mart cut throughs on the lots and not down the lanes), to him, a dangerous situation – breaking and making sure the traffic flows down the isles to the best extent they can.

Commissioner Schulze was unclear as to what Commissioner Jensen was trying to accomplish and asked if he were trying to encourage the developer with Commissioner Jensen repeating he wanted to see 20% of the islands tied with some connecting planter that cars can park over, not taking any parking spots away, and adds more shading to the micro-climate that's being created in Apex, heating up the Town in the summer as a result of these parking lots. He stated it wasn't much but an evaluation of an approach to better manage a bad situation.

Attorney Kaus advised procedurally, since there was a motion that had a second this would need to be an amendment to the motion.

Action: Commissioner Jensen amended the motion. Mayor Weatherly asked if everyone was clear as to what the amendment would be. Commissioner Jensen restated he was trying to tie some of the islands together with planters and grass. Mayor Weatherly asked if there were a second to the motion. Commissioner Schulze made a second to the motion as a point of consideration to allow for discussion. Mayor Weatherly allowed debate on the amendment to include staff comment on the amendment.

Rosetta Radtke, Staff Arborist, reviewed the site drawing to assure she was clear on this.

Commissioner Jensen noted it would be a tie between the islands, 10%/20% of the area to tie the planters together with a planter and cars can park over them, not taking up parking spots; planted with a lawn or very low shrub such as a creeping juniper and if low enough the heat from the engines typically goes up and not down, so if low enough, it would be no problem (ex. parking lots where he works is not effected by this) and then crape myrtles to provide more shading.

Radtke advised this would depend on the amount of space between bumpers and the amount of space remaining, as well as planter space with crape myrtles working in a more narrower space than bigger trees; some smaller versions of crape myrtles would not need much more than a two foot planting space but with cars overhanging them, height differentials are important; with ground cover and with people cutting through if planted will be trampled and would look bad in between; offering these as consideration.

Action: Commissioner Jensen withdrew his motion.



Mayor Weatherly stated the motion on the site plan it self with the conditions so expressed. He asked if there were further to debate.

Commissioner Grimes didn't want to delay further, but raised the question regarding the issue of further commitment to traffic calming devices at Haddon Hall if justified and felt this could be discussed with Phase II and at the time of impact. Commissioner Jones felt it should be discussed regardless of this site plan, and may need to be addressed separately. Commissioner Grimes continued if they are willing to offer any compensation for this. Richter had no problem with this, as there were not a lot of intersections whether the resolution could be non-specific and allocate those dollars where the Town sees, and committed up to \$5,000 as well as with Beckett Crossing.

Mayor Weatherly asked Commissioner Jones if he were willing to amend his motion to include the condition to Haddon Hall as well as Beckett Crossing.

Action: Commissioner Jones amended his motion to include this condition for both Beckett Crossing and Haddon Hall.

Mayor Weatherly asked if there were further discussion on the motion. There being none, he asked for the vote on the motion to approve the site plan with the conditions as so stated. The plan was unanimously approved.

End of Old Business

Mayor Weatherly called for a recess at 8:30 p.m. and reconvened at 8:35 p.m.

PUBLIC COMMENT

Public comment is welcome. Anyone may address the Board concerning any item.

Mayor Weatherly will recognize those wishing to speak at the appropriate time.

Please limit your comments to 3 minutes to allow others to speak.

No one spoke during public comment.

NEW BUSINESS

Item # 1 – Resolution Supporting Pledge of Allegiance

Possible motion to adopt Resolution supporting Pledge of Allegiance.

Mayor Weatherly presented a Resolution supporting the Pledge of Allegiance with the words "Under God", feeling basic values were under attack and public officials should take a stand urging support. Commissioner Jensen agreed "God" was generic and agreed with its use. Commissioner Jones asked removal of the comma after one Nation. Light discussion followed. Commissioner Meckes called for the question.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adopt the resolution. Motion carried.

End of New Business # 1



Item # 2 – Apex Community Park Lake for Boating

Possible motion to refer to the Planning Committee for consideration and recommendation, the opening of Apex Community Park Lake for Boating.

Manager Radford noted conversations with Commissioners Meckes and Jensen to allow boat on Lake Pine, asking this item be referred to the Planning Committee and possibly the Parks and Recreation Commission for further discussion and recommendation to the Board. It was noted there's more potential for money involvement and insurance risks and possibly more appropriate for the Finance Committee. Mayor Weatherly commented this item predates him with money and liability having been a major issue. Parks and Recreation Director John Brown commented on the original plan for rental paddle boats and the problem with the CP&L easement; the boat house that formally sit there which was pulled out with installation of the greenway; also whether there is a staffing issue or not. Commissioner Grimes recollected the liability issue as well.

Commissioners Jensen and Meckes commented on allowing boating; to launch it yourself with maybe a sticker or fine system, and agreeing to more liability particularly if staff managed it; using maybe a basic contract, placing the burden on the boater.

Mayor Weatherly responded with unlimited access there may be alcohol and with numerous trails and canoes you couldn't catch one with a sticker or not and needing some type supervision. He asked if the Board wanted to refer to the Finance Committee to discuss further with the Attorney's help.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to refer this item to the Finance Committee. Motion carried.

End of New Business Items

CLOSED SESSION

Mayor Weatherly closed the regular meeting to move into closed session at 8:47 p.m. to consult with the Town Attorney.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to move into closed session. Motion carried. Minutes of Closed Session are recorded separately. Motion by Commissioner Jensen and second by Commissioner Jones to move from closed session back into open session at 9:02 p.m. Motion carried.

With the meeting back in open session:

Action: Motion by Commissioner Grimes and second by Commissioner Jones to authorize staff to terminate a contract with Jones Electric and to authorize staff to seek appropriate remedies regarding contractor and completion of the project. Motion carried.

End of Open Session



ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Grimes and second by Commissioner Schulze to adjourn at 9:02 p.m. Motion carried.

The above minutes were approved on the 6th day of August, 2002.

Georgia A Parker
Town Clerk

Keith A. Wamboldt
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 6, 2002 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m., Tuesday, August 6, 2002 in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Commissioner Jensen rendered the Invocation.

Mayor Weatherly led the Pledge of Allegiance, and extended a welcome to those present, recognizing Scout Troop #353, sponsored by St. Paul's Christian Church of Raleigh.

CONSENT AGENDA

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

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the consent agenda as printed. Motion carried.

1. Minutes of the July 9, 2002 Board of Commissioner's Special Meeting.
2. Minutes of the July 16, 2002 Board of Commissioner's Meeting.
3. Minutes of the July 16, 2002 Board of Commissioner's Closed Session (separate cover).
4. Minutes of the July 24, 2002 Personnel Committee Meeting.
5. Resolution Extending the Apex Extraterritorial Jurisdiction - former resolution adopted November 20, 2001 for 55 acres along Green Level Church Road; additional acreage will increase the total acreage to 72.65, and requiring adoption of a new resolution.
6. Resolution changing name of Templeton Street (between the roads of Pearson Street and Hinton Street) to Ivy Glen Drive.
7. Local bill and appropriation for lobbyist efforts to help in obtaining authority regarding transportation impact fees.
8. Amendment No. 1 to Fire Protection Services Agreement with Apex Volunteer Fire Department - Rural Services, Inc. - original agreement executed May 15, 2002.



Consent Agenda continued

- 9. Deed, Bill of Sale and Bulk Sales Act Affidavit from Apex Volunteer Fire Department – Rural Services, Inc.
- 10. Assumption Agreement with Central Carolina Bank and the Apex Volunteer Fire Department – Rural Services, Inc., re: New Hill Fire Station.
- 11. Wake County Fire Protection Contract.
- 12. Resolution authorizing Town Manager to enter into a municipal agreement with NCDOT for transportation related improvements at intersection of Olive Chapel Road and NC55.
- 13. Request from Commissioner Jensen to investigate Grey-water system in Apex. Manager Radford recommends staff investigate and report back in the future.
- 14. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set with a request from Manager Radford to include discussion concerning the drought situation. The agenda was set as amended.

PUBLIC HEARINGS

THERE WERE NO SCHEDULED PUBLIC HEARINGS

OLD BUSINESS

THERE WERE NO OLD BUSINESS ITEMS TO BE CONSIDERED

PUBLIC FORUM

Public comment is welcome. Anyone may address the Board concerning any item.
 Mayor Weatherly will recognize those wishing to address the Board at the appropriate time.
 Individuals having made requests to address the Board will be recognized first.
Please limit your comments to 3 minutes to allow others to speak.

Shepherd Smith, President, Episcopal Housing Ministry, Inc.

West Haven Town Homes: Requests relief of capacity fees for water/sewer for 82 units, located on Tingen Road. The purpose is to increase and improve housing for lower income and homeless individuals and families. Capacity fees would be \$4,500 per unit, an increase of 50% from when site plan approval was received and when the building permit was applied for. Fees are being calculated on gallon rate for single family detached house; an additional fee cost creates a burden due to unbudgeted costs in the original pro-forma. Asks relief in fees to keep units affordable for first time homebuyers and at the same time further the goals of the Town to bring affordable housing to the community. His specific request : 1) capacity fee be based on the rate that was in effect at the time site plan approval was received and capacity fee be based on using 250 gallon per day (commensurate with apartment usage) rather than 300 gallons used for single family detached homes.

Realtor for West Haven addressed affordable housing relating to fees and payments for buyers, asking the Board to look into the future of affordable housing and payment of less fees.



Public Forum continued

Mayor Weatherly commented on the impact fee structure and noted affordable housing issue of concern and needed throughout the Triangle. He asked the attorney's advice regarding their position as far as any change. Attorney Kaus advised a change would be necessary in the regulatory regime, as there was no mechanism to make this change. Creation of a new mechanism would give them power to do so.

Mayor Weatherly noted consensus of the Board to refer this request to the Finance Committee.

Art Clem, Fairfax Woods Drive, complemented the Town on actions taken:

- Changing the park times to 6:30 a.m. has relieved traffic along Lake Pine.
- Resolution for improvements to NC55/Olive Chapel Road Intersection.
- Investigation of a grey water system for irrigation.
- Continuation of sidewalks from Kelly Road to Kelly Downs; challenge more sidewalks from Beckett Crossing to the Town Hall; and look at more intersections.

End of Public Forum

NEW BUSINESS

Item # 1 – Mixed Use Focus Group (Mr. Bill Sutton)

Presentation by Mr. Bill Sutton - recommendations of the Mixed Use Focus Group.

Former Town Manager Bill Sutton presented recommendations from the Mixed Use Focus Group (MUFG) and answered questions regarding allocation of future wastewater capacity for mixed use (TND, PUD, MEC) and conventional development, advising all recommendations were unanimous in agreement as a package by MUFG. He expressed his appreciation to the group and to the staff for their support.

All recommendations are outlined in the attached memorandum and incorporated as a part of the minutes. The consultant for the project emphasized flexibility for planning the development with modifications at site plan approval on a case by case basis.

- Acceptance of TND and Residential Plans
- Amend Land Use Plan (TND) to four primary areas (new section of Peakway, Peakway/Old US#1 South, Peakway Olive Chapel Village, Apex BBQ/Old US#1/540 Expressway)
- Wastewater Allocation – 50% min. of wastewater capacity to for mixed use (max. 60%); balance to residential with no restraint on commercial development which is already factored in. (Commissioner Grimes question the percentage of residential and non-residential. Response: It was determined on historical data as to how much it would take to support the population - 1 million gallons of wastewater treatment capacity would support 10,000 people, and accompanying commercial and non-residential development that was factored in). (Commissioner Jensen asked the factor ratio. Response: There was no factor ratio of commercial to residential, but a mix that exists in Apex now – from a historical perspective. Commercial is generally not wastewater heavy).



New Business # 1 Continued

- Growth Rate 4% be averaged over a period of years, rather than 4% each year.
- Upon approval of plans of a mixed use or TND, within 45 days, fees would come in from the developer to cover 50% of the residential first phase and a 100% of the commercial first phase of the development. This keeps development from being approved and one holding the capacity, not allowing more capacity to allocate.
- Trackside: Hunter Street to US64 be rezoned as TND. Commissioners Jensen and Meckes had reservations because it departs from the normal precedent of having the petitioner, the owner, petitioning to rezone. Fear of MUFG was the property would continue to develop piece-mill, project by project or building by building with no overall TND.
- TND descriptions be added to the UDO, descriptive in nature (coming mostly from the consultant and some detail by the MUFG); retaining some flexibility in application due to the dictates of terrain (hardship by railroad tracks or current development – maybe some way to substitute where the developer dedicates and goes above and beyond one requirement to be able to do less on another requirement – being considered at site plan review on a case by case basis).

Commissioner Meckes added these recommendations offer a wide range of flexibility for all involved, staff, Planning Board, Board of Commissioners, and thinks, we are on un-chartered territory, and at the hallmark of this document being its flexibility and that it could be modified, reviewed, and end up with something that is highly desirable to the community through the process established.

Mayor Weatherly asked if the recommendations should be formally forwarded to the Planning Board. Manager Radford agreed, forwarded to the Planning Board for review, tweaking, and recommendation, calling for a public hearing at a later date as a result from changes to the UDO, and be voted on by the Board at a later date.

Action: Motion by Commissioner Jones and second by Commissioner Grimes.

Discussion followed.

Commissioner Schulze indicated he would feel uncomfortable, forcefully rezoning the development referred to as Trackside, and whoever reviews this, to take a hard look, maybe getting the property owners involved and see if there is a solution everyone would be happy with, property owners and citizens, developing this as a whole and not piece-mill development.

Commissioner Jensen agreed, and felt there shouldn't be anymore "no parking" signs installed without first talking with the neighbors. He thinks there would be buy-in from the property owners if this was done correctly.

Commissioner Meckes noted once nice part of this is, it was hard to get to this point, with the array of uses of the land being significantly enhanced by this rezoning over and above what it is now. Lots of the land is industrial with only a small number of uses that the land can be assigned where as with the TND, anything in the UDO it seems, could be developed under the proper guidelines.

Mayor Weatherly called for the motion to defer the recommendations of the MUFG to the Planning Board. Vote on the motion was unanimous.

End of New Business # 1



New Business continued

Item # 2 – (Town Attorney Jason Kaus)

(1) Assignment and Amendment of Ground Lease” agreement with Carolina Power & Light Co. and the Apex Volunteer Fire Department – Rural Services, Inc. re: New Hill Fire Station; and

(2) Fire protection services agreement with Carolina Power & Light Co. re: Shearon Harris Nuclear Power Plant.

Town Attorney Kaus noted items on the consent agenda related to the consolidation transaction between the Town’s Fire Department and the Volunteer Fire Department. The two items listed are being seen for the first time by the Board.

Fire Station No. 2, New Hill, is a building built on land owned by CP&L; as part of the process collected and transferred to the Town, the ground lease had to be transferred as well as the title to the building. CP&L in return for leasing the land to the volunteers required a commitment from the volunteers to provide fire protection services to the Harris Nuclear Power Plant. Rather than assign this contract along with the ground lease, they wanted a new contract. This is being presented as two new agreements. One would assign the ground lease and one would be a new fire protection services agreement between CP&L and the Town.

CP&L will lease the land to us and allow the station to remain on it which is used to provide fire protection services to a lot of people in the county, and also wants fire protection services to be provided to the plant. Agreements with the volunteers were not tied together; these two agreements will be tied together. As noted in the cover sheet, it has practical effect. This means the new contract to provide fire protection services to the plant will go through 2027, a significant long term commitment from the Town through this board to agree to provide fire protection services to the nuclear power plant. Also the price for this has been \$12,000 yearly to the volunteers since 1985; this new contract proposes to keep the price the same through 2027. This is the standard price that CP&L agrees to pay, not only the volunteers, not only the Town of Apex; we’re not being treated differently, but also for example, Town of Southport who provides services to the Brunswick Plant. The third change is if the Town ever wants to back out of the agreement to provide fire services to the Harris Plant, we could no longer lease this land, which again we use to provide services to many other people throughout the HIPEX District and we have just committed ourselves to do so through the Wake County Contract, which was on the consent agenda. This is not a part of the transactions with the volunteers. The next step is a clean-up with some additional things CP&L wants to negotiate into this contract. We want to get it in place so the fire department can be up and running and can close this transaction, but will return in a couple of months with a short amendment.

Commissioner Schulze asked if we decided to break the contract, and CP&L took back the land, asking what would happen to the building. Attorney Kaus advised under the lease from the volunteers, we have the right to remove the building. CP&L wants to talk about this building, thinking they would potentially have the right to purchase it from us when/if the leases were to terminate, expire, etc. As it sits now, if the lease expires or is terminated the Town could pick up the building and move it and keep it.

Commissioner Jensen asked if it expired in twenty-five years, he would suspect we wouldn’t want to do that anyway; with other Commissioners agreeing. Commissioner Jensen felt the agreement was good, but locked into the next 20+ years, but couldn’t imagine not responding to a fire at Shearon Harris.



New Business continued

Attorney Kaus advised the former set up was that CP&L relied on a number of the surrounding municipalities to provide services in the event of any kind of incident, not just the worse case incident. They have their own fire brigade which is a smaller force than ours, but have relied on Holly Springs, Morrisville, and some of the other municipalities. Under this arrangement, the Town of Apex will be primary responder. The contract sets us up as the first people on site and feels this is a great compliment to the Town and to its fire department that they rely on us and are asking us to fill this important role. He thinks this is a fine agreement and will help our fire department close the consolidation process, thinks it will keep us in good stead with our neighbor, CP&L and will provide important fire protection services to a neighboring facility, the Harris Plant.

Commissioner Jones asked if it were just the Harris Plant and not to the surrounding properties that he believes may be inside based on the signage on US1; maybe in Holly Springs jurisdiction rather than Apex. Attorney Kaus advised as it is currently defined, yes; it is just the Harris Plant.

Commissioner Jensen asked how many response times there has been to the plant. Attorney Kaus didn't have the exact number, but understands from Chief Haraway that it's not very many; again this was volunteer commitment before now; we have access to those records, but the Town Fire Department doesn't have a history with CP&L. Manager Radford noted fortunately, we go to more training exercises there than we do to actual events, and thankful for this. Attorney Kaus continued this is not just fires, but a car accident, or others, the Town would be the first emergency responder.

Commissioner Grimes asked if there were any kind of requirement, implicitly or otherwise that he has the capacity to do what it is that he was undertaking to do; obviously the nuclear plant that he's never carefully surveyed the whole situation, but seems like a fairly significant structure and complex for the Town of Apex to fight off all by it's self and conceivably there could be other structures, or whatever there in the next 27 years or so, and wonders if we are putting ourselves in any kind of position where we would have to enhance our capacity beyond what we would like to do; just in order to be able to meet this obligation.

Attorney Kaus advised of two important pieces of information, thankfully, we want be necessarily the only people responding, but will be the first people to come and co-ordinate with the fire brigade and then through the mutual assistance agreement that these other municipalities do have, we can call on our brethren municipalities to help. We would not be the only ones responding to a large event, everyone in the area would be there. Second, more direct legal response is nothing in these documents includes any sort of warranty, guarantee, representation about ability or quality of service other than what is already required of us through the state guidelines and state standard; we take a pretty dim view of and wouldn't be in any position to make any sort of additional promises. We have told them that we will provide them with the best service that we can provide, but no further guarantees of perfection, etc.

Commissioner Jensen clarified there was no requirement for any specialized type gear. Attorney Kaus, advised no, in fact in regard to some of the specialized events that we may encounter there, CP&L actually has an obligation to provide some of the necessary specialized equipment, decontamination, those sorts of things, but other than that, we were not biting off any additional requirements or obligations that we haven't already fulfilled under the consent agenda, by consolidating our services with the volunteers.



New Business continued

Commissioner Jones asked if he hadn't read that if any of the fire departments equipment was contaminated while serving, they would replace them as well. Attorney Kaus responded yes.

Manager Radford added his first conversation with the fire brigade commander at Shearon Harris was, ...he feels as though he was relinquishing the authority of our fire department and our chief to him, and he was concerned with our own folks and him sending them into a situation that might otherwise be dangerous, or for that matter, hazardous and life threatening. He made it very clear to the Manager that the fire chief did not relinquish any authority over his people to decide at what time it was to pull back, and they could come back at any point they chose and that our fire chief was still in charge of his folks.

With no further discussion, the Mayor noted there needed to be a formal approval of the two agreements.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to adopt both agreements. Motion carried unanimously.

Manager Radford added this now solidifies all the documents the Town has been working on for this period of time to try to merge and consolidate the Volunteer Fire Department with our full-time staff and wanted to extend his appreciation to Chief Haraway, and members of the Volunteer Fire Department for their efforts in getting this done. It is a momentous occasion.

End of New Business Item # 2

Item # 3 – Personnel Committee Recommendation (Commissioner Meckes)

Possible motion to adopt revisions to the Town of Apex Personnel policy manual.

Commissioner Meckes noted the Personnel Committee had worked their way through issues in trying to determine the immediately family definition and what comprises immediate family. Related to sick leave we have the employment of relatives and under what circumstances that will or will not be acceptable and temporary employee appointments.

Personnel Committee met last week and recommends the following.

Sick leave defines immediate family; under employment of relatives we did include domestic partners and defined, and then temporary employment.

Eleanor Green, Human Resources Director, pointed it is now only in the employment of relatives section and does make it more difficult for people to be domestic partners and be employed, and cannot be a domestic partner and employed by the Town. It is not in the immediate family definition.

Commissioner Meckes noted the conservative side being taken regarding this issue and thinks at least domestic partner definition/classification is understood.

Commissioner Jensen thinks there was a struggle to find the right definitions that apply and doesn't hinder people at the same time, but protects the Town and did the best they could with multi-variables.



New Business Item # 3 continued

Manager Radford commented on concerns raised by general public regarding this issue; thinks there has been a miss-understanding regarding whether or not this change extends benefits to domestic partners; it does not extend life insurance, health insurance, medical leave, sick leave or other beneficiary types of insurance coverage to a domestic partner, or to someone who is recognized as a domestic partner. As a result of those areas, are only entitled to folks who are legally married and legally recognized as married by the State of North Carolina. The things done do not touch on this, and seems to have been a miss-understanding as a result of a lack of discussion publicly about these issues and various issues, but this particular case doesn't do this.

Commissioner Meckes commented, nor does it comment on the legitimacy of any relationship that exists. It's merely acknowledgement that they do exist and for the purpose of employment, it would be unacceptable for a domestic partner to work in any one of these four positions.

Commissioner Jensen commented they tried to follow, more or less, the guidance of the State of North Carolina definitions. He continued if substantial changes came about, they would have to come through the state rather than through the Town of Apex.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen for the approval of the personnel committee recommendations to revisions of the personnel policy manual. Motion carried unanimously.

Item # 4 – Water Conservation (Manager)

Manager Radford reported on the extreme drought conditions of this region of the state, with the Town acting on various kinds of water conservation measures including irrigation. Town is operating under a mandated request from the Governor to reduce water consumption by 20% (Town has not met that goal). In keeping with the Jordan Lake resources, there are measures to take these more seriously and will ask in the next upcoming weeks to look at prohibition of automatic irrigation of yards, subdivision entrances, and car washing, etc. in order to maintain resources at best and as long as possible. Additional allocation was allowed through the EMC a few weeks ago, but doesn't deal with water quality issues that will be dealt with in the next few weeks in regard to where the intakes are located in the lake.

Director of Public Works noted this 100 year drought, occurring over a period of four years, and if it continues with no rain until November, it will be more than a 100 year drought. He gave a history of the Lake during a time of drought, supplying water to communities of Cary, Apex, Morrisville, Wake County, and Chatham County, being divided into two pools: water supply and flow augmentation into the Cape Fear for down stream communities and aquatic and wild life. Release has been reduced from 500 to 250 cubic feet per second, and the lowest release flow on record for Jordan Lake. Water supply is in good shape, but flow augmentation pool is being depleted rapidly, with the Lake level being reduced and requiring use of the lowest intake, causing water quality problems. Water on the bottom has more iron and manganese and needs more treatment, giving taste and odor problems, and causing laundry to be dingy; hoping not to reach this point. There will be an attempt to preserve water in the Lake for the Town's water supply, but also for those folks downstream; if the pool can't release to them, they will be in a drastic situation – they have their own intakes for their communities and wildlife.



New Business Item # 4 continued

Articles will be printed in the local paper pointing out current measures and showing some progress (reducing consumption from 35% from the month of June, but only 5% from the average use of last summer, as rainfall was more spatial and there was less demand), and wants to continue to meet the Governors challenge goal of 20%. The majority is trying to comply. Next steps could come.

He continued if decisions are being made to manage lawns (sod, reseed, landscape) prudence would be to not do so, unless there's a tropical storm – look ahead – more aggressive measures may be taken. Lake Intake is above 208 feet; if problems occur, it could be early to mid September. Cary/Apex are studying ways to modify the lower intake – with the Lake continuing to drop, this would not solve all problems.

The flow of the Cape Fear below the dam would be 50 or 60 cubic feet per second had the Lake not been there; and enhances the flow; with more water in the Cape Fear today, even with the drought, than had the lake not existed, and with the care being taken,

A phenomenon of Apex, with a community that has grown so rapidly is there are new lawns (average less than 5 years old, due to the addition of so many homes) and not well established; citizens tend to over fertilize and over water to establish them, not realizing with fescue grasses you are better off to get them well established in the spring and fall and leave it alone during drought. Some may die, but more economical to reseed in the fall. Society puts high value on a green lawn, but unrealistic; it's better not to bag grass clippings but mulch and leave on the lawn. There's more demand to keep this investment, and 20% goal is difficult to achieve, but a good challenge. Irrigation during June for each 150 gallons consumed, shows 70 gallons were for irrigation. During July, due to cut downs, it was reduced to 20 or 30 gallons.

Commissioner Schulze asked if we are telling people if they are considering making major investments in their landscape or lawn, it should be postponed due to the drought. Donnelly made this point with the news media; wanting people to make prudent decisions on these type investments and maintenance, trying to meet the goal with the conservation efforts. Commissioner Meckes asked why he didn't promote the community to go to a more drought tolerant grass; good but expensive.

Manager Radford noted News Headlines would be, "DO NOT PLANT SOD NOW, MAY NOT BE ABLE TO WATER IT LATER"; trying to send this message and plans to put into place within the next two weeks. 250 gallons per second flow out of the river goes past Fayetteville and Wilmington – generating 300 mgd, Apex, Cary, RTP, and a sliver of Wake County use 20 mgd over 100 mgd evaporates from the Lake with no mechanism; 5 times more evaporates each day than is used. If the dam wasn't there, there wouldn't be water for Fayetteville, Apex or Cary, a tough situation.

Commissioner Jensen noted a lot of landscape architects do not plant much lawn at all, and their yards are full of bushes and a lot of interesting things to look at rather than grass; if we could get people to go more natural or plants, they would be better off; not having to mow as much.

Mayor Weatherly noted this would be considered at the next meeting.

End of New Business Items



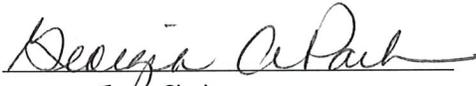
CLOSED SESSION

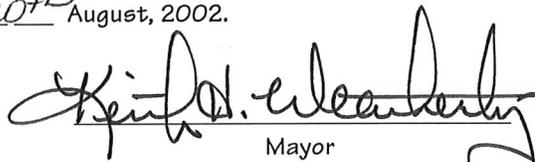
Mayor Weatherly asked for a motion to move into closed session to discuss land acquisition, and to discuss a personnel issue. Action: Motion by Commissioner Jones and second by Commissioner Meckes to do so at 8:05 p.m. motion carried. Minutes of Closed session are recorded separately. Motion by Commissioner Jones and second by Commissioner Meckes to go back in regular session at 9:14 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, Commissioner Meckes made the motion to adjourn at 9:15 p.m., with a second being made by Commissioner Grimes. Motion carried.

The above minutes were approved on the 20th August, 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of the Special Meeting
Wednesday, August 14, 2002
Apex Town Hall, 73 Hunter Street
7:00 p.m.



Web site: www.apexnc.org

Mayor Keith H. Weatherly presiding
Commissioners: Don Grimes, Bill Jensen, Mike Jones, Doug Meckes, Gene Schulze

Mayor Weatherly called the special meeting of the Board of Commissioners to order at 7:00 p.m., August 14, 2002, in the Board Room of the Apex Town Hall, 73 Hunter Street. Present were Commissioners Jensen, Meckes, Jones, Grimes and Schulze.

Staff present: Manager Bruce Radford, Assistant Manager Mike Wilson, Attorney Jason Kaus, Director of Planning David Rowland

Invocation by Commissioner Meckes
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

REGULAR MEETING AGENDA

There were no regular meeting agenda items advertised for this meeting.

WORK SESSION

Mayor Weatherly asked to the Board to move into a Work Session to discuss Wastewater Allocation and the proposed Chapel Glenn Development located at the Intersection of Olive Chapel Road and Kelly Road.

Manager Bruce Radford noted the purpose of the workshop was to discuss the proposed Chapel Glenn Development prepared by Louis Ioannoe, who is no longer involved with the project, but has made suggestions regarding this development.

Manager Radford asked the question, does the Town have a mechanism to allow transfer of wastewater allocation credits for a development that has not happened and may not happen in this location, in the particular way it was originally approved. The desire at that time of approval was to develop the property to front both Olive Chapel and Kelly Roads. The number of single family units proposed and approved was 420 apartment complexes with 170 single family houses valued around \$42 million, not including the value of the commercial development that may be proposed. At that time, the answer to the question was, the Town doesn't have a mechanism by which to bank wastewater allocation credits to become a commodity for potential trade. He was not aware of projects that were approved as QRDs that had not utilized wastewater allocation; this being the only one. Wastewater allocation approved in the past for QRDs in various subdivisions, now have subdivisions under construction and nearly completely built.

Jim Tucker, representative of the owner was present and had talked with Manager Radford, desiring less impact on this location rather than apartments. There are concerns with impacts to the school, this intersection and the density at this particular corner. The owners have not purchased the credits at this time at the rate required to do so. The 420 units and 250 gpd at \$7.50 per gallon for wastewater amounts to \$787,500. For single-family credits at 300 gallons per unit for 175 units the amount is \$393,750 – difference being \$393,750.

Tucker confirmed information given by the Manager. Reasons weren't clear as to why loannoe had withdrawn his interest in the project, but was concerned about timing and conditions placed in the transaction and how this worked with market and business plans. He expressed disappointment that loannoe had not gone through with the plan, as it was a good concept and the owner was willing to consider it. Primary concern was diminishment of value that would be attached to any reduction of density on the property, and to the extent the ordinance might mitigate and off-set this diminishment in value; are interested in seeing this go forward. There has been discussion with other interested parties for this type less dense development. He has met with other regional area developers regarding potential for the property and for a For Sale product as apposed to a For Rent product, with considerable interest. He has more meetings scheduled and has one formal contract proposal from a competing developer. He has not encouraged those up to now even though there has been quite a bit of interest expressed because of loannoe's faithful pursuit of this concept with the Town. In his last correspondence with loannoe, he claims no ownership of the concept, and in his mind they have every right to explore this with other interests and carry it forward. Tucker advised he was not a legal representative of the owner, but a broker, licensed in North Carolina and Virginia.

Mayor Weatherly, noted without a specific proposal to come before the Board, it remains a policy issue, and speaking for himself, doesn't believe it would be worthy of discussion except he believes there is some community interest in making this switch from apartments to single-family and a limited applicability of the transferability of this allocation; the ordinance was very clear and didn't allow transferability, nor, if this had been discussed, would not have wanted the transferability of this allocation; has to be tied to an approved site plan. If there were interest in pursuing a different style project on this property, not just apartment to apartment, but the same site plan could be built by another developer. He doesn't know what else should be said before launching into a general issue. He asked if there were comments as far as what should be pursued.

Commissioner Schulze noted this could set precedence. Mayor Weatherly understood this was the only project left un-built under the existing ordinance that would have transferability potential.

Attorney Kaus advised he hadn't looked into the numbers, but assuming this was the case, should keep in mind the QRD ordinance contemplates the possibility of transferring allocation, one thing that had not been talked about at this point. A provision in the QRD ordinance says (essentially calling the group of QRDs - Qualified Residential Development) they have the right to transfer credits and allocations amongst themselves or to themselves between properties (if you had a property owner with two different properties, they could shift the allocation). The Mayor added, they have to be among the approved subdivisions. The Attorney advised it was a whole group and the Board did this obviously to ameliorate the affect of QRD Ordinance. The next incremental step would be to let an outsider come in, a non-QRD, and purchase it. The question as to whether they could sell them, the ordinance doesn't specify whether they could or could not sell them; he understood the Town's intent to stay out of the arms-length transaction; the Town just needed notice of transfer between existing QRDs. The next incremental step is to allow the outsider in and introduce themselves to the QRD group; legally it can be done.

Commissioner Meckes questioned that an undeveloped entity, someone not seen, coming out of no where, buy this allocation to go for something we've never seen before. Attorney Kaus, answered this was right, unless the ordinance ties transferability to approval of site plan.

Mayor Weatherly asked what if a partially developed subdivision, for one reason or another, chooses not to pursue the full number of building lots in this subdivision. Commissioner Meckes interjected they still have some allocation they could transfer, with the Mayor asking would this be marketable, saying a developer could take 15 from here and 15 from here, if there were such enough to put together something else. Commissioner Meckes continued this would be beyond, over and above any criteria already established. We've already said 2003 would begin the 4%, but if we have units hanging out there, those could come and go anytime. Mayor Weatherly felt the ordinance could be tightly drawn that you could not.

Commissioner Jones asked why a QRD, that has 15 or so lots to become available, and don't anticipate building out between now and next July, why would they have any value – why would these have a value to someone who already has an allocation. Mayor Weatherly was talking about an outsider, someone that doesn't have allocation. Commissioner Jones asked who this might be – what subdivision. He understood they already have approved lots; maybe Phase 4 of Haddon Hall, asking are there any of those out there that wasn't accommodated by the allocation plan.

Mayor Weatherly was talking about those vested in the allocation plan, those that are not built now, that says they had rather cash their value in now; there are no builders that want these lots. Commissioner Meckes interjected, wait for three years and come back and get what they want, instead of letting them sit. Mayor Weatherly continued while they have market ability. He's was asking the question, not saying he's proposing it.

Commissioner Jones understood as of next July the value of this commodity goes away. Commissioner Meckes didn't think so. Attorney Kaus advised there was some uncertainty on this, and may want to talk about some of this in closed session, but says, as to what happens with the QRD allocations as of July 1, 2003 is unclear.

Commissioner Meckes noted, conceivably, they could stand and go on for an extended length and be available to someone that wants to use them; it's already set aside, allocated – vested; it doesn't have anything to do with the new wastewater treatment capacity from Raleigh. These are approved wastewater treatment entities that will continue to be available even after July 1, 2003. Commissioner Jones agreed. Commissioner Meckes continued conceivably they could become a hot item. Example: A guy has something he wants to do, he comes before the Town and can't meet the criteria and can't fall under the 4% limit; sitting out there is a bunch of already approved allocation, so he goes and buys these and does his deal.

Manager Radford noted every one of them can be controlled by the site plan process, and eventual approval by the Board. Commissioner Jones understood; Commissioner Meckes agreeing this was true, there's wastewater there. Manager Radford continued with the scenario that someone couldn't get something they wanted, we have available sewer and they couldn't get it, probably the reason is this Board had not approved it, and would have to come for approval of whatever. Commissioner Meckes agreed.

Mayor Weatherly stated anything done, may be around a long time; hoping for a regional plant on the ground with the tap open by 2010, but the regulatory process could grind exceedingly slow. Commissioner Meckes commented there may not be any water to send back, with others agreeing.

Mayor Weatherly guessed the ordinance could be changed when and if there was something dramatically different. Commissioner Meckes asked if there were some proposal being thought about, or were they trying to formulate a proposal.

Mayor Weatherly responded conceptually what he thought was being done by this exercise was, that initially there was a specific proposal, and this was to see if there were going to be a switch from apartments for single-family dwellings, one third or so, on the same site and then allow the transferability of those allocations to be able to do so in public good, with the assumption the public is better served by single-family dwellings rather than 400 units of apartments at this particular location. He stated this to be a debatable/discussable issue, and now becomes more esoteric, and what they are there for; do we want to allow this in principle, do we want to allow another, speaking now of only one site, we have opened up "Pandora's box" if there are some unused credits among the approved subdivisions that want to be built. But we're talking about in principle, do we see a public interest being served to allow this particular project to market its sewer allocation. He asked if anyone wanted to pursue this in any thoughtful way.

Commissioner Meckes asked if there were any criteria...not wanting them to market any of their sewer allocation to another apartment complex. Mayor Weatherly asked the Attorney to speak to this. Attorney Kaus advised in one of his discussions with Iannone, all of this would be conditioned for example on a de-intensification of development; if you have a proposed site plan that is "X" intensity, in order to transfer the allocation, the new proposed development for example, talking about the same site as opposed to transferring to off-site, it would have to be lower intensity and of course as said earlier, all depending on site plan approval by this board. There are two important checks this board would have on this process. Mayor Weatherly asked if this were legal, with the Attorney advising it would be.

Commissioner Jensen noted one thing, pushing on mixed use and this could go up to 14 or 20 units per acre at this level, if looking to push for mixed use, then maybe there's a need to define how it would be used in those terms also, or maybe this is the allocation we want to see go to single-family dwellings and make it simple and say it has to go to less density rather than high density.

Manager Radford noted the intention was diverted by plan, that now, the plan doesn't really exist on the ground, and obviously Tucker has the right to broker the property to someone else; at this point this particular part of the discussion is in the air. Commissioner Jensen thought it was more general now, rather than specific, because they could define it now, as the Attorney said, to go to lower density and make it more general in those terms and not specific to this.

Commissioner Meckes asked if the apartments had gone by their second year – where are we on this. The Director of Planning advised they had their ground permit for site work. Commissioner Meckes clarified the acreage.

Tucker indicated there were 30 .47 acres for the apartment land. Ioannoe's proposal included a 5.5 acre parcel running along Kelly Road and talked about shifting this and creating a mixed use. That part of this proposal probably stretched the capabilities of some of the folks they are talking with from a competitive point that would be coming in to replace him as far as a developer. The folks they are talking with now are strictly looking at residential zoning portion of this; the apartment area is about 30.5 acres. He also had heard repeatedly that single-family development was the proposal. Ioannoe's proposal not only included single-family development, but also townhomes. It was substantially less than 50% of the density and he thinks from the owner's standpoint, what they are really looking for more than anything else is some flexibility to address market conditions while at the same time doing it within the vision of where Apex sees this property fitting into the Town's future. He noted the Manager had been very candid as had staff, if there's generally a consensus that a less dense development at this location would probably make sense, but division was currently expressed in the Town. Within the ability to maintain some sanity about the investment from the owner's standpoint, they want to be able to play and help the Town do this. They were really looking for flexibility, and if the Town can provide them with the opportunity to transfer those, in potential, they realize that market for these may go up or down, may become worthless because of current wastewater capacity development and negotiations – may become worth more money. They also understand clearly the Town from a "win-win" standpoint would be looking at the transfer of this, facilitates something else, either another location or a close location that would contribute to the future vision of the town also. They understand this is not one sided, this isn't a request, was simply here to beg the perspective of the property owner. They want to work with the Town and truly in a fashion that accomplishes the goal for the town as well as for them.

Commissioner Grimes noted in the papers lately, apartments are not a real viable development commodity right now, and he doesn't see any reason to bail someone out who had a bad plan. Maybe this will develop as apartments at some point in time, but maybe the guy just wants to dump it and give someone else a chance to do something and we would be subsidizing his bad investment; is the way it sounded to him.

Commissioner Schulze thought this was a good point; we could also help someone out as a "win-win" for both and thinks in this case, he would almost say, don't allow anyone to transfer, asking how could they accept the credit back and then reallocate them if we like the alternative plan.

Mayor Weatherly asked if we wouldn't do this anyway; the sewer capacity we would still have if they don't build, we would reallocate it under our existing – our new ordinance, it will just get rolled into the capacity that we have left to allocate. Commissioner Meckes commented he guesses we have the choice as to whether we have 420 apartments or 170 single-family homes; he prefers the homes if there's anyway this would work.

Mayor Weatherly added this would be a nice, neat, tidy decision that could be made. Commissioner Meckes asked if we could establish criteria, indicating he didn't know what we were doing. Mayor Weatherly asked if we could approve this plan without having loanoe tied to it; did anyone want to pick this concept up and run with it, it would be something to consider, but not a "pig-in-a-poke". He didn't want to get too far-feeled about something unspecified as far as what we would end up with. Commissioner Grimes asked why change the policy when you don't have anything on the table, with Mayor Weatherly agreeing.

Manager Radford asked if direction should be given to Tucker to bring a project similar to this one, bring someone else's plan. The land was not going anywhere except to someone they sell it too and would only be able to encourage their buyer to do something different. If they choose to build 420 units of apartments this had been approved that way and if they want to make some change in some business deal in another way, then encourage those folks to mark through Chapel Glenn something and bring it back as something else. He thinks this will get firm direction.

Mayor Weatherly added we would apply what's in the community's interest as far as allowing this transferability and if it meets the test, then we would be certainly willing and eager to consider it, with Commissioner Meckes agreeing the best step now is take no action until we have something specific. Mayor Weatherly was not comfortable knowing what direction.

Tucker commented on Commissioner Grimes thoughts about bailing a property owner out. He didn't think this is what the property owner was looking for. The investment was made recognizing the density, the approval; the entitlement does have some value given market conditions that we know in time will change in some form or another. He thinks the market conditions as they currently exist represent in his view, an opportunity for the town to negotiate with the property owner to get them to positively consider what is being talked about now, which is reduction in density of the property and ultimately in terms of the sale of the property only, reduction in its value. He understands what is being said, and thinks this could be a very serious charge that you would be bailing out a property owner or an individual or whatever in this kind of situation. That's clearly not what he's trying to achieve; this wasn't their strategy. This proposal came from loanoe and since that time he has since released them to go ahead and market to other people. They have tested the market place and there appears to be very substantial understanding that a For Sale product in this location would be successful opposed to an apartment given prior position. Transportation changes and everything else that continues to develop around it may well bring the apartment project back into a more peaceful situation.

Tucker continued to provide them with these thoughts to bring back a proposal under a different sponsorship, one they both could feel comfortable with was fine and what he's looking for. He's market driven and with this consensus of opinion about what the Board would like to see happen on this site, he's comfortable to report back to the owner that those are marching orders, and will try to get something back before them.

Commissioner Jensen didn't see they were subsidizing so much with this being allowed, because they were not feeding any money, but allowing opportunity for folks to better market their property. Commissioner Meckes added change of use. Commissioner Jensen continued on the other hand, the value of the property is there as apartments and isn't what it was two years ago. What is done now will not change much at all but help out, thinking this should be considered and thinks they should let these folks know it's a possibility, so they can market.

Mayor Weatherly asked what the obligations were to honor the approved site plan if it stays in its current status for an extended period of time. Director of Planning responded their obligation is to keep the building permit moving; they have satisfied the site plan, they have the building permit to keep the project alive, thinking to keep the building permit up would have to show some progress. Building permit is good for six months; and there's not a huge amount of effort to keep it alive. Mayor Weatherly asked if they could set another footing and extend it indefinitely, with Rowland saying they could ask for an inspection.

Commissioner Meckes asked if they didn't do anything and it came up seven months out, could the building permit be pulled, does the site plan still exist, or do they get another building permit. Assistant Manager Wilson stated they have to renew and pay more money. Commissioner Meckes confirmed the site plan doesn't go away and it does not.

Mayor Weatherly referred to the comment of Commissioner Grimes that the value of approved apartment complex is definitely incredible, that probably want be built in the foreseeable future. He agrees with what's said and willing to consider a better project for the community at large, if we're going to be in a situation where the site plan approval will go away and our obligations to that will go away in a realistic time, they need to know that too, so they would know if they were giving away something for nothing. Commissioner Jones liked the "win-win" phrase; good for the developer and the Town.

End of Worksession

ADJOURNMENT

With no further advertised business to come before the Board, the Mayor asked for a motion to adjourn at 7:30 p.m. Motion by Commissioner Schulze and second by Commissioner Grimes to adjourn. Motion carried.

The above minutes were approved on the 20 day of August, 2002.

Deezia A. Paul
Town Clerk

Henry W. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 20, 2002
Apex Town Hall, 73 Hunter Street
7:00 p.m.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Pro tempore Mike Jones called the meeting to order, Tuesday, August 20, 2002 at 7:00 p.m., in the Board Room of the Apex Town Hall, 73 Hunter Street. Mayor Weatherly was out of Town. Commissioners Jensen, Meckes, Grimes and Schulze were present.

Invocation by Commissioner Meckes. Pledge of Allegiance led by Mayor Pro tempore Jones. Welcome by Mayor Pro tempore Jones.

CONSENT AGENDA

Mayor Pro tempore Jones presented the consent agenda to be set and asked it be amended to include: Ratification of Use Agreement with Wake County Board of Education for use of the Apex Community Center.

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to amend the consent agenda to include this item. Motion carried.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the consent agenda as amended. Motion carried.

1. Minutes of the August 6, 2002 Board of Commissioners Meeting.
2. Minutes of the August 6, 2002 Board of Commissioner's Closed Session (separate cover).
3. Minutes of the August 13, 2002 Finance Committee Meeting.
4. Minutes of the August 14, 2002 Board of Commissioners Meeting.
5. Site Plan - Care Environmental, 1005 Investment Boulevard (unanimous approval by Planning Board).
6. Site Plan - Advance Auto Parts, 1757 W. Williams St, Peak Plaza (unanimous approval by Planning Board).
7. Resolution Accepting Dedication of Public Right-of-Way and Easement for Mason Street Widening Project.
8. Award bid for equipment Telelect, Terex Hi-Ranger Model 5FC-60, Quotation No. 0721022 - \$120,125 and referencing the City of Rocky Mount, N.C. Purchase Order No. 18159.
9. Wake County Tax Report.
10. Ratification of Use Agreement with Wake County Board of Education to allow Lufkin Road Middle School to use Apex Community Center for volleyball and basketball practice.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the regular meeting agenda to be set as printed.
With no amendments, the meeting agenda was set.

PUBLIC HEARINGS

Public Hearing # 1 – Amendment to 2010 Land Use Plan (Staff Planner Diane Khin)

Planning Board unanimously recommended approval.

- Public hearing regarding Amendment to the 2010 Land Use Plan Update, for a portion of the Champion property, located at NC55 and future Haddon Hall Drive Extension; possible motion regarding same.

Planner Khin gave background information regarding amendment to the 2010 Land Use Plan Update for a portion of the Champion property:

- 3.43 acres is located at NC55 at future Haddon Hall Drive Extension.
- Current land use designation: Medium/High Density Residential.
- Proposed land use designation: Commercial.
- Property is currently zoned Office and Institutional.
- Staff recommends land use designation amendment to the 2010 Land Use Plan from medium-high density residential to commercial to ensure consistency with abutting parcel of land - Seymour property. Once Haddon Hall Drive Extension is complete, this portion of the Champion land will have streets on three sides (NC55, Haddon Hall Drive, and Zeno Road); the only contiguous parcel of land to this one will be the Seymour property, designated Commercial on the 2010 Land Use Plan. By designating the subject property as Commercial, all the land in the NC55, Zeno Road, and Haddon Hall Drive Extension quadrant will be Commercial.
- The portion of the Champion tract south of the future Haddon Hall Drive Extension will remain in the Office and Institutional zoning district.

Commissioner Jensen expressed concern with commercial development across from Haddon Hall entry, desiring a better buffer. Director of Planning David Rowland stated both tracts are zoned high density residential and where they expect it to be. Khin noted a required 30 foot buffer on thoroughfares, giving an example: Ole Archstone Apartments on NC55 across from Peak Plaza. Commissioner Meckes noted on the east side of NC55 there were condominiums and townhomes to the right and buffers single-family dwellings.

Commissioner Jensen continued typical commercial was O&I and a step down, asking if 30' buffers were acceptable, and knowing it would be discussed at site plan.

Mayor Pro tempore Jones opened the public hearing at 7:07 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve the amendment to the 2010 Land Use Plan Update for the portion of the Champion property located at NC55 and the future Haddon Hall Drive Extension. Motion carried unanimously.

End of public hearing # 1



Public hearings continued

Public Hearing # 2 – Conditional Use Rezoning #O2CU05 (Staff Planner Diane Khin)

Planning Board unanimously recommended approval with additional conditions offered by applicant.

- Public hearing regarding Conditional Use Rezoning #O2CU05, JDN Development Company, petitioner, seeking to rezone 3.43 acres located on NC55 at future Haddon Hall Drive extension, from O&I (Office and Institutional) to (PC-CU) Planned Commercial-Conditional Use; possible motion regarding same.

The Town Clerk swore in all persons, including staff that might speak regarding this conditional use rezoning.

Planner Khin gave background information regarding the conditional use rezoning:

- 3.43 acres located on NC55 at future Haddon Hall Drive Extension
- Adjacent zoning and land uses are outlined in the staff report, page one.
- Adverse impacts such as traffic, noise, and additional lighting are anticipated to add slightly to the impact of the area directly to the north, which is zoned for Planned Commercial and the future Beaver Creek Commons, Phases 1 and 2. Area to the north is over 80 acres and impacts should not be significant in the overall area.

Restriction/Conditions proposed by applicant are outlined on page 2 of August 12, 2002 Staff report, giving uses allowed in 1) and incorporated as a part of the minutes; 2) Section of buffer along Zeno Road across from Carriage Downs will be landscaped to Type A buffer. Other buffers will be adjusted to meet UDO standard; 3) Building orientation will promote pedestrian friendly environment.

Staff comments: Portion of property south of future Haddon Hall Drive Extension is proposed to remain Office and Institutional. Buffer along Zeno Road is proposed to be upgraded from UDO required Type D buffer to Type A buffer, which should provide relief to Carriage Downs from impacts of additional noise and lighting.

Planning Board recommendation: Approval with additional conditions (items 1 – 12) and outlined on the cover sheet of the agenda item action request and incorporated as a part of the minutes.

Staff recommendation: Approval of rezoning based on surrounding land uses and conditions placed on subject property through this conditional use rezoning.

Commissioner Schulze asked if there were paging systems. Khin advised there are no outdoor sales areas, or paging price checks, but fast food restaurants with drive-through pages are allowed.

Commissioner Jensen addressed Type A buffer vs. 30 foot streetscape buffer on NC55, and asking why Type A for Carriage Downs. Khin responded it has to do with distance across the road; was not discussed by Planning Board.

Commissioner Meckes noted Type A buffer were opaque and didn't think this would be wanted on NC55. Khin advised this type buffer could be plants. Commissioner Jensen noted this a short distance from Haddon Hall and was referring to the Champion tract; wanting additional plants, hollies and evergreens, which would give a visual break from residential to commercial zoning. He again noted Office and Institutional as a step down, not wanting to see a "sea of parking". He continued NC55 was wider than Zeno Road and felt there should be no difference in buffer (air was air and could still look through it) and there was no tone down of development for Haddon Hall. Khin noted plant materials were opaque and the width was the same on Zeno Road. Requirement of the UDO is a 30 foot buffer between single-family and commercial, but not wider. Commissioner Jensen thought it seems wider than NC55. Mayor Pro tempore Jones advised this would come up at site plan review. Commissioner Jensen felt this should be addressed by looking for a condition on the rezoning.



Public hearing # 2 continued

Mayor Pro tempore Jones opened the public hearing at 7:20 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Action: Commissioner Jensen made a motion to require Type A buffer along NC55 for the width of the rezoned property and is totally opaque. Attorney Kaus advised if adding a new condition, the applicant would have to agree to it, giving consent, or an addition to meet a standard in the UDO.

JDN wanted to address concerns, but noted this was something to be talked about at site plan impact, but willing to offer additional screening, and will talk about it at site plan review, but the condition for an opaque buffer was not acceptable at this point in time based on the rezoning.

Action: Commissioner Jensen withdrew his motion due to the fact he didn't have agreement with the developer.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to approve the conditional use rezoning per the recommendations of the Planning Board and having been accepted by the applicant. Vote on the motion was 4 in favor and 1 opposed. Commissioner Jensen voted in opposition. Motion carried.

End of Public hearing # 2

Public Hearing # 3 – Major Site Plan – Beaver Creek Commons, Phase 2 (Staff Planner Diane Khin)

Planning Board unanimously recommended approval.

- Public hearing for major site plan, Beaver Creek Commons, Phase 2, located at NC55 and US64; possible motion regarding same.

Staff Planner Khin gave the following background information regarding the major site plan for Beaver Creek Commons, Phase 2:

- 80+ acres located at NC55/US64
- Applicant JDN Development Company
- Plans prepared by McKim & Creed (showing arial site photo)
- Proposed project: Phase 2 of Beaver Creek Commons
- Contains 14 village shops and 10 out parcels
- Uses are consistent with the 2010 Land Use Plan update and with Planned Commercial Zoning District.
- Building Elevations: (slides) 107,000 square foot Village Shops building proposed to be several complimentary colors of brick, masonry unit and EIFS with dark blue metal roofs and awnings to match Phase I buildings. Out parcels are required to be built with the same palate of materials, colors and finishes.
- Resource Conservation Area: meets UDO requirement with 20.294A or 25.22% of the net property in RCA (overall in Phase 1 and 2).
- Landscape/Buffer: meets UDO requirements for buffers, landscape and vehicular use area, except 100' buffer along limited and controlled access US64.
- Applicant requests reduction along ramp from 100' to 60' Type A buffer, based on hardship of extensive wetlands and steep slopes on site (40 foot undisturbed and 20 foot planted to a Type A standard.



Public hearing # 3 continued

Applicant, McKim & Creed offers the following above and beyond UDO requirements in exchange for the buffer reduction:

1. Number of proposed shrubs exceed general landscape requirement by over 60%
2. Thoroughfare buffers, one large tree and two small trees are required for every 1,000 square feet of the area, whereas, plan proposed three large trees for every 1,000 square feet of buffer
3. Screening provides for ornamental shrubs rather than wax myrtles or other less appealing shrubs.

Slide shows Village Shops Landscape and Buffers: 30 foot Type D buffer along Zeno Road has been upgraded to Type A buffer with additional 6 foot tall wooden fence to give better visual and noise buffer between Carriage Downs and village shops. Finished floor elevation of building is 25' lower than road elevation (building sits lower than road).

Staff recommends a line of crape myrtles be planted within 6 foot strip between sidewalk and curb on both sides of Haddon Hall Drive Extension to give sense of enclosure to street and provide attractive entrance for residential neighbors. Plan shows crepe myrtles as recommended. Water line has been relocated so trees will not interfere with it.

Floodplain/Watershed: property located within secondary watershed protection area; stormwater requirements for Phase 2 were met in Phase 1. Impervious surface on site equals 59.97 acres or 69.9% which includes future build out of all the out parcels and meets the 70% impervious surface limitation in the PC District. A portion of the property is located within FEMA designated flood plain and no development activity proposed within the floodway per section 6.216.B.9 (a).

Parking spaces: meets requirements of UDO; regular 533 and handicapped 16; more than 50% of spaces are located to side of village shops buildings due to location of three retail spaces near corner of NC55 and Haddon Hall Drive and one located in the middle of the parking lot near Beaver Creek Drive and NC55. Conditions of variance for 50% parking requirement discussed in Phase I will still apply to Seymour property, but not to the corner where they are meeting the 50% on their own.

Street access: two major entrances onto NC55 (Beaver Creek Drive and Haddon Hall Drive extension) and one minor entrance connecting to Zeno Road are proposed; significant road improvements are proposed to NC55 including traffic signals at both site entrances, and on both ramps to US64.

Traffic Impact Analysis addendum prepared by Ramey Kemp & Associates reviewed by Kimley-Horn & Associates gave following comments, and recommended by staff to be made conditions of approval:

1. Appears right-in/right-out on NC55 serving out parcels does not provide direct connection to Beaver Creek Drive, but fact cannot be determined with plan given. Out parcels 1 – 4 should be submitted for planning approval as a group to determine how traffic will circulate between them and how right-in/right-out will operate. Out parcels 1-4 are viewed to have most potential impact to traffic operations on and off-site out of ten out parcels due to location with respect to primary accesses for center and to NC55.
2. All roadway improvements Phase 1 and 2 should be completed prior to opening of Phase 1, including those noted as funded by NCDOT (if NCDOT construction schedule for NC55 improvements does not meet development timelines, developer is expected to complete improvements prior to opening Phase I).



Public hearing # 3 continued

Commissioner Jensen commented on the word "should" rather than must, is there a difference in those two. Attorney Kaus advised the word "shall" is compulsory and the courts would look to see the word "shall" as opposed to could or should or may. Commissioner Jensen asked about the word "expected". Attorney Kaus advised again, the preferable word from the courts perspective would be "shall".

Commissioner Meckes commented but not for the NCDOT; not "shall" for NCDOT because if NCDOT doesn't complete it then the developer has too. This was the way he read it. Attorney Kaus responded if that were the intent of the Board.

Commissioner Jensen didn't read it that way, because all road improvements shown in Phase 1 and 2 should be completed prior to opening Phase 1, including those noted as funded by NCDOT. Commissioner Meckes commented if NCDOT didn't do this, then the developer has to do it. Attorney Kaus advised what the courts would be looking at was to define the Board's intent and thinks the language is pretty clear what you are expected to hear, which is the developer needs to do the improvements.

Khin continued:

3. Plan showing current existing and proposed lanes/widening on NC55 between Haddon Hall and Olive Chapel Road is requested to understand all improvements planned or proposed.
4. Since additional stacking distance has not been provided internal to site at Village access onto Haddon Hall Extension, it is recommended a left-turn lane be provided serving parking bays to south along entrance throat - provides 4-lane section - two entering and two exiting along Village access between Haddon Hall and second parking bay to south. This 4-lane section can be transitioned to two-lane section across main body of shopping center frontage.

Lighting: plan proposes 41 black cut-off shoebox fixtures on 27 foot and 29 foot poles mounted in vehicular use area; maximum 250 watts; also proposes 40 black antique street lamps mounted on 12 foot poles in tandem with shoebox fixtures on 27 foot poles; maximum 100 watts. Parking area has an average 3.1 foot candles which meets UDO of 3.1 to 4.1 for regional retail centers. Maximum spillover level of 1.0 fc onto adjoining non-residential properties and rights-of-way is also met.

Staff recommendation; Approval of major site plan with the four conditions recommended by Kimley-Horne:

Planning Board recommendation: Unanimous approval of site plan as presented.

Khin answered questions.

Commissioner Schulze had raised the issue regarding a pedestrian crossing at Haddon Hall and asked if anything had developed regarding this. Khin responded there will be a required traffic signal at this intersection and shows the cross walk. JDN representative didn't know if the cross walk was visible; but understands there is pedestrian time on the signal for a pedestrian crossing.

JDN consultant noted the signals had not yet been designed which will show the ultimate design of the traffic control at this intersection; however, the traffic impact analysis provided a minimum green time to accommodate a pedestrian crossing on NC55.



Public hearing # 3 continued

Commissioner Schulze asked if there would be a press button to safely cross. Consultant stated he would work with NCDOT for signal design; but feels NCDOT would not have a problem with this; but couldn't speak for them. Commissioner Schulze wanted as much of a commitment as possible, assuming the rest of the Board were in agreement to this. JDN Consultant responded he would work towards this.

Commissioner Jensen brought up a suggestion of a walkway connection between Carriage Downs and east end of the proposed Lowes building for connectivity. This was addressed by the folks at Beckett Crossing at one point. Khin responded at the Carriage Downs end of the project, they are relying on sidewalks within the right-of-way; there's a significant retaining wall of 12 to 14 feet back of the Lowes.

Commissioner Grimes asked the type buffer, wanting a description. Khin responded typical requirement is two large trees and one small tree per 1000 square feet. In addition, there are vehicle use area requirements where they are required to have a shrub line blocking the parking area and driveways 42" tall, sometime in buffer, sometime not, but right at edge of buffer. Commissioner Grimes asked what kind of plants are proposed or shrubs. Khin noted the scrubs upfront along NC55. JDN representative noted they vary; magnolias. Commissioner Grimes was thinking of the line that weaves. JDN representative noted those as VIC's which are Viburnum, which creates a hedge appearance. Commissioner Grimes asked if they need to be pruned to create a height of 42 asking if this was the limit for a shrub of this type. JDN consultant noted they will be taller and will need to be maintained to stay 4 feet or so. Commissioner Grimes asked if the entire row were Viburnum or more than one type. Khin noted they are Viburnum; some holly mixed in; 20/30 of each alternating across the front. Commissioner Grimes asked if they would reach the same elevation. JDN consultant stated there would be some smaller hollies 24 to 30" and there will also be a berm; it will not be ridged in design; coming up and down.

Commissioner Meckes asked at this corner, if the foliage reaches maturity, it appears 'dense'. Khin responded the darker spot is seasonal plantings, and some magnolias. Trees located are various types, some deciduous (cherries), some Darlington oaks (deciduous), Commissioner Grimes noted the magnolias would provide a different buffer if they were pruned than if they were allowed to drape or stay on the ground if left; and feels they should be left. JDN representative indicated they were not specifying how to lean them up, so they would serve as a full buffer. Commissioner Jensen asked what type Magnolias, deciduous or evergreen, with Commissioner Grimes thinking of southern magnolias. Consultant noted there are six "granda-flora" variety green-back magnolia, not southern, it is evergreen, the typical large magnolia.

Commissioner Jensen commented on how tall they get. He was thinking 40 feet plant and looking at density doesn't make sense. Khin responded at installation the height would be 12 to 14 feet. Consultant noted they will grow to 30-35 foot height, but unsure and are evergreen. Commissioner Jensen asked what was stopping us from carrying the evergreen configuration through out. Consultant stated the way it was planted was for variety color and seasonal interest; evergreen, deciduous, alternate colors. Commissioner Jensen felt through out a good part of the year you look at tree trunks and branches, rather than evergreen, and his concern was the impact to Haddon Hall entry way. He continued, it may not be a lot, but it is important, recalling Home Depot and have upgraded buffer as a request from the subdivision on their own and doesn't want this to happen here in two years with people being upset; he doesn't think it is as bad as HD but is concerned about the corner.. JDN representative responded he didn't have a problem replacing or substituting more evergreen material there along the buffer, if more hollies, etc. Commissioner Jensen wanted the Nellie Stevens or larger evergreens or possibly move some of the magnolias over.



Public hearing # 3 continued

JDN representative noted for the retail development, magnolias would be 30' in height, and it can't happen. Retail needs street appeal. Commissioner Jensen indicated they already have them. JDN representative noted they are like bookends; to break up the visual appearance by height and color to the plantings and is what a designer is supposed to do. He stated if a designer brought him 30' magnolias across the front, they would be fired; it doesn't work this way on a retail project. Commissioner Jensen was asking it only in front of the front of Haddon Hall entrance, he's trying to tone this down for one of the largest subdivisions.

JDN representative noted what is happening from the area in question, looking at the zoning map, the Champion piece comes off at an angle to the roadway and flairs back out; the point; the rezoning application deals with a limited area of the property. When looking at Haddon Hall and driving down into Haddon Hall Extension, their houses are from visual inspection 30' below NC55 grade and down in a hole off NC55. Site-line issues clearly from a house perspective is important, he see no issue; concern that may be justifiable is they come out of the roadway, get to the signal, what do they see. The buildings are detailed design, an attractive building and nothing they want to hide, they are architecturally attractive buildings and within a retail environment and when you come to the traffic signal on NC55, they need to be visible, not blaring in front of you, but full blockage is not customary to retail. To him, the issue is headlights cars, shield the cars, don't see a sea of asphalt, you see an attractive building and the focus of this design. The landscape along the edge of the parking lot calls for a two or three foot berm above the top of curve elevation and then plants on top; headlights are two and one-half feet high and between the berms and landscape will shield any headlights glare directed towards NC55, as well as shielding all the vehicles in the parking lot; with the parking lot on a 2 to 3 percent grade; you may see some of the vehicles during winter months, but the issue is it will break up the perception that there will be a sea of asphalt and will screen the first couple of rows of parking so you will see green buffer when sitting at the traffic signal. He thinks he has met the objectives; they are on the same page, and thinks the plan represents what is needed. Commissioner Jensen stated they were not.

Commissioner Schulze commented on the out parcels and that people would like to see more restaurants, asking if this provides an opportunity for this; not wanting a lot of fast food restaurants there. He asked if the plots were big enough for Red Lobster, Outback, or steakhouse. JDN representative commented a strong interest by Ruby's and Applebee's; they can't commit to anything now, but will come in for site plans; there's a lot of strong interest from the family style restaurants; three or four tops fast foods would be a lot.

Commissioner Jensen commented on stormwater; the additional pavement and the impervious surface for run off for the pond. JDN representative noted it's the same as for Phase I, draining back to the retention basins; they have been intentionally over designed as this was a pending reality as far as the property standing by itself; calculations were resubmitted and are acceptable. Commissioner Jensen stated if cutting in twelve foot retaining walls, topography lines don't mean a lot at this point. JDN representative noted this component is connected into the drain system on Phase I component of Beaver Creek Drive and all the out parcels, Beaver Creek Drive grades down to beaver Creek, so there will be a secondary drain system picking up the proposed development of the out parcels tying into the trunk line that goes to the basin system.

Commissioner Jensen asked traffic consultant to comment on the off ramp off of the off ramp. He asked if Horne had discussed this with them. Mike Horne responded he had not raised this with NCDOT. Commissioner Jensen asked if this were his conclusion they would say no. Horne responded, he had indicated that not only is it the NCDOT, but because this is a US Highway, the Federal Highway Administration would be involved as well, and the current criteria set forth by the Federal Highway Administration will not allow it.



Public hearing # 3 continued

He believed he had also indicated through out the state of NC, where years ago they had allowed certain things of this nature, a ramp off of a ramp, they are in the process of going through those interstate roadways and US highways and having to buy back those access points that were once allowed back in the 50's and 60's.

Commissioner Jensen felt this was a safety situation, and why not allow it off US64; coming off US64 to him was somewhat ideal unless it was in fact a safety problem; asking if people get confused or try to jog across, or were there more accidents on these things; what was the problem.

Horne, stated the feeling is there is a roadway hierarchy meaning the Interstate Freeway System I-40's that goes to US Routes to NC routes that goes to SR routes and then collector streets network. The Federal Highway Administration is very interested in their system, the interstate roadways and US highway roadways, and are protective of their roadway system, deeming to facilitate movement of traffic on their roadways, not desiring to have access to roads taking you directly from an interstate freeway into a collector street stem.

Commissioner Jensen asked about Crossroads. Horne continued it is a ramp off of a US Route, US1 and US64 taking you into it, but not a ramp off of a ramp; it also comes off a collector distributor section of a freeway that has a different allowance of speed on it, where it is not directly off the main roadway. Commissioner Jensen asked if he considered this a safety hazard. Commissioner Meckes stated we are looking at hierarchy. Horne believes as traffic increases, and traffic does increase everywhere, he's yet to see traffic go down, and with this thinks we need to be innovative and need "thinking outside the box", that there is room and times we need to do this and be appropriate. Commissioner Jensen asked if it could safely be done. Horne responded absolutely. Commissioner Jensen felt if we're talking hierarchy, this was unfortunate. Horne didn't disagree with this, but to make it safe, it may take half the site to do this safely. Commissioner Jensen stated if we did do this, we would begin the ramp substantially farther west that would allow for the slow down and wouldn't impact this site in terms of; he stated, it kills him that we didn't ask; he understands maybe why, but it might sound foolish, but sometimes its worthwhile; he's done this here a few times with a "no". Horne responded he appreciates the question and didn't not ask because he was too arrogant to ask, but needs to understand the criteria set forth by the Federal Highway Administration and NCDOT to obtain their funding has to oblige and asking for a ramp off of a ramp particularly when the ramp would feed a development. Commissioner Jensen asked if the individual developing that property had to pay for it. Horne responded totally, yes; that's a given to NCDOT, even if they decided to pay it in double. Commissioner Jensen responded for an organization that has too much money and they keep taking it away from us.

Commissioner Schulze asked Horne to comment on the four conditions regarding street access and how they were addressed by the developer; one being the first four parcels and their impact. Horne explained it appears the right-in and right-out on NC55 serving the out parcels does not provide a direct connection to Beaver Creek Drive, but the fact cannot be determined with the given plan. They had several scenarios they were working through with the developer in regards to this and how it was going to provide a connection over to Beaver Creek Commons and concerned. Point being if there were a direct connection, anyone coming from US64 or this direction on NC55, would they come here or try to turn down Beaver Creek Drive. They thought they were providing a short-cut and were concerned and have indicated that with those four out parcels, should be submitted for planning approval as a group, They need to know, and envision this right-in and right-out will serve the out parcels and do not want it to be a cut through or somewhere where someone can say zip through here, and with all other inter connections of the out parcels all of a sudden create a grid lock.



Public hearing # 3 continued

All four out parcels should be submitted as a group and how traffic will circulate between them and how the right-in and right-out would operate; out parcels one and four are viewed to have the most potential impacts to traffic operations on and off site; of the ten out parcels shown due to their location with respect to the primary access for the center and to NC55. He understands the developer has agreed to this. JDN representative stating this was correct. Commissioner Schulze noted this would not become a cut through, but would be access for just those four parcels. Horne stated this was correct. JDN representative noted this integrated into a common access drive to serve those parcels only. Commissioner Meckes commented you would not have access to them coming from Apex. Horne stated no. Mayor Pro tempore Jones noted the four out parcels would come at one time at site plan review and how the traffic would flow; with right-in and right-out you would have to turn onto Beaver Creek. Commissioner Jensen noted if you aren't going to have a cut-through, you would have to block off the parking lot. Horne responded or to provide the parking lot such that no one would want to do this and why they want to bring all four. He's worked with staff and they understand the desire and are waiting for the four to come in. Commissioner Meckes commented this is a safety issue, screeching off NC55. Horne noted everyone loves to go to the first access point and turn in.

Commissioner Jensen assumed the buildings on the out parcels would face on Beaver Creek Drive as a front; asking with access to NC55 are they looking at as far as fronts on NC55 are we going to have glass or something on both sides of those out parcel buildings to see from either direction. JDN representative stated their intent is to have all out parcels facing Beaver Creek as their primary frontage, and where necessary finishing off all four sides of the buildings. When looking at out parcels, you watch building orientation; it's driven on how do you access that property and where is the vehicular orientation going to occur; one may not face Beaver Creek; but will have to look at this at site plan process; you will have a look at all of those; and will put together a comprehensive plan that has consistency throughout.

Mayor Pro tempore Jones stated the recommendation was made which they have agreed that out parcels 1 - 4 will be submitted as a package. JDN representative noted when they come back, he understood they may not have all four tenants locked in at this time, but would commit to a circulation pattern and building foot print so they could define how the parking will be laid out and how you would access those pads.

Horne noted intent was not to have it as a straight shot where it comes directly to Beaver Creek Drive and the developer has said he understands this and agrees with it. This stemmed from the NC DOT in some of their review comments back as well. He stated this came full circle, but is also through NCDOT.

On condition # 2; all roadway improvements for Phase I and II should be completed and understands the change in word "shall be completed" and when writing this was a recommendation to staff; Phase I and Phase II shall be completed prior to opening Phase I including those funded by NCDOT. If NCDOT construction scheduled NC55 improvements do not meet development time lines, then the developer "shall" not is expected, shall complete the improvements.

Commissioner Jensen noted they are talking about NCDOT doing some improvements, asking what improvements they are talking about, what NCDOT is actually doing and what improvements by the developer. Horne responded the ones most in question are the two signals at the ramps and have indicated they plan to come in and be widening north of the bridge and they will signalize both of the ramps. If this development gets ahead of NCDOT, they didn't want this development to come in and load traffic onto the interchange and not have those signals.



Public hearing # 3 continued

Commissioner Jensen asked if NCDOT funding some of the widening, he was interested in how this funding is taking place. JDN representative responded it was work in progress but the plan is that NCDOT has final construction documents including installing temporary signals, permanent signals, and widening that overlaps their proposal. They have agreed in concept with NCDOT to create a break line in the plans that says the developer will build up to this point and NCDOT will build up to another point. Based on the private development sector they have ability to get work done a lot faster than NCDOT process, so what they will do is be the aggressor on the process, extend their work limit and into their scope and take over this work, so they can control the time frame of completion. The project NCDOT is letting is a very large project and goes miles north of site; the contractor is not obligated to complete any particular section at any particular time; a complete date, but not obligated to say the signals on US64 have to be done by June 2004, so the only way to protect themselves is take control of the process and will do this and pay for it; NCDOT may or may not reimburse them for portions of the work given its part of their plans, but are agreeing to this condition and working with NCDOT to assure this is the case.

Commissioner Jensen asked clarification regarding what parts they were committed to, vs. not the areas they may be going into; are they committed to funding and doing right in front of the development or just part of it. JDN representative responded everything on their side of the bridge has always been theirs; the two signals on US64 and the widening up to the Lowes Driveway. They are transitioning their widening north of the bridge into the Lowes acceleration lane; this was always their responsibility to make it happen. Mayor Pro tempore asked who would actually perform the work. JDN representative stated if they get tonight, they are not doing the work; NCDOT is proceeding with their process; they have no assurances at this point in time that they can build this. It was obvious to him there needs to be developed some certain approvals before they can commit to NCDOT, saying lets enter into an agreement to do the work and until they have vested rights in this project, they can't enter into an agreement with NCDOT. They have to get to this point then finalize the agreement with NCDOT; there is a three party agreement with Town that says we will do this, committed to it, they will have to pay for it and they go from there. Commissioner Meckes noted all this has to be done before. Horne stated the improvements shown on the set of plans are what dictates is what they recommend; if NCDOT decides not to do it, then the improvements that have been identified on the set of plans dictate and they are clear with this.

The third condition shows current existing and proposed lanes and widening on NC55 between Haddon Hall and Olive Chapel Road is requested to understand all improvements planned or proposed. This is a request that was one for the benefit of the commission to see the extent of the widening being done and to understand there was question by the Planning Commission of knowing there is widening now that is occurring beyond Haddon Hall; Haddon Hall further south does go for quite a distance and there is widening that has occurred on NC55 up by Olive Chapel; there is a piece left and at the Planning Board there was a mention the Town may want to look at this piece that is missing and get it widened. Commissioner Jensen responded done by NCDOT or at the Towns expense. Horne responding this is correct. This was a visual to help clarify and understand.

Condition four: Since additional stacking distance has not been provided internal to site at Village access onto Haddon Hall Extension, (has been modified from the original one what at one time there was no building here in the area that was along this side; this was parking and now they have changed it to have a building and put parking along the side to meet the UDO Ordinance - meets 50% requirement on the Champion property where there was no variance.) They are concerned with this amount of the development and see access this access point and coming out to the signal on NC55. They will not want to come back and come out this way; that's why the second point.



Public hearing # 3 continued

With people wanting to come in and people waiting to come out, they wanted to have enough room that if someone wanted to turn left and come into this parking this wouldn't get locked up or frozen and back traffic up onto Haddon Hall extension. They have talked to the developer and they are in concurrence in providing this, they can provide this and he's comfortable with this.

Commissioner Schulze felt the developers had agreed with everything suggested. Horne responded yes.

Commissioner Jensen handed a drawing of a suggestion by Philip Myers regarding traffic control – no turns left/right that came from the Planning Board meeting. Mayor Pro tempore asked him for clarification – Commissioner Jensen explained; with the objective being to stop people from cutting through. Mayor Pro tempore stated people who live there want be able to get their; with Commissioner Jensen agreeing on the other hand they would not have cut-through traffic and was the trade off. He was suggesting this may not need to be done immediately, but wanted to get the Board's opinion and Horne's opinion regarding if there is a cut through problem through Zeno or Red Barn, asking if this is a possible solution. The last meeting he had stated Zeno would not be used much for access to this development and probably Red Barn wouldn't be if there were an upgrade of Olive Chapel and NC55; in effect maybe it would only affect the subdivision of Beckett Crossing. He was asking if the folks on Zeno Road, Beckett Crossing and Carriage Down find that the programs we put in place does not satisfy them in terms of preventing cut-through traffic if their quality of life is gone down and degraded, can we do this?

JDN representative had met with NCDOT today and the residents of Zeno Road or those that could attend to discuss this very issue. He understood this was prepared last week; they wanted to give a status – the NCDOT representative discussed the options on traffic calming on Zeno Road and there weren't a lot of options there because of their focus on moving traffic, but basically, NCDOT will be paving Zeno Road within 2003/2004 – number one on their funding list for 2003 as long as funding occurs by 2003 and could be paved as early as fall of 2003 and in advance of when their first stores would be opened. The traffic calming, not speaking for the Zeno Road residents, but appeared based on being able to pave that road and get rid of the concern for noise/dust generated from the dirt road, it's not the best of both worlds, but at least a start in the right direction. Signage on Zeno Road would fall under the jurisdiction of NCDOT and are looking at signage now; the residents came up with internal signage for Zeno Road as far as "dirt road ahead" or "narrow road ahead" – "deer crossing" whatever it took to slowdown traffic on the paved portion before the dirt section between now and when it gets paved. This is in NCDOT's hands now.

He continued as far as Haddon Hall, this will be a Town roadway and indicated the no left turn in Phase II is a problem for them and not sure what it does; what benefit the no left turn does and the right turn only deals with Zeno Road.

Commissioner Jensen explained the left turn if it were used as a cut through to get into Phase II, the objective would be to route them back to NC55 according to his understanding. If they have a left hand opportunity, they will come down, make this jog, and go into Phase II. Commissioner Meckes asked if they could go straight on Zeno Road or it says right turn only; does this mean no one can go straight on Zeno. Commissioner Jensen responded yes, because it brings you down into the core; it's a right turn off Zeno would be the objective. He stated if as was said, people are not going to be using Zeno Road for cut through or Red Barn Way as a cut through, then in effect it shouldn't effect the business opportunities of this development. If there are a bunch of people using Zeno Road and Red Barn Way possibly this idea will affect, but he's been led to believe there will not be a problem and this will ensure we don't, if there is a problem.



Public hearing # 3 continued

JDN representative agreed with him if Zeno Road was going to stay a dirt road; the news has changed the scenario is NCDOT's commitment to having Zeno Road paved soon to a point where there is a very strong probability it will be paved before they open the first store; with the road being paved, and again, his opinion is that Zeno Road is great service road to NC55. There is land zoned along Zeno Road, between Zeno and NC55 that is office and commercial land and from a planning perspective the interconnectivity of Zeno Road is a good thing. When looking at trying to get this brake, dirt road yes, he agrees with him, but the facts are we have to deal with the fact that Zeno Road will be paved within the next year and one half. Commissioner Jensen responded and then it will be a cut through. JDN representative noted not a cut through, but serve as a collector for the residents.

Commissioner Meckes commented this is where we get back to "what is a cut through", depending on Zeno residents feelings as well; on one side, it's not a cut through, but inter-connectivity. Director of Planning stated Brandon Jones NCDOT says this road will be paved 2003/2004 time frame; once paved the town would look at annexation of the road. NCDOT can not put in traffic calming devices, it's not their nature to do this; Town would look at annexation of the road and bring it into our system, where the Town could place traffic calming on these roads.

Mayor Pro tempore Jones noted the Manager had just made the point that we are contemplating a multi-million dollar shopping center and we shouldn't even be thinking about a dirt road adjacent to it, or about a \$50 sign that says "deer crossing" to keep from using a dirt road adjacent to this shopping center. There should be some commitment on someone's part even if it's the Town's to make sure that Zeno Road is paved prior to this happening, and he didn't know how to do this, but agrees it should be and has to be paved. Commissioner Jensen commented if it isn't paved make this would help out, because you don't want people going down an unpaved road. Commissioner Meckes asked about the condition of the road (lots of ruts).

Mayor Pro tempore Jones wanted to open the public hearing since; there had been on-going discussion for the past forty-five minutes.

Commissioner Jensen had another question. Mayor Pro tempore Jones told him he could have one more question; and hoped it would be answered in an expeditious manner, if he would open the public hearing and come back.

Director of Planning stated he heard Brandon Jones NCDOT say they would be willing to let the Town take over the road, once paved, and then the Town could make plans for traffic calming, sidewalks that would be part of the road section when development occurred on it, just like there's development on state roads where there is pavement and you add curb, gutter and sidewalk per the Town's standards. Horne asked is the Town, if there is a problem, it would be best if the Town could go back to the state, ask the state to abandon the right-of-way on the road, then the Town would take it over for maintenance and you would be allowed to do what you deem fit on the road, of course, within reason for your own engineering staff; they want let you do just anything.

Commissioner Jensen asked if this were a possible solution. Horne commented it could be a possible solution, but hesitant to say what any solution would be until he knew what the problem is. Commissioner Jensen responded, yes, and that was why he was proposing if there is a problem, and the Zeno Road folks or the Beckett Crossing folks come to them - this is short of shutting off the road with a blockade or anything else. Horne continued he could come up with a better way.

Commissioner Meckes commented on gated communities; not real gate, but everyone thinks they are so, no one goes through them.



Public hearing # 3 continued

Commissioner Jensen questioned the connectivity to Kelly Road and he understands cost is prohibitive for this development to be willing to consider as an option; however, he thinks there should be some pro-rata connectivity requirement where this development will help with this connectivity. To him it is a key connectivity that the Town should have out to Kelly Road with the extension of Beaver Creek Road/Zeno Road. His question: How can we do a pro-rated improvement of this road, and can we buy easements through this development and then when other stores come in, have them put the road; how can we break it up so the folks putting the pressure on Apex pays their fair share. He doesn't see this development paying their fair share at this point.

Horne had talked in length as to what was fair and equitable was. In discussion he would have to ask him, does other development in question pay a pro-rata share of the improvements that is being proposed right now. If they do, then he could agree having them pay some pro-rata share for the other, because that's fair and equitable, but right now they are clearly doing a substantial amount of improvements at a vast cost and they have acceptable levels of service and accommodate this, this is fact. He wasn't sure and the answer in his opinion is let's do transportation impact fees and believes they are paying. Commissioner Jensen asked who's really going to pay to upgrade NC55; will be this development or NCDOT and there's no answer to this and he can't get an answer to this tonight. Horne stated he thought he was very clear with him, that he fully believes in his professional opinion they will do at least the improvement identified on their plan for the road widening on NC55, the Beaver Creek Roadway, Haddon Hall Extension, and they will pay for the two signals at their main entrance at Haddon Hall and they will most likely pay – the only question in his mind is, who pays for the traffic signals, and the only question as to overlapping and his guess is that NCDOT will find a way to get it from them. Commissioner Jensen again asked about the widening. Horne responded they can't open Phase I until it's done. Commissioner Jensen understood. Horne continued if they wanted to wait five years.....Commissioner Jensen interjected he didn't want to strap these folks with a whole bunch, but at the same time if you're going to get off the hook for the NC55 for most of it, then he wanted to see them do their fair share for the other, and probably want, but wanted to clear the air tonight, because it was the last shot.

JDN representative stated he wanted to clear the issue, they were in no way getting anywhere close to a clean slate on NC55; there's may be two or three percent of the cost of the work being debated now as far as whether it is within NCDOT's scope and whether they will participate in the signals. The issue as a developer is they design the signal, the signal they design is in accordance with NCDOT's standards, but is not the signal NCDOT would design if it's their own job. They have a less conscious approach to some of their design; they now have to build the signal off their plans so they would absorb the doubt as to what they would design and what they have. All they would pick up is the upgrade in the plans from where they are today to what they would build for them. Commissioner Jensen stated this is on the signals, what about the widening.

JDN representative stated the widening they are doing; the NCDOT widening plan didn't even come south of the bridge; everything has always been theirs and always will be. There's a small amount of transition where they have transitioned down and that whole section is going wide and north and is a small transition area; this is probably one-quarter of one percent of the works that's being talked about. The entire thing is two or three percent of the entire NC55 widening plan that is even in debate.

Commissioner Jensen commented, he was saying, they are basically committed to 97% of the cost of doing the work on NC55. JDN representative stated they are committed to 100% and have no option. Commissioner Jensen continued, you expect or you will be paying 97% no matter what.



Public hearing # 3 continued

JDN representative stated he didn't know this, and wishes he could tell, but they are committed and have 100% of the cost in their budget and anticipates paying 100%. If there is a process within NCDOT that they are upgrading their system to accommodate their design, then yes, they anticipate them to pay for them too; this means their costs will go up instead of \$1.5 million project, because they are building to NCDOT plans, it will be \$1.6 million. They will pay the extra \$100 thousand for them to do upgrade of signal design.

Commissioner Meckes noted a \$1.6 million shortfall in the budget for the state next year and NCDOT was not going to come in and pay anything these guys are going to do. Commissioner Jensen continued, basically they are committed, but what would happen if they didn't have to pay; could some of the other road be funded. JDN representative didn't know; they had to play by the rules. You have a TIF in place then they are committed to paying what their obligation is, if rules are established. If they don't know what the rules are, and they can't throw money out and can't pay something without either an ordinance being in place, or firm established rules in place for them to follow. Commissioner Jensen said he understood and agreed.

Mayor Pro tempore opened the public hearing at 8:30 p.m. since most of the aspects of the project had been discussed, addressing comments and concerns. Those speaking in favor or in support:

Philip Myers, 1407 Zeno Road, was not against the development. He wanted to clarify some things from the NCDOT meeting and appreciated Commissioner Jensen's efforts on Zeno Road, which came from his idea a few meetings ago. Finally NCDOT answered questions and he understands where they are coming from. As said, they are not in the traffic calming business, but traffic enabling business and will not entertain, while it's their road, any kind of traffic calming situation. He found out from Brandon Jones, NCDOT, Zeno- Road is number one for 2003/04 paving under the secondary road program for Wake County, meaning even if they don't get all the money, they are still number one; some things left over from this year may not happen and could be pushed up. NCDOT isn't going to entertain any kind of calming, as long as it's their road they want the road to go all the way to the end at Art Farm Road. With the concept of NCDOT coming in and paving it within a window of when the developer will be coming on line, and the Town stepping in and saying they would support annexation of the road bed, getting control of it, then, get into the traffic calming business. He thinks it's a good idea, and if NCDOT wasn't going to do any access to or from the shopping center, then he would rather have the road paved since he'll get the traffic anyway and would rather not deal with the dust. If the Town takes the road, the effect of the paving would get the road narrower for some traffic calming; getting control of the situation and getting NCDOT out of the picture, these things can be addressed, if in fact it becomes an issue. He thinks it will become an issue, but based on the reality situation, right now, it's an NCDOT game and they have said they are not in the traffic claming business, and not going to entertain anything like this. With the idea they will pave it soon, he encouraged the Board to encourage staff to stay on top of this. As a citizen he would be talking with whoever he needs to talk to at the state to keep this number one and get this targeted where Zeno is paved before the shopping center really has an impact on Zeno Road, then he would have to take it from there. He thinks until the town controls the road, they are not going to get the traffic calming needed; and thinking it will ultimately need calming and doesn't know what form this will take. There is the issue of commercial rating of the east side of the road; everything on the east side has been rezoned. He summed up that we do need to push NCDOT somehow, and sounds like a contradiction of terms, but get control of the road, see what needs to be done, get it paved, then see how traffic calming can be done, once, the Town gets control. He's encouraged by today and worked for a form municipality and understands how bureaucracy works, promised the world, but funding and political situations change. He encourages staying on top of this; this will be an issue and you will hear from Beckett Crossing, Carriage Downs and Zeno Road people. Even with speed bumps every car length there will be people doing this because they do not want to sit through light cycles at NC55 and Olive Chapel and another set of cycles at Haddon Hall Extension or Beaver Creek Commons. It will be an issue; what's the reality and get control of the situation and the way to do this is get it out of NCDOT's hands. He express his thanks for the efforts in this area and looks forward to working with the Town and getting these issues solved.



Art Clem, Beckett Crossing, wasn't against the project but concerned with traffic. With bureaucracy, changes in political environment and moving on of time and cycles he wanted to reinforcement the things for Beckett Crossing, and Carriage Downs such as traffic calming devices, stop signs, and those type things. After the last meeting this was talked about, the police were there checking traffic. They would like those traffic calming devices in before the traffic flow that justifies those devices, because it will come and he doesn't know if they will start to justify the traffic flow devices at this point in time, but they want be justified until this center is opened. He wanted to reinforce Beckett Crossing people do need these speed humps, these stop signs and asked for two signs to be placed at each end, Red Barn and the other way saying "no through traffic". He didn't know if it need ordinance to do so, but would warn people not to go through there. An editorial point: he thinks this developer has delivered on all that has been asked of them, but thinks the process that the Town goes through from the beginning to the end should develop more. He as an observed noted the process as somewhat mediocre traffic plan that is followed; he thinks there needs to be a more detailed on any major commercial development, not only at NC55 and US64, but the traffic at Kelly Road and the traffic on Vision Drive and at Olive Chapel; extend this traffic out so we have a broad and comprehensive plan as to what is going on. It bothers him that we are so effected by the state highway system, that somehow we have to bring political might to bare on our representatives and the people that represent us to have some of the NCDOT people right in the process. In industry, when using the word they, you can never attach they - there's no one to attack or put pressure on. No one to do anything because they are a term you can't get too. He thinks we need someone in on this process. All talked about will not solve the traffic problem and thinks when this center opens and more commercial development goes on, he thinks Zeno Road to Kelly Road has to be addressed and would like this Board, right away, get an engineering firm to work on the traffic flow that will come from this center and the others that will go along the Zeno Road corridor as the next five/six/ or ten years goes along; he thinks we should start today as a town, planning Zeno Road so when the center opens, maybe they could alter their plan to fit into this corridor from Zeno Road to Kelly Road. How to pay for the road, he thinks they have a transportation impact fee of \$200,000 they will deliver to the town and put liens on properties along there and when they go to commercial, they pay for some of the improvement of the road and we bank-rolle the road and get it in. Traffic, traffic, traffic, and reinforce what you will do for Beckett Crossing.

Kevin Boyce, Carriage Downs was disappointed that he was not invited to the traffic meeting with NCDOT and had wanted to participate but glad it was productive toward the Zeno Road problem and glad to hear about the state plans. His main concern was with Red Barn Way, not having any houses to back up against this, some townhomes do, there's a small berm, but some houses are not built yet. This street is already a problem; the cable came down connecting it to Beckett Crossing and there is now traffic in excess of 50 mph regularly and now has a posted 25 mph. The development plan has a child's playground on this street; one resident was merely hit by a car two weeks ago. The problem will be exasperated by this opening if people come into Red Barn Way and go into the shopping area, not wanting to down Olive Chapel Road and NC55. The same story from the others; the problem exists now and will get worse. The Planning Board made a motion for a traffic study on Red Barn Way and hopes this Board will push this through and fairly soon. As construction continues and the lots sell, the problem will be worse and potential for people to get hurt, especially when the playground is up. He's in favor of this development and looks forward to Lowes and a police substation and a signal light to get out in the morning.

Mayor Pro tempore Jones closed the public hearing at 8:45 p.m. and referred this item back to the Board for consideration.

Commissioner Schulze asked if the Wal-mart didn't sign and it becomes a Target is the color scheme affected. Khin responded the colors are the colors in these buildings with the two big box buildings utilizing the darker/lighter brick and the roofs are blue and is what is approved for the building - if they want to change colors, it would have to be a uniform change across the entire project.



Commissioner Schulze would want it this way; if Target did come in and the Lowes – ex. Home Depot orange and red now. Khin noted they could request a change but would have to be consistent across the entire development. Commissioner Schulze asked if this comes to the Board. Khin stated typically color changes do not, but consistent and if they wanted to go with all red, they would have to go all red, green, or whatever color decided. They are allowed, ex. Olive Chapel Village, there are several roof types, but consistent throughout the development, not one building with red roof and the next be blue, but mixed in; and would have to do something interesting for the big boxes to do this.

Attorney Kaus advised:

- 1) With the concern of the language of the staff recommendations; one way to clean this up, is if the Board was interested in approving all the conditions, they might direct staff to do whatever it takes to make them compulsory instead of going through each one to change should to shall, and will be happy to clean this up, if this is the Board's intent.
- 2) One thing Khin mentioned earlier in her report was the modification of the buffer, reminding the Board this is a unique animal and will require a super majority vote; he suggests one of two things: separate votes on the buffer and then the overall site plan or in the motion, include whatever disposition you will want to have with this buffer requirement so the minutes reflect that you considered it and did something specific.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to approve the plan with the additional concession that the 60 foot type A buffer along the exit ramp on the grounds that there are some difficult watershed and slope features there that make it difficult if not impossible to comply literally with our requirements and as long as they are following the recommendations that were made and they be included in the motion also.

Commissioner Meckes commented as far as traffic, and knowing they can't talk about what will happen ten or fifteen years from now, or five years, but thinks this Board of Commissioners has always been amenable to resolve these issues as they come before them. They do not want to negatively affect any subdivision or road and whatever issues do arrive, he feels certain the Board will address them in the future. As far as having higher ups in the state that goes back to the hierarchy, we're just little fish in Apex and he doesn't know how amenable they would be.

Mayor Pro tempore stated as far as Zeno Road, we need to direct the Manager and staff to make this happen in whatever manner is feasible prior to opening this shopping center.

Commissioner Jensen noted the traffic calming device in Beckett's Crossing and Red Barn Way that was being asked for the "no through traffic" is an example - the stop signs and speed humps. He feels this will be a cut through problem and it was requested we get those in as soon as possible, but once again, the way this is set up, is there has to be a problem before we can fix it. In this situation, he feels there needs to be a mechanism, maybe it can't be done tonight, where there is a predictive method that there is a problem and fix it early because if it's fixed early then it won't become a problem; if you let it become a problem, you can't get it back to where you could probably keep it if you fix it in the first place. He hopes at the next meeting if this is passed, a discussion or some sort of ordinance method to decide.

Commissioner Meckes suggested this be sent to Planning Committee and start to work on this. Commissioner Jensen agreed.



Public hearing # 3 continued

Mayor Pro tempore Jones noted this a balance between safety and accessibility; is it a cut through or is it an interconnection – two terms for the same thing, but agrees where we can anticipate it and know it will be a problem then take care of it before hand and do it.

Commissioner Jensen felt if there was going to be interconnection he thinks we would want to keep the houses of this street as much as possible using Vintage Grove as an example, have cul-de-sac off the main road and thinks two houses or four may face it. In Surry Meadows they all face it and where the problem is. He wanted to look ahead to this. He still has a problem with the buffer, the fact there's a blockage with one spot in the corner where it shows a tree planter coming into the parking lot and asked if that could be an evergreen, he would probably be satisfied, not satisfied but be acceptable, if you look at the planting program, right behind all the perennial flowers. It appears to be a deciduous tree, and if it's evergreen, they've got it. He wanted something in the winter, a magnolia or something; he's not satisfied but will take what he can get. JDN representative confirmed the tree he was referring to and stated they will replace it and may even put a "plaque" on it for him.

With no further discussion the motion carried unanimously.

End of public hearing # 3

Mayor Pro tempore called for a brief recess at 8:55 and the meeting reconvened at 9:05 p.m.

Public Hearing # 4– Rezoning Case # O2RZO4 (Director of Planning David Rowland)

Planning Board unanimously recommended approval.

1. Public hearing Rezoning Case #O2RZO4, regarding amending previous Conditional Use Permit #93CU11, located at the end of Haywards Heath Lane; possible motion regarding same.

Director of Planning Rowland noted the previous zoning of this property including Golders Green was zoned R4 in 1994. This area was platted for three single family homes. The UDO amendments made this High Density Multi Family which it is except this area should have been included in High Density Single Family. Staff requests the rezoning of this part. There are already existing homes and if this was not rezoned they would be non-conforming since they are currently zoned High Density Multi Family.

The public hearing was opened at 9:06 p.m. With no one speaking the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve this rezoning. 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 Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others to speak.

Herman Jaffee addressed water conservation using low flow water devices or "washers" since the drought impacts everyone. He asked to implement the low flow washers and shower heads to save water and a low cost item; possibly have builders put in the low cost showers. He extended an invitation to attend an evacuation meeting.

Phillip Myers noted at the south end of Zeno Road, the part (S curve) that intersects the Peak Way is a town road. As far as NCDOT, it's not their road and didn't know it was the Town's road; it is the Town's road and for the Town's maintenance and is dirt. He asked the Town own up to it and get the trash cleaned up; some of it is from the developer. Because it is dirt that empties onto the Peak Way, there is a lot of gravel that spills out and onto the Peak Way and is dangerous as he rides a motor cycle, asking it be cleaned up. Commissioner Jensen wanted to do something to stop the gravel from spilling over onto the Peak Way, as it damages the asphalt roads.

End of public comment

NEW BUSINESS

Item # 1 – Traffic Signal/Intersection Improvements (Director of Construction Management Kent Jackson)
Possible motion to approve a partial reimbursement of transportation impact fees for the installation of a traffic signal and associated intersection improvements at the intersection of Ten-Ten Road and Reliance Avenue.

Director of Construction Management commented on the site plan retail center across from Pinnacle Park. Developer Brantley Powell had a traffic study conducted at the intersection by Ramey Kemp and Associates that identified the intersection as meeting a number of warrants for signalization. He forwarded this to the Town and NCDOT and the Town feels it's a good measure to add a traffic signal to this intersection. NCDOT accepted the study and agrees a traffic signal is warranted and has agreed to allow permitting the installation of a signal. They have also agreed to not participate financially. With this response, the developer met with Town Manager and him. He is under the transportation impact fee program and is required to make a payment to the town for approximately \$30,600; the traffic impact fee for this development. He requests the Town participate in the installation of this signal as an area for traffic improvement and seems reasonable to reinvest a portion of his transportation impact fee to pay a portion of the estimated \$70,000 cost. Jackson thinks this is definitely physical improvement traffic wise and thinks it will be an economic enhancement for the Pinnacle Park development. Sheryl Bynum from the Chamber commented she had several developers/businesses that had looked at Pinnacle Park that had concerns with the traffic situation as they left the park, trying to make a left turn and even a right onto Ten – Ten because of the poor site distance.

The recommendation was partial reimbursement of transportation impact fees to Pinnacle Park Associates, LLC for the design and installation of a traffic signal and associated road improvements.



New Business # 1 continued

Commissioner Schulze asked if there were a way to get around the island. Director noted intent is part of island would have to be removed to construct when coming out of the park, a left turn lane onto SR1010. Commissioner Schulze noted the island not being very big to begin with and to make it smaller would not be much left. Director had not talked dimensions or looked at a plan, but it maybe it ends up as a narrow concrete median, similar to the one at the BP at Waterford Green; it's currently planted, curbed out. Commissioner Schulze didn't want to disturb it if they didn't have too and seemed that there would be room on the outside to make the lanes. Commissioner Schulze wanted to keep the islands as much as possible.

Mayor Pro tempore Jones noted from his observation, making the left turn lane, the reason for removal is to add to the space needed that is not there now.. Director had not looked at the proposed geometry and a formal design has not been drawn for the improvements, all is conceptual at this point. He will keep the request to keep as much of the island as possible when working this out.

Commissioner Jensen commented on the recommendation not exceed \$25,000 and thinks the traffic fees are set low in comparison to other local folks and can see working with this and comes out to 85% being returned and not going above, an is a lot of return from a small impact fee. Director responded the basis fits within the range or goal of the collaboration, hoping and pursuing this as a three way venture between the Town, developer, and NCDOT. Having gotten a negative first response and second response from NCDOT, it appears the may not have any participation. Given this is how he arrived at the number.

Commissioner Jensen this is an impact point going out of Pinnacle Park; typically where would we use these impact fees if not used here. He felt if they are collecting them, they should be used to off-set an impact of the development as best can, rather than elsewhere, knowing they are used elsewhere to compensate for other items. He asked if there were other impacts of this development just off site and where they could be used for something else.

Mayor Pro tempore Jones asked if there were anywhere close by that is impacted by Pinnacle Park rather than this signal and the money being spent on it. Director noted consideration of the geometry of SR1010 itself, however, the situation of trying to collaborate on this presents certain problems, again the situation where SR1010 is a state street and have certain requirements they have to work within, and closely with the parameters of our traffic impact fee ordinance as how we apply the fees collected; it's a tight rope we are walking trying to make sure we live by our own ordinances.

Mayor Pro tempore Jones feels this intersection needs some help and given this direction any time of day, going over the hill there, and even coming back into town. Director added the signal is not a requirement of the development; it's not a situation where we are offsetting something that is a direct requirement of the development with neither the Town nor NCDOT has placed a requirement on this development that they install a signal; it's only a transportation improvement. Commissioner Grimes asked if the developer is willing to pay the difference. Director stated the developer in writing has committed to spending up to \$35,000 with a hope that NCDOT would offset the part that the Town didn't contribute in the way of reimbursements on impact fees, but the Town's position is that is if he and NCDOT will have to pick up the difference. Mayor Pro tempore Jones noted this as based on an NCDOT estimate. Commissioner Grimes asked if NCDOT would install it. Director noted the developer would hire an improved contractor by NCDOT for traffic signal work, but would inspect it and NCDOT would operate the signal after installation.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to approve up to \$25,000. Motion carried.



New Business # 1 continued

Commissioner Jensen noted JDN are now paying \$200,000 impact fees besides what they are doing in front of their development. Director noted this as a fair estimate. Commissioner Jensen to him seems this person got away with something prior to this. Commissioner Grimes noted a lot of people had gotten away with a lot of stuff if you look at this way. Director noted part of the difference to him in the two situations is the case with JDN is their signals were a requirement and this is not a requirement because the Town doesn't have ordinances that prescribed an improvement such as this and NCDOT didn't make the requirement. Commissioner Jensen asked if the Town didn't come up with this then the developer didn't do it. Director didn't know what he would choose to do, but he would be responsible for the entire cost with NCDOT appearing to be out of it.

Mayor Pro tempore called for the motion. The motion carried unanimously.

Director noted it was good thoughts to talk about the transition of Zeno Road from NCDOT control to Town control and would offer that the Town be aware of the timing of what might be done. If NCDOT is committed and have this project in their paving program for 2003/2004, we don't want to in haste loose their contribution to the funding and could easily happen if the Town moves to take it quickly and loose side of the funding piece. They would be more than glad to give it and say no money.

Commissioner Meckes inquired about the lighting on SR1010 and Lufkin Road; another terrible intersection. He thought at one point it was on track to be signalized. Director wasn't familiar with this project, but was with the February visit with NCDOT giving them a list of problematic intersections that being one to study and would say they have done a decent job of following through on the requests; have sent some thoughts about Salem and Center Street and a couple of others; the wheels turn slow.

End of New Business # 1

Item # 2 – Water Conservation (Director of Public Works)

Possible motion to Modify "Stage III – Severe Mandatory Conservation" of the Town's Water Conservation Ordinance; possible motion to enact Stage III of the Ordinance.

Director of Public Works noted we are in an exceptional stage due to the drought; 100 year drought and doesn't know when it will break. He recommends the steps to eliminate automated and other forms of sprinkling for lawns and grass. Recommends changing current stage three of the water conservation ordinance. Town supply is still good - 180 days at current usage. Lake is dropping with normal elevation 216 feet and currently at 210 feet and 49% of its capacity for water supply and flow augmentation in the river. This recommendation is to conserve more water by this elimination. Asking to find the correct wording – there needs to be the ability to hand water some ornamental plantings and has recommended the change of stage three which is severe mandatory conservation and change it from no watering of lawns, grass, shrubs or vegetable gardens. Proposes it say no sprinklers or automated watering. The problem: don't want to set a hose across the lawn and set and read the paper while the sprinkler operates – manual water is to identify valuable plants that are under drought stress and walk up to each plant and water it.

Recommends: Prohibit irrigation of lawns, grass, shrubs, trees, flowers, vegetable gardens, landscape and all other out door plantings by sprinklers, installed watering systems and other automated watering devices.

Commissioner Schulze suggested the inclusion of soaker hoses; as some tend to think of them as water saving devices. Manger and Director agreed.



Attorney Kaus advised there is a defined term in the code called irrigation system, and may want to use this.

Director agreed this was a good point, but saw Commissioner Schulze's concern as being does the public know and can we by the letter enforce it and agrees it's a good point.

Manager Radford would like to include it. Commissioner Meckes agreed the more we define automated systems the better off we are. The change would be behindsprinklers and before installed watering.... Commissioner Grimes stated anything other than hand held watering is verboten, anything other than holding the hose in your hand. Director included bucket or other conveyance; the trick to the test is, are you manually spending the time to direct the water to the needed place rather than leaving it running and wasting.

Director continued, he recommends under Stage III, we change the wording, as we have no non-essential use of water for commercial public use and are encouraging single service plates at restaurants; they believe this step is further than needed now, although, if things get worse, if he's back here three months from now, he may be including this in Stage IV, but doesn't see it necessary now. If this step is implemented, he thinks the Town would save about 1 MGD, particularly on a hot day. This done over a period would extend the life of Jordan Lake over a course of a month and be quite valuable to us. The question is will the drought continue and he doesn't no. The all time elevation of the Lake is 207 feet 1986 and at that time the drought wasn't viewed quite as severe but the lake releases were greater. The Corp of Engineers didn't react as quickly to throttle down the releases; not as many people were here and we weren't using it as a supply; and 1 mgd would have been a significant amount, probably for the entire town.

Recommends we remove from Stage III – the non essential use for commercial at this time and could come back later and then add the item hand watering of selected shrubs, trees, ornamental plantings and vegetable gardens shall be allowed provided the application of water is manually accomplished by bucket, hose or other handheld container or device that directs the water to the selected plant. Staff believes this is a prudent step and will put us out front of some other communities but thinks it's well worth it, but will cause some frustration with some citizens. Staff recommends this be effective August 27 allowing time to get the word out. Manger Radford has a sign he would like to offer that would be posted at intersections and other areas to get the word out. He hopes citizens will buy into the importance of this, maybe saving the water for us as well as downstream communities and for Durham. Durham is in much worst shape and is likely we can will 3 MGD to them through our interconnection with them and Cary. This is a prudent way to protect the resources.

Manager Radford stated we have not met the Governor's 20% mandate and thinks this will help us do this; we believe the more communities that would do this and meet the mandate may stave off further requirements and mandates by the governor's office. He described the difference between watering and washing. Washing cars, dogs, power washing house – a definitive answer. Watering ficus on your porch, you are watering; washing a dog is washing, washing the side of your house, you are washing – if you refer to it as something you water, you are watering. If you refer to it as watering, you're watering. Washing is ok for now; not suggesting changing carwashes, personal, private or commercial; there may come a time when commercial car washes are addressed, but not at this time. Mayor Pro tempore Jones added we don't want to put the power washing people out of business at this point either.



Commissioner Jensen asked if down line we tried to do this to folks who are commercially power washing, can we set something up to where they could use wastewater. Director Donnelly notes current laws do not allow this. When the re-use system is installed, and was looking at the final plans today, then it can be offered. Commissioner Jensen stated people can swim in it. Director Donnelly stated if they want to put in a pump and immediately after it enters the stream by law, they can do this. To take it out of a basin, they can't, and hopes regulators figure this out someday. Commissioner Jensen continued, he didn't know how many people, but Cary has the capability and until we do, maybe we could arrange something with Cary. Director Donnelly continued some go to ponds, etc. and the Town sends them in every direction we can, but is difficult. The good news is the big bulk of water you can save is irrigation. Any washing is certainly important, is a smaller, but every drop helps and is the approach needed; the big bulk is irrigation that you can control. Commissioner Jensen asked what flow we have at the wastewater facility. Director stated 1.8 mgd with the average flow through the fresh water facility being about 2 mgd, with a day of local showers, the base demand for our population. On hot days, up to 3 and 4 and our all time peak was 5 mgd.

Manager Radford stated on the day, when no irrigation is allowed at any kind, the number was 1.7 mgd. Director noted they dropped the tanks lower, trying to turn them over. We have trouble maintaining the chlorine residual when it's hot, so you want to exercise the tanks which pushed us a little further. Commissioner Jensen felt the wastewater facility gave the true number, because anything on the ground doesn't go through the wastewater. Director agreed and with the days at 4 mg, the wastewater is still 1.8 the rest is on the ground.

Commissioner Meckes referred to the figure the flow and what's being released, cubic feet per second, was 500. Director noted they are trying to probe it down some more, the big problem is the controls on the dam aren't meant for that fine adjustment so they are trying to tune it and hard to do, and a huge amount of water, in excess of 100 mgd. Commissioner Meckes continued you could release that water for 180 days and with no rain, we'd still be alright. Director stated assuming the flow coming in stays constant; what would happen if we didn't have 180 days of rain, even the flow would drop. Our supply is close 180 days given there is a little rain, little flow, and as we get further into the year evaporation will drop. When the lake was fuller on a hot low humidity 95 degree day, you could lose 100 mg up in the air. Commissioner Meckes stated it seems it would come down,

Commissioner Schulze asked when the lake level gets below the top part of the intake, that intake is now unusable. Director stated as the lake drops, you have to go to the lower intake where there would be iron and manganese problems, it creates a vortex and sucks air into the pumps and the pumps no longer pumps properly causing cavitations and tears up the pumps. They are working now with Cary to do minor modifications to the intake that will give more flexibility, buy a little more time and maybe prolong that day sometime in September when we may have to go to the lower intake and get a lower quality of water. The water would still be safe to drink, but might have taste and odor problems from the iron and manganese, which is ascetically unpleasing although if there was no water, it would look beautiful. Commissioner Jensen asked if a goose-neck would be placed on the lower intake. Director noted that's what's being played with.

Mayor Pro tempore called for the motion.

Action: Motion by Commissioner Schulze to approve the amendment to the water conservation ordinance State III to include soaker hoses in the description of item one and to also approve inaction of Stage III, effective August 27. Motion carried unanimously.

End of New Business Items



CLOSED SESSION

Possible motion to enter into closed session to discuss a personnel matter.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to enter into closed session at 9:45 p.m. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Grimes and second by Commissioner Schulze to move back into open session at 10:13 p.m.

With the meeting being back in open session;

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve pay adjustments for the Town Manager as follows: (1) a 2% COLA as of 07/01/02. (2) a 3% increase in base pay effective with the 08/01/02 anniversary date, and (3) a 2% cash bonus effective immediately. Motion carried.

ADJOURNMENT

With no further business to come before the Board, the meeting was adjourned at 10:18 p.m.

The above minutes were approved on the 3rd day of September, 2002.

Georgia Parker
Town Clerk

Keith H. Warkley
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 3, 2002

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order September 3, 2002, 7:00 p.m., Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Jones and Schulze were present. Commissioners Grimes and Meckes were absent.

Mayor Weatherly rendered the Invocation. Mayor Weatherly led the Pledge of Allegiance. Welcome by Mayor Weatherly and a special welcome to Scout Eric Chiavacchi, Troop # 236.

PROCLAMATIONS

Mayor Weatherly presented Proclamations: Constitution Week and Prostate Cancer Awareness Month.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set asking a call for action. Commissioner Jensen asked to consider Item # 5 separately. Action: Motion by Commissioner Jensen and second by Commissioner Jones to consider item # 5 separately to discuss traffic flow and potential drive connection. Motion carried (Item # 2 New Business). Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the consent agenda with the exception of Item # 5. Motion carried.

1. Minutes of the August 20, 2002 Board of Commissioners Meeting.
2. Minutes of the August 20, 2002 Board of Commissioner's Closed Session (separate cover).
3. Findings of Fact, Conclusions of Law, Decision/Ordinance approving Rezoning/Conditional Use Permit #02CU05, JDN Development Co., located on NC55 between Haddon Hall Drive and Apex Peakway, containing 3.43 acres, Planned Commercial Conditional Use District.
4. Ordinance amending Official Zone District Map #02RZ04, Town of Apex, petitioner, end of Haywards Heath Lane in Haddon Hall, 2.22 acres, High Density Single Family Residential Conditional Use.
5. Site plan—St. Mary Magdalene Gymnasium Addition, 625 Magdala Place (New Business # 2).
6. Resolution Authorizing Purchase of Public Right-of-Ways/Easements - Mason Street Widening Project.
7. Resolution Accepting Dedication of Utility/Pipeline Easements for Lufkin Road Water Line Project.
8. Award construction contract Lufkin Road Water Line Replacement Project to Bunn Olive Grading and Construction Company.
9. Annexation Petition #329, Wake County Board of Education, owners/petitioners; at Olive Chapel Elementary School, 0.64A located at Kelly Road (SR1163) and adjoining public right-of-ways; Resolution to Investigate Petition; Certificate of Sufficiency, and Resolution for Date of Public Hearing September 17, 2002.
10. Resolution honoring Service of Jeff Walters, member of the Apex Planning Board.

End of Consent Agenda



RESOLUTION

Mayor Weatherly presented a Resolution to honor Jeff Walter's service as a member of the Apex Planning Board asking for a motion for adoption.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to adopt the resolution. Motion carried. Mr. Walters was not present to accept the Resolution.

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as amended to include Item # 5 from the consent agenda to be considered as New Business Item # 2. Manager Radford asked to include water conservation update (Old Business).

Action: Motion by Commissioner Jones and second by Commissioner Schulze to add the water conservation update. Motion carried.

The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

THERE WERE NO SCHEDULED PUBLIC HEARINGS

OLD BUSINESS

Item # 1 – Water Conservation Update

Manager Radford reported with the recent rainfall the Jordan Lake elevation had increased by three feet to 213.37 feet, adding water to the water quantity pool for a sixty day increase in supply for drinking water and giving a 230 day supply putting the Town in good shape past spring. He recommended the water conservation measures taken two weeks ago to band outside irrigation no longer be in effect and return the Town to the more permissive Stage II – Moderate Mandatory water restrictions allowing residents to sprinkle and irrigate their lawns on alternate day watering schedule, with no sprinklers or automatic irrigation systems on Mondays and hand watering being allowed at all times. He doesn't anticipate having to revert to the more severe measures before spring.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to revert back to the water conservation measures as outlined. Motion carried.

End of Old Business



PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item. Mayor Weatherly will recognize those who would like to speak at the appropriate time. Individuals having made requests to address the Board will be recognized first. Please limit your comments to 3 minutes to allow others to speak.

Lib McGavin addressed the student school assignment program understanding the Town has no control of the Wake County Schools, referencing access to the magnet school program. A planning meeting will be held September 7 to discuss the inadequacies of the school system. She urged the board to attend and give their support in opposition for the families. Mayor Weatherly commented on the strategy of the school board regarding the assignment program, picking various nodes in the county, allowing one or two school board members to vote "no" for home district consumption, whereas they clearly know where the majority of the votes are allowed to pass this arbitrary reassignment plan every year.

End of public comment

NEW BUSINESS

Item # 1 – Request by Commissioner Bill Jensen

Commissioner Jensen modified his request for one set of house plans to be provided to the buyer of any newly constructed home in Apex of the Apex ETJ; proposing an ordinance to require electrical and plumbing plans be provided with the sale of new homes with no scale being required. He understands protection of copy right and right to build a house and not have someone else build a house; using his home as an example with problems he has had with water/electrical locations and connections, with the objective to help homeowners not putting builders into jeopardy, and maybe having something along the line of "as-built" as well.

Mike Johnson, spoke from a builders perspective, being unclear of what was trying to be accomplished, and opposing the request since generic plans are used across the state, with even an "as-built" situation varying with each house and hard to manage and not knowing the costs involved.

Attorney Kaus advised builders currently submit information for building permits, selections or excerpts from a full set of plans. He talked with Construction Management Director Jackson and notes Apex requires a framing set of plans, not plumbing or electrical, much less a full set of plans. Apex doesn't require an "as-built" as it's not typically done. The situation is, Apex does currently obtain and have certain information and under North Carolina law is public record a homeowner could come in and access. As far as requiring a whole new set or new type of plans, he doesn't believe the Town has the authority to require builders to do this, as municipalities can only do what municipal law allows. He could not find any source of authority to establish this requirement in just the Town's jurisdiction.



New Business # 1 continued

Mayor Weatherly asked what would stop a perspective homeowner, feeling it in their best interest to have electrical, plumbing or entire set of building plans, to put it in the contract to purchase, to say upon closing the seller would produce whatever. Commissioner Jensen responded this was a possibility. Mayor Weatherly asked why government needed to be involved. Commissioner Jensen looked at it as a safety issue and as the house passes from person to person; example, finding the water shut off at his house or where electrical lines run, but if there is great anxiety from the building area, and if Apex doesn't have any authority, he's not going to press this issue. He noted a car even gets a manual and a house being more valuable; but, this information could be traced down, but would be an asset to the homeowner; maybe a contract was the best way to handle this.

Commissioner Jones stated even with a set of plans there's no guarantee of the way it was built; inspectors check to see if it was built according to code and not according to plans. He continued with a set of "as-builts" done by plumbers or electrician or mechanical person, there's no guarantee for accuracy. In the commercial environment, the architect contracts with the owner to provide "as-builts" at a significant cost and is verified it's done as the contractor provides. He's concerned a homeowner would think the plans were correct as it was built.

Construction Management Director Jackson commented keys points were noted, and to help homeowners be more self-sufficient is noble. He is working with Information Services to develop a list of frequently asked questions to be placed on the Town website addressing typical routine homeowner problems with pointers to help handle them their selves, and other things including talking to builders to help homeowners in an inexpensive way.

Commissioner Jensen withdrew his request, noting the first request was a mistake, but knew it would be nice to have something to help homeowners know where things are. Mayor Weatherly commented he would consult with a certified electrician or plumber with his limited knowledge in such things and didn't encourage others if their knowledge was such.

Item # 2 – (Consent Agenda Item #5) - Site plan: St. Mary Magdalene Gymnasium 625 Magdala Place

Commissioner Jensen referred to the Planning hearing regarding traffic flow and the drive connection not built to Apex Barbecue Road, and if installed could change the traffic pattern, reducing cut through traffic in the neighborhood, and inquiring the cost to development, looking at the balance of cost vs. impact to the community, and if low asking the church to consider this.

Khin responded the flow numbers are included in the report, giving the location of the site and the project data as outlined in the staff report, and showing slides of the 26 acres site for the proposed gymnasium addition, and indicating the location of the potential drive connection onto Apex Barbecue proposed in the future final phase. Site plan meets all requirements of the UDO and 2010 Land Use Plan and Thoroughfare Plan. Staff report is incorporated as a part of the minutes.



Planning Board reviewed the site plan and unanimously recommends approval with the condition the Board of Commissioners obtain data for their review regarding the number of trips the school would generate with the goal being to determine the impact of the development on the neighborhood. Principal Cadran of the school had performed traffic counts for the school's main driveway onto Townside Drive and with left turns towards Apex Barbecue Road and right turns towards Cameron Park for afternoon and morning counts. School has sent newsletters to residents to follow speed limits and be respectful when passing through the neighborhood.

Staff looked at Apex Barbecue Road traffic in the spring to see if second drive would be required, but didn't count cars going to the north but with 76 cars exiting with no more than four cars at the stop sign at any given time with an average of two, one or none. The morning count showed 65 cars exiting with two/three cars at the stop sign at most. Given no traffic impact analysis was required staff felt a second access at Apex Barbecue Road was not required at this time. Staff recommends approval of the site plan as submitted.

Louis Iannone, homeowner and Planning Board member, noted traffic counts were quoted coming out of the full service out of the entrance on Townside Drive. He spoke with the principal; he observed traffic count fails to ignore automobiles pulled up to the sidewalk on Townside where children are loaded, and with all being pointed towards Cameron Park seeming to be the strategy to direct traffic in this direction. Khin noted the count by staff were for vehicles exiting Apex Barbecue Road not Townside Drive. He pointed out the full service entrance very awkward and feels the additional entrance off Apex Barbecue would permit the site to function as intended as a master plan (making comparisons to Olive Chapel Road with stacking area). He's raised the issue of the master plan for the entire traffic function being cut with phase lines and would like to see this addressed in the Planning Department. He noted a large percentage and the main entrance to this site off a main road not being there and not proposed on the second phase.

He noted cost for the entrance widening to be approximately \$1 million as stated at the Planning Board and accepted this from the professional engineers. He consulted Town Engineer Gron and came up with a cost under \$200,000. He noted the two phases to be a \$12 million dollar project and thinks \$200,000 would be reasonable, but there were no plans for improvements to Apex Barbecue Road. He advised an entrance off Apex Barbecue would relieve traffic off Cameron Park. He noted parents were told not to come off Old Salem Street because of the back-up in traffic, trying to come in on Townside and stacking onto Apex Barbecue.

Khin noted there was no master plan approved, but a conceptual plan of Phase I, but didn't get the entire project approved in phases and they had to meet the UDO when the second building was planned. Iannone noted this as an even greater need for a master plan and was weak in his opinion.



New Business # 2 continued

Bob Cadran, Principal, noted it a \$12 million campus, but adding only 26 more students. He noted prior to lannone arriving, half of the cars didn't go through Cameron Park and do not go through there. Cars beyond Pine Oak turn left and around through Scotts Mill or back onto Townside and out that road. Many cars parked prior to Pine Oak take a left onto Pine Oak through Scotts Mill noting the number of cars that could line up there; morning and afternoon; all of them do not go through Cameron Park.

He continued an entrance or second exit from Apex Barbecue Road would not change driving habits, as most families live in Scotts Mill, Cameron Run, Dog Side, Pearson Farms and down Olive Chapel, and taking the shortest route to work. He thinks their main entrance would not be used by those coming down Apex Barbecue; as on rainy days traffic backs up farther to US1 and was the problem when the school first opened. Chief Hearn had reviewed the traffic problem and suggested to come up with a way to disburse both morning and afternoon traffic so it would not tie up traffic on Apex Barbecue Road, and suggesting education of the parents to different exits and entrances onto the site to avoid backup. He suggested carpooling and this is being reinforced and used through out the various Scotts Mill exits or preceding down Townside onto Olive Chapel to NC55 maybe through Amherst or Dogwood or Cameron Glen onto Olive Chapel, and is what parents are doing; with the majority entering the campus leaving Apex Barbecue Road and doesn't believe they would change their patterns and not cut through the neighborhoods even with the second exit. Total enrollment is 498.

Allen Manus, BBM Associates, and Cameron Park resident, noted he didn't do the plans of the site and contracted this addition. As engineer for the project, if the issue was congestion at the intersection of Apex Barbecue Road and Townside, he could see the benefit of a second drive, but is not the issue that he's hearing, but cut through traffic in Cameron Park and Dogwood Ridge. He doesn't believe the driveway would deter anyone from taking a shorter route, with an alternative to Apex Barbecue up Old US1 and waiting at the traffic signal through 5 and 6 cycle delays at NC55 in the morning. He noted these are public streets and was not going to deter them, as Chief Hearn had said, the best way to handle the traffic is disburse it in multiple directions or there would be real problems on the major thoroughfares and the neighborhoods were designed to connect and the Town had mandated these connections to disburse traffic to ease the burden on thoroughfares. He noted it's not great for all neighborhoods but everyone has to share this burden.

He didn't put the cost of \$1 million on the project, but notes it closer to \$1 million than \$200,000. Cost detailing two lanes of entry, additional parking, considerable grading to widen the drive, widening Apex Barbecue for left and right turn lanes, widening back to Townside Drive with sidewalks and streetscape, utility relocations, NCDOT requires one-inch overlay over all roadway areas of widening – a significant cost, no dollar figure has been determined because no detail design has been done, but is a conceptual driveway more in a million dollar figure than \$200,000.



He noted the bigger issue was even at a cost of \$100,000, the church couldn't afford it. They programmed their construction and had what they thought they could handle, and were surprised when the site plan came back and they realized there was no approval for a master plan under the old ordinance and fell subject to the UDO, bringing significant changes to the project, one being the stormwater requirements (an underground detention system), with the budget being stretched at this point with no additional monies for the driveway costs and would be a project killer. He's asking a gymnasium and lunch room for the existing kids, with no new children.

Commissioner Jensen could see both points with the flow and taking short cuts, but felt an extra drive would put the flow pattern in a "U" taking people back onto Apex Barbecue Road. Commissioner Jones felt it would, but not sure what percentage would go that route, if their ultimate direction is north, they would come Townside Drive and out rather than Old US1 and Kelly Road.

Commissioner Jensen asked when the next phase would occur (maybe 5 years) and if the student population would stay constant through this period. He asked if those headed toward Cameron Park could be circulated back to Apex Barbecue Road. Principal Cadran noted they could go left around town square allowing them to go south on Townside or take a right through Scotts Mill and out the main entrance. Additional parking spaces will double existence on the loop for more cars; takes 10 minutes to load 500 students, with majority of the parents in the parking lot and a smaller number on Townside. Commissioner Jensen asked the number of students per car. Principal Cadran noted it was hard to say with more car-pooling occurring in the afternoon than the mornings and varies each day; he doesn't see the traffic increasing at all. He encourages car pooling and asked parents to be respectful recognizing children and speed limits. Principal Cadran noted Chief Hearn had said this school is cooperative in trying to solve these problems and will continue to be and they want a good relationship with everyone.

Commissioner Jensen asked about the traffic flow problem with Cameron Park. Principal Cadran noted there are more cars in the morning. Iannone noted a large volume of cars in the morning, with some speeding; the association is trying to get humps and signs. Commissioner Jensen asked the difference in traffic flow when school was in and when it was not; was it a tremendous impact from the school or flow through traffic. Iannone noted a bigger difference in the morning, drivers in a bigger hurry trying to get to work with less in the afternoon - 30 minutes in morning and 30/40 minutes in the afternoon.

Iannone would like to see the Town revisit traffic strategy to provide major routes through neighborhoods; noting Beckett's crossing would have an identical situation with the shopping center connected to Olive Chapel Road - drivers seeing it more convenient to go through the subdivision then back to the intersections. He continued parents trying to go down Apex Barbecue and back to Salem on NC55 backs up traffic and he doesn't understand how they could come through Cameron Park any quicker; with the problem being getting through the intersections.



New Business # 2 continued

He thinks the Town has failed in planning to provide adequate transportation; he didn't think it was smart to direct traffic through neighborhoods. He doesn't think this is smart growth and no one living on these streets would think so either. He thinks the Town has reached a population where there's need to look at a way to handle transportation at major intersections.

Commissioner Jensen confirmed in the next phase this drive would be put in (there is a commitment to put this drive in place). Commissioner Jones feels there needs to be a drive on Apex Barbecue Road, as shown on the set of plans, but not sure this particular project justifies it with only 25 students being added, but ultimately has to be there, but not for this particular project.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to approve the site plan as presented.

Commissioner Jensen thinks with the commitment of the driveway, should look at every alternative and with speed humps or traffic calming devices as done with Becketts Crossing, including barricades and needs to commit to push this forward for Cameron Park. He looks at this as a cut through; in talking with a developer, in some towns where they see there may be 500 cars through a subdivision per day, they consider it to be a road that does not have drive cuts so you have cut throughs and you're back to cul-de-sacs or used off of them like in Vintage Grove. Motion carried unanimously.

End of New Business # 2

CLOSED SESSION

Possible motion to enter into closed session to consult with the Town Attorney regarding pending litigation: Apex Properties, LLC. v. Town of Apex.

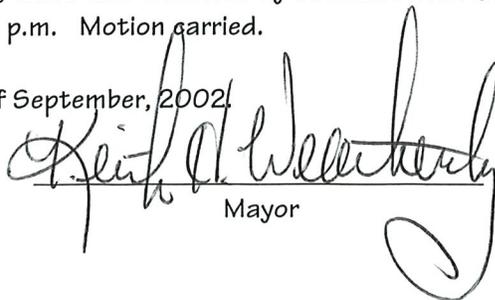
Action: Motion by Commissioner Jones and second by Commissioner Schulze to enter into closed session at 8:10 p.m. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Schulze and second by Commissioner Jones to go out of closed session and back into regular session at 8:27 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jones and second by Commissioner Jensen to adjourn at 8:28 p.m. Motion carried.

The above minutes were approved on the 17th day of September, 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 17, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:

Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, September 17, 2002, 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation was given by Commissioner Grimes.
Pledge of Allegiance was led by Mayor Weatherly,
Welcome by Mayor Weatherly.

PRESENTATIONS

Mayor Weatherly presented the quarterly Residential and Commercial Appearance Awards:
Jacques & Sophia Overdiep, Owners, 1897 Abby Knoll Drive
Dream Sports Center, 1016 Investment Boulevard

CONSENT AGENDA

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

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda as presented. Motion carried.

1. Minutes of September 3, 2002 Board of Commissioners Meeting.
2. Minutes of September 3, 2002 Board of Commissioner's Closed Session (separate cover).
3. Resolution Authorizing Condemnation of a Portion of a Parcel of Land for Public Street Right-of-Way.
4. Resolution Authorizing Purchase of Public Right-of-Ways/Easements - Mason Street Widening Project.
5. Wireline Crossing Agreement #CSX-043874 between CSX Transportation, Inc. & Town of Apex.
6. Amendment No. 1 - Chatham County, Cary and Apex Water Intake Agreement.
7. Amend Town of Apex Code of Ordinances, Section 20-68 (b) to add a four-way stop intersection and two three-way stop intersections.
8. Award 911 System to Wireless Communications, July 17, 2002, bid in the amount of \$138,550.
9. Local Firemen's Relief Fund Trustees and authorization for Town Clerk to file North Carolina Municipal Report of Fire Conditions.
10. Wake County Tax Report.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Attorney Kaus asked to include under Closed Session – Discussion of Potential Litigation.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to amend the agenda as requested. Motion carried. The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 1 – Proposed Transportation Plan

Public hearing regarding proposed Transportation Plan for the Town of Apex.

Staff Planner Dianne Khin recommended continuation of this public hearing to consider the proposed Transportation Plan for the Town of Apex to the October 1 meeting of the Board of Commissioners in order to allow the Parks, Recreation and Cultural Resources Board to review and make a recommendation on the Plan.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to continue the hearing as requested by staff. Motion carried.

Public Hearing # 1 continued to October 1, 2002

Public Hearing # 2 – Amendments to UDO

Public hearing regarding amendments to certain sections of the Unified Development Ordinance; possible motion regarding same.

Staff Planner Dianne Khin reviewed proposed amendments to certain sections of the UDO, Articles 8 and 12 as detailed on the staff report, recommending adoption by Ordinance. Planning Board reviewed the proposed amendments at their September 9 meeting and unanimously recommended approval. Khin made clarification regarding the number of colors allowed within a master signage plan limiting the number of brighter colors. Mayor Weatherly opened the public hearing at 7:10 p.m. With no one speaking in favor or in opposition, the hearing closed.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to adopt the ordinance approving the amendments to certain sections of the UDO. Motion carried.

End of Public Hearing # 2

Public Hearing # 3 – Annexation Petition #329

Public hearing concerning Annexation Petition #329, Wake County Board of Education, owners/petitioners; located at the Olive Chapel Road Elementary School, 0.64 acres and adjoining public rights-of-way on (SR1163) Kelly Road; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning David Rowland noted the location of the 0.64 acres as a strip of the CP&L Powerline property. Mayor Weatherly opened the public hearing at 7:12 p.m. With no one speaking in favor or opposition to the annexation, the hearing was closed.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to adopt an ordinance to extend the corporate limits by the 0.64 acres. Motion carried.

End of Public Hearings



OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others to speak.

No one addressed the Board during public forum.

NEW BUSINESS

Item # 1 – Potential Municipal Golf Course Development

Presentation by Mr. Doug Spear, Spear Consultants, LTD, regarding potential Municipal Golf Course Development. Spear Consultants specializes in preparing independent reports to aid clients of not for profit type organizations for an evaluation of a golf project investment potential. Commissioner Mike Jones and Billy Mills had conversation, noting interest in a golf course project. Review of types of funding available – private with tax-exempt bonds or US Guaranteed loans. Data for Apex area would indicate certain qualities that make an attractive opportunity for investors or funding. Building cost is estimated at \$4.5 to \$9 million and requiring 160 to 200 acres of land; cost does not include land purchase. Spear answered questions for the Board regarding facilities, other states where such courses have been constructed, equipment, fees, and partnerships, Commissioner Jones commented on the options to explore and need for a golf course, and offered when exploring plans for new residential development, this be kept in mind. Mayor Weatherly asked if this should be referred to the Finance Committee.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to refer this item to the Finance Committee. Motion carried.

End of New Business Item # 2

Item # 2 – Site Plan - Planet Fitness

Possible motion concerning site plan for Planet Fitness, located at 900 W. Williams Street.

Staff Planner Dianne Khin reviewed the staff report for the site plan for Planet Fitness, which is attached and incorporated as a part of the minutes. Developer requested to be allowed to reduce the number of required parking spaces from 92 to 83, a reduction of 9 spaces (attached). Developer felt the lot was encumbered by the amount of existing easement, buffer, etc. Developer made an attempt to purchase additional property adjacent to this project. The owner was not willing to talk about the sale of property.

Planning Board reviewed the site plan at their September 9 meeting and recommends approval with a vote of 4 to 1. The dissenting vote was based on Section 8.3.9(D) off-street parking alternatives, allowing the Planning Director to approve any other alternative to off street parking spaces on the site if the applicant demonstrates satisfaction to the Director that the proposed plan will do at least as good of job protecting surrounding neighborhoods, maintaining traffic circulation patterns and promotion quality urban design than would strict compliance with otherwise applicable off-street parking standards.



New Business # 1 Continued

Planning Director Rowland found proposed parking to be acceptable, given the reduction in parking is less than 10% and less than 10 spaces total. As confirmation that a 9 space reduction is minor, Section 2.3.6(H) (3) of the UDO states that a reduction in parking by no more than 10 spaces is considered a minor deviation. The Planning Board member felt this section meant there needed to be something given in exchange for the reduction in parking spaces. Director of Planning interpreted this section to mean any alternative including allowing reduction in parking may be approved by him,

Planning Board requests Town Attorney comment on the applicability of both Sections 8.39.9(D) and 2.3.6(H) (3) to this project. Staff recommends approval of the site plan.

Khin answered questions regarding brick, entrances, buffers, bio-retention area and its longevity and being equivalent to 1" retention ponds (approved by staff Environmental Program Coordinator), road widening for 5 lanes with no extra from property line to property line – NCDOT requires taper.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve the site plan as recommended. Motion carried.

End of New Business Items

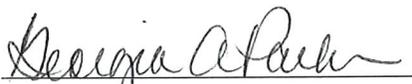
CLOSED SESSION

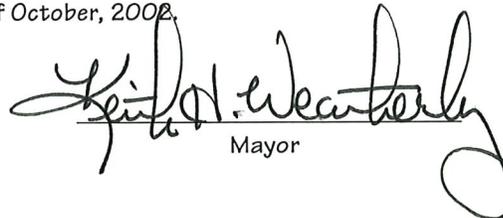
Action: Motion by Commissioner Jones and second by Commissioner Grimes to move into Closed Session to discuss a personnel matter and potential litigation at 8:00 p.m. Motion carried. Minutes of Closed Session are recorded separately. Motion by Commissioner Grimes and second by Commissioner Meckes to move back into regular session at 9:12 p.m. Motion carried.

ADJOURNMENT

There being no further business to come before the Board, there was a motion by Commissioner Grimes and second by Commissioner Meckes to adjourn at 9:13 p.m. Motion carried.

The above minutes were approved on the 1st day of October, 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 1, 2002 Meeting

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order, Tuesday, 7:00 p.m., October 1, 2002 at the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Meckes.
Pledge of Allegiance
Welcome by Mayor Weatherly

PRESENTATIONS

Mayor Weatherly presented the "Buffer Enhancement" Appearance Award to Home Depot, 1000 Vision Drive.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
There were no amendments to the consent agenda.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the consent agenda as presented. Motion carried unanimously.

1. Minutes of September 17, 2002 Board of Commissioners Meeting.
2. Minutes of September 17, 2002 Board of Commissioner's Closed Session (separate cover).
3. Minutes of September 25, 2002 Personnel Committee.
4. Resolution No. 02-1001-35: Lease Purchase Agreement for Purpose of Procuring 911 System - Agreement adopted September 17, 2002.
5. Resolution No. 02-1001-36: Authorization for Town's Finance Director to Execute a Lease-Purchase Agreement on Behalf of the Town of Apex regarding the 911 System.
6. Resolution No. 02-1001-37: Authorization for Town Manager to Approve and Execute Contracts on Behalf of the Town of Apex.
7. Possible motion to approve Personnel Committee recommendation to reclassify positions in Public Works.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. With no amendments, the meeting agenda was set as printed.

PUBLIC HEARINGS

Public Hearing # 1 – Conditional Use Permit #02CU06

Public hearing regarding rezoning and conditional use permit #02CU06, Ronald Crabtree, petitioner, seeking to rezone from O&I-CU (Office & Institutional Conditional Use) to HDSF-CU (High Density Single-Family Conditional Use) District classification, containing 1.196 acres located at 509 Center Street; possible motion regarding same.

Director of Planning David Rowland and David York were sworn by the Town Clerk.

Director Rowland advised this was regarding a conditional use rezoning and oriented to location of the 1.196 acres, 509 Center Street, giving adjacent zoning and land uses (page 1 of staff report). Current Zoning classification: Office and Institutional Conditional Use. Requested zoning classification: High-Density Residential Single-Family. UDO objective: to eliminate pyramid zoning where O&I permits all uses under R4, R6, etc. When Unified Development Ordinance became effective, it removed the use of this property for residential. Crabtree, property owner, would like to use the property as residential and requests the change in zoning.

Two conditions placed on the rezoning: (i) only used for high-density single-family residential property, and (ii) staff work with petitioner and asked the house be situated such that Tunstall Street could eventually be extended northward to Old Raleigh Road. (Mike Rutkowski, Kimley-Horne, and Staff Planner Dianne Khin will address the future Thoroughfare Plan.) Petitioner was asked if he would off-set the house to allow Tunstall Street to be extended in the future in the event this happens. Copy of the letter of amendment to the initial filing is attached and agreed to by signatures of David York, Holt York McDarris & High, LLP and Ronald Crabtree, Applicant has agreed to the condition of this rezoning that the building envelopes be offset to allow for the extension of Tunstall Avenue.

Planning Board recommends approval. Planning Board recommends if there has to be buffer (when and if Tunstall is extended) between the street and the houses, Town would put in landscape, buffer, etc. when this happens. Plantings would be located on a portion of the property, if street is built, town would try to get it to the property line and not leave a segment of applicant's property. There would be a planting strip to allow buffering between the street and the existing duplexes located there. Staff recommends approval.

Attorney Kaus had advised staff to be more formal about decisions when considering conditional use rezonings; whether approved or not, UDO standards should be kept in mind (standards are listed on page 2 of staff's report which is incorporated as a part of the minutes).

Commissioner Schulze asked if the Town paid for the landscape, would this set a negative precedence. Rowland advised no, as this is an unusual situation, that there may be a strip between the existing street and the property line that could not be anticipated.



Commissioner Jensen asked the legality of plantings on the property. Rowland responded there would either be need to acquire the strip or obtain a landscape easement; it was hard to determine at this time since there is no exact location for the street. Rowland thinks its general enough to either purchase all the property or have a landscape easement if the Town didn't get all the property for the road.

Commissioner Jensen commented in Exhibit B, Crabtree's desire to rezone to High Density Single-Family Conditional Use to allow construction of his house and asked if the property would be subdivided. Rowland responded eventually, but not at this time; he understands Crabtree would like to construct his house facing Center Street. Eventually, if he desires to subdivide the rear section of the property, and Tunstall Street has been extended, he would have frontage on Tunstall.

Commissioner Jensen commented on the map; properties to the east are condo's (high-density) and to the west (high-density) asking the lot size. Rowland responded minimum lot size in high-density single-family is 5000 square feet. Commissioner Jensen commented it was larger than shown on the map. Rowland responded this was right. The lots were misleading in that the property line divides the duplex, where you do not have two duplex units on one lot. The line goes through the wall; lots would be compatible to what is on each side of it.

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

David York, 4601 Six Forks Road, Raleigh, Applicant' Attorney, having been sworn, offered the property was purchased six/seven years ago with intent to build a home and in the future build a Judo Studio in the rear and under the old zoning code was permitted in O&I. With the UDO, the applicant had to do either one or the other, and decided to place his home on this property and move into Apex. The first zoning condition of the petition limits use to single-family detached. Lot sizes would be more compatible with the cul-de-sac to the west, because with building setbacks you could not achieve the lot density there is to the south and east. He has reviewed findings and comments for issuance of the special use permit that must be met, and Director Rowland had indicated they have been met and consistent with the Land Use Plan for the area, which is a residential use and comparable and compatible with property to the east and west, more to the west than east, but still consistent with what is in place there and should actually enhance those existing property values to have this vacant property put to use.

Attorney Kaus asked Director Rowland to affirm the September 5 letter that the Applicant consents to the new condition, since it was not a part of the agenda packet and is Quasi-Judicial. York confirmed Applicant Crabtree does agree and has signed both the revised condition page as well as given his consent on the letter, which is attached and incorporated as a part of the minutes.

Jennifer Barnette, 305 Center Heights Court, was sworn by the Town Clerk. She resides to the east of the property and spoke in favor of residential use instead of business, as it would help her property on either side. She would have a major concern with a road extension since it's a nice piece of land owned by Crabtree. She noted if he situates his house facing Center Street it would take more room unless it is going longer back instead of wider and with their property line being farther out, she doesn't see there's room for the Town to make a road through this area.

Mayor Weatherly commented the situation of a house on this lot would be predicated and may eventually be Tunstall Extension. House would be off-centered so the right-of-way could go through the property; with no plans now, but looking to the future, he couldn't say or predict if or when this would happen, but with the expectation it might, with potential being taken care of in this situation with the house on this property.



Public hearing # 1 continued

Barnette asked, if their property goes to the line and if his property starts at the line, how the Town has the right to take the property and make a road out of it. Commissioner Meckes responded "imminent domain". Mayor Weatherly noted the right-of-way would have to be obtained one way or another, voluntarily or otherwise, if decided it's in the public interest, an overwhelming public interest to have Tunstall Extension, and who's to know what the conditions would be in the future, that may or may not cause this to happen. Town would either come to adjoining property owners, and ask to acquire property in some fashion or use whatever means of decisions made by whoever may be sitting in this capacity at the time. Commissioner Meckes commented none of the roadway would be taken from her property; the roadway would only be planned on Mr. Crabtree's property. Barnett responded she would want to keep all her property for value. Commissioner Meckes commented there would be plantings there to protect her and her home.

Barnette asked if the Judo Studio would definitely not be done, and only the home. Rowland responded if rezoned to residential, it would be the residence only.

York advised there is 250' of road frontage on Center Street and is sufficient space to shift the building and still have adequate set backs on either side. Commissioner Meckes asked what the right-of-way from the road would be. Rowland responded 60'. Commissioner Meckes commented there was 140' for the house and plenty of room for the road. Commissioner Grimes asked if this were a dedication or the space was being maintained. York responded Town didn't request dedication, only in the event of the road extension, leave enough room.

No others spoke. Mayor Weatherly closed the public hearing at 7:20 p.m. and referred the matter to the Board.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the rezoning as presented. Commissioner Jones made clarification about the road extension with planning staff telling them there's a point A and at some point there will be a point B to the north, and all that's being done is reserving point A access to Center Street, and does not know where point B will be. Motion carried unanimously.

End of public hearing # 1

Public Hearing # 2 – Conditional Use Permit #O2CUOB

Public hearing regarding rezoning and conditional use permit #O2CUOB Ashley Ansara, petitioner, seeking to rezone from RA (Residential Agricultural) to O&I-CU (Office & Institutional Conditional Use) District classification containing 2.89 acres located at the western portion of the intersection of S. Salem Street & Apex Barbecue Road; possible motion regarding same.

Director Rowland being previously sworn advised this was regarding a conditional use rezoning and oriented to location of the 2.89 acres at the western portion of the intersection of S. Salem Street and Apex Barbecue Road. He noted adjacent zoning and land uses; Current zoning: Residential Agricultural; Requested Zoning: Office & Institutional Conditional Use.

Petitioner placed restrictions/conditions on the proposed rezoning. Uses allowed under O&I except those the property could not be used for are listed on page 2 of the staff report and incorporated as a part of the minutes. Property Uses: nursing homes, assembly halls, church, daycare, veterinary clinic, medical/dental office, laboratory type uses, business and professional offices, publishing office, financial institution, floral shops, funeral home, health and fitness spa, with 30% of an O&I Use could be (veterinary clinic with a news stand or personal service or pharmacy). Other regular uses are printing, copying service, real-estate sales, studio for art.



Public hearing # 1 continued

Planning Board did not recommend approval of the rezoning request. Recommendation to deny was based on Standard 1. The inappropriateness of this location and is incompatible with the character of surrounding land uses. Rowland noted the standards the Board of Commissioners needs to consider when approving conditional use rezonings are listed on page 2 of the staff report. The property surrounding this site is rural farmland with single-family houses and vacant rural undeveloped area. Impact on the property if rezoned to O&I would be detrimental to adjacent properties and would constitute a nuisance or hazard due to traffic impact or noise because of the number of persons who would be using the conditional use. This is a busy intersection and any kind of drive cut could have an adverse impact on the functioning of this intersection.

Staff recommends approval to rezone to O&I, believing over the last 4/5 years the entire Beaver Creek Basin (area bounded by NC55, Olive Chapel, Kelly and Apex Barbecue Roads) has changed dramatically with a considerable amount of traffic coming by this property each day, out of Apex Barbecue Road. Staff feels given some of the uses/services for this property could be used by the folks passing by this property daily. Secondly, the property is located at the intersection of two thoroughfares and typically is where you find points of commerce, areas of trade, where people gather, drive by, etc. Director Rowland noted if the Board chose to approve the rezoning request, the standards should be considered to approve the rezoning or if the Board chooses to deny the rezoning request, should consider the standards the Board feels it does not meet. He advised a protest petition had been validated by the Town Attorney and would require a super-majority vote if the rezoning is to be approved (3/4 of all members of the Board).

Commissioner Grimes asked clarification of the 30% of floor space use. Director Rowland responded 30% of a floor area within a building (ex. Doctor's office/pharmacy within in the same building). Any building could have 30% devoted; examples of what would be allowed: newsstand, personal service such as art or music school, driving school or a pharmacy). In terms of those particular uses, they have percentage, the other uses do not have percentages; the entire building can be used for those.

Commissioner Schulze referred to the number of access points, one or two, and knew this to be a part of the site plan process, but to him the lot seemed small, and with one access, it would be close to the intersection; asking if this would run into the same problem like Eckerds where an exit comes into an intersection or close to it. Director Rowland responded this was a site plan issue, but staff would look at the property and recommend the drive be located as far away from the intersection as possible to allow stacking room; distance would be approximately 800 feet; staff would not encourage access off US1. Commissioner Jensen asked if there could possibly be a right-in / right-out. Rowland responded it could be possible. Commissioner Jensen clarified it's zoned residential and could have two drive cuts. Director Rowland responded for one-acre lot houses, it could have two drive cuts, but does not see this intersection with single-family homes. Commissioner Jones asked if there was already an approved drive cut by NCDOT. There's not.

Mayor Weatherly opened the public hearing at 7:35 p.m.

Bill Johnson was sworn by the Clerk. His request for O&I eliminates uses that are more traffic oriented and reasons for placing the conditions on the rezoning. There's 1300 foot of road frontage on both roads; State informed owner there will have to be an extra lane all the way around the property. With extra footage taken off, and if rezoned, the 40 foot setback requirement for any building would take 70 feet around it or 3/10 of an acre, reducing the lot considerably and would be difficult to build homes at an intersection such as this, with children or pets. He stated anything at this intersection will increase traffic, but if the Town grows it will face traffic one way or the other. He sees no problem at the time of development, with a plan submitted, that the drive be placed where it would not create a problem or as little as possible, and if only one drive, so be it.



Public hearing #2 continued

He doesn't think this would restrict development because it's not large enough to do much on it, once you have setbacks from the fronts, sides and rear, there would be little building space left for anything.

Commissioner Jensen clarified acreage left if rezoned to build an O&I use. Johnson responded 2 1/2 acres. Commissioner Jensen asked if Johnson had discussed his plans for development with the neighbors. Johnson responded there are no specific plans at this point. He notified the residents and called one/two of them when he had an offer for a funeral home, but fell through, subject to rezoning. He has not discussed this with the neighbors. Commissioner Jensen asked if Johnson had more time, would he get with the neighbors and discuss this since two groups want to do one thing, with another group being against it. He could understand both sides and if there were a more compatible approach, a few more things added to this – buffer it better so it doesn't show, and could have a win-win situation. Now, it's either win or lose. Johnson was willing to work something out, whatever direction he should go in. He does developments in the area, and if it were a larger tract of land he would be interested in seeing it developed as mini-houses.

Those speaking in opposition and being sworn by the Town Clerk:

Doug Poe, 1216 S. Salem Street, resident directly past this property, agrees with staff the area has changed over the last 5 years, but does not agree every intersection needs business; with this not even being an intersection, but a tee. Poe noted the Peak Way and south of it I-540. Planning Board discussed this intersection and what could happen to Apex Barbecue Road, straightening the road and connecting to South Salem and making Old US 1 a tee into it. Point is the area is not developed and doesn't feel this is the time to set aside a little tract and dictate from this point on what occurs around this intersection; it is not yet developed and lots of things could impact it. Community, even though it has grown and developed, has maintained the degree of a rural community and housing; you don't see the church from the road and Scotts Mill has the greens developed inside of it. There could be a lot of development to occur without sticking it out on a corner at an intersection that affects the additional property owners and those in the area. He doesn't support the use; a lot of the things will have a high volume of traffic and now with all the traffic coming out of Scotts Mill onto US1, you don't need anything else there that will increase traffic flow at this particular corner. A funeral home or nursing home would have high volume traffic and some of the businesses and feels high-volume traffic would not help the growth or future development of this entire area. He asked the Board to support Planning Board decision to deny this rezoning at this time.

Mayor Weatherly thanked Mr. Poe, a past member of the Planning Board.

Commissioner Jensen asked Poe what he would recommend as a use of the property-just houses. Poe responded at this point yes. He doesn't know about the future, but thinks now, all development is houses and to keep the area as residential and agricultural would be his preference, and thinks it's possible. He's live there for 55 years and knows his home is closer to the road than he would like it; there's a lot of traffic. The land is suitable for a couple of houses if the area develops this way. If the area around it were to develop differently, then it would be different. All development is houses and he would like to keep it; when driving down the road you don't have to see business at every intersection. So far this area has been developed nicely and is his preference.

Commissioner Jensen asked if there were a heavy buffer, would it be more acceptable and if he had more time to discuss it with the petitioner, would he?



Public hearing # 2 continued

Poe responded, if buffered would it be more acceptable and continued it would not. He doesn't feel there's anyway to take this tract of land in this location and put O&I, high-volume type things there without impact and looking like what it would be. It's not big enough for a development like Scotts Mill – then the church to move it in far enough, if in the development, that's fine. When looking at the major roads and what will happen with Apex Barbecue Road, widening or straighten – will it be an intersection or will it be US1 with the by-pass. As far as time to work things out, this is the third time the property had come up for rezoning in the past years (5 or 6) and each time the request was for some type of business, commercial, etc. He's opposed it in the past for the same reasons he's stated now and doesn't think any additional time would make any difference from his perspective; he just doesn't feel this is an asset to the community or a benefit from either the traffic flow, development of the land or anything of this nature.

Commissioner Jensen pointed out he would look down line, that the area could develop as commercial at a later date and to him, O&I is much more benign than another route. Poe agreed, only the fact that now he was looking for the best, not the best of the worst. He prefers it be developed with the text of the way the entire community is developing and obviously if it comes down to bad choices and worse choices, he would prefer the bad choice.

Marjorie Britt, 209 Blue Ridge Drive, Cary, is property owner of the Tingen property, 6260 Apex Barbecue Road. She's aware of traffic; she sells flowers there and sees 100 plus cars within 10 minutes at 3 pm and in the am/pm hours and other times 100 in 30 minutes and getting worse. When talking about enlarging the intersection, she reminded it was all turning lanes and was not a good location for this development. She's opposed to O&I wanting it to stay as it is. Her dog has run in the road several times almost getting killed but has learned to stay on his yard. She would like it to stay as is – in favor of Poe's comments and well said.

Commissioner Grimes asked what the LUP calls for at this location. Director Rowland stated LUP Map shows this property as low-density residential; not knowing when doing the land use plan how areas will develop, was a fall back position at that point. LUP text talks about type development that's expected along major thoroughfares; it's appropriate for O&I or high-density residential. Commissioner Grimes asked if the plan has to be changed to do this. Director Rowland stated this would be done if the property is rezoned. He noted a correction: he had stated this land could be developed as one acre lots in residential agricultural, but residential agricultural requires a 5 acre lot. This property could be developed for one house instead of two.

Commissioner Grimes asked if it complied with UDO Section 4.4 if rezoned; it didn't say what it is, just one of the standards is that you find certain criteria or standards are not being met. Director Rowland responded these are supplemental standards when the property is developed; there is no site plan for this property, you do things above and beyond what is normally required on a site plan. He couldn't say these are being complied with since there is no site plan for the property; they are not applicable until there's a site plan and staff will look for compliance with supplemental standards.

Commissioner Grimes asked if this were the first petition for O&I presented to the Board for this property. Director Rowland responded he thought so, the others were commercial. Commissioner Grimes couldn't recall one. Commissioner Meckes and Commissioner Jones remembered one, recalling the orientation with Apex Barbecue Road. Commissioner Grimes asked if Apex Barbecue Road would stay. Director Rowland responded as far as he knows, yes. A while back the road was wider and when Apex Barbecue Road was being anticipated for development, the developer of this property agreed to pave the road; NCDOT wanted to tee the intersection and make it come to right angles with Old US1. There are no plans to change it.



Public hearing # 2 continued

Mayor Weatherly closed the public hearing at 7:55 p.m.

Commissioner Meckes noted traffic a big issue; staff support based on the premise that with needed services in more close proximity to residential areas, actually could minimize traffic; people don't have to leave Scotts Mill and drive elsewhere in Town. Director Rowland responded lots of cars pass by this site daily and would be in his opinion, a convenient place for some of these type services.

Commissioner Meckes continued if rezoned O&I, what happens to the square parcel behind there; did he envision additional O&I phasing into more high-density residential. Director Rowland responded the Planning Board on 14th. would consider the Mixed Use Focus Group recommendations for areas of change on the land use plan for mixed use development and is one of the areas specified. This parcel and surrounding both sides of the Peak Way; also envisioning a triangle formed by the I-540 expressway, Old US1 and Apex Barbecue Road as being suitable for mixed use type development.

Commissioner Schulze asked if Director Rowland thought it would be better to handle a mixed use development instead of a smaller piece. Director Rowland responded he's a planner and loves to see unified plans with bigger tracts put together but this is what's before us.

Commissioner Jones agreed, we've talked so much about TND's and mixed use, larger tracts, looking at 2+ acre piece for something than is different than what's around it; is difficult for him to think about. Commissioner Schulze continued especially when it comes to access; he'd rather see a mixed use development and coordinate the access onto US1 or Apex Barbecue Road.

Commissioner Grimes would personally not like to see the area turn or develop in any sort, residential or otherwise; prefers it stay the way it is too, but at the same time, this one parcel is sort of isolated from all the others and is in an extremely advantages location for some type of service development such as a daycare center, which immediately comes to his mind, not knowing if there are any daycares in the area, if not, there's certainly a need for one. The lot isn't big enough to have a rest home, even if it was, it would be a small one, but a daycare center would be an ideal and appropriate use of this particular property with all the residential development there. With 100 cars a day or minute going by there, the fact is traffic comes by in droves and the fact there's a daycare or church is not going to in his view have any negative impact, but probably keep those people from going down to Salem Church Road or out to wherever and to him, seems a good use of the property; O&I, some type of institutional use of this sort. If there were an opportunity to combine with some other larger uses that would be great, but that opportunity may not come along for another 10 years and this piece of property is literally of no use that could be put to a useful purpose. He feels O&I is appropriate for this site. He doesn't particularly want to see a lot of development out there and further down the road, but what he wants and what will happen is not necessarily compatible.

Commissioner Jones noted to approve a conditional use permit the Board must find the following standards are being met; referred to #1 - appropriate for its location and second part should be two standards: consistent with the 2010 LUP Use Plan and Land Use Plan Update. He asked if it were or were not consistent with the LUP.



Public hearing # 2 continued

Attorney Kaus advised his answer was the same as Director Rowland's answer. The Map is different from the text of the land use plan. The map has colored districts shown, but the text clearly shows the Town anticipated that along major thoroughfares, as this one, especially at intersections, you may have O&I development that would be ideal uses for those types of property, regardless of what the map shows. He recalled a couple of places on NC55 with the exact same thing; map shows high-density single-family but thought O&I would be a proper use on a major thoroughfare. It is, if you agree with that interpretation of the land use plan, consistent with the 2010 Land Use Plan.

Commissioner Jones continued it has always been a debate as to which do you look at, the map or the text. Director Rowland responded you look at both, and staff tries to do plans but can't anticipate every use for every property; conditions change and he thinks it should be fairly general in nature but yet the text backs up the intent.

Commissioner Meckes clarified if there were a house there, there could only be one house on this property. Director Rowland responded this was correct, there's a 5 acre lot minimum.

Commissioner Jensen asked if this could be rezoned to something else. Director Rowland responded the LUP map indicates low to medium-density residential and is one to four units per acre. Commissioner Jensen continued if it were rezoned to what is on the map; he could probably put 8 to 10 houses on this.

Commissioner Jensen asked if the Board could look at the list of standards; he thinks O&I is not a bad use of this if it's done correctly; at the same time he could understand it's a rural area - he's torn on this.

Mayor Weatherly asked Director Rowland if he wanted to point out any inconsistencies, not detail on each one. Director Rowland said he would be the first to admit that predominately you see the area as farm and tobacco fields at this particular location; but sees the area in transition with a huge amount of traffic that comes by this site every day. He realizes all would like to see it stay a very rural type setting.

Mayor Weatherly doesn't know this has ever been an overbearing concern. The minutes of 1981 or 82 about Shepherds Vineyard tract being rezoned with 35 people speaking in opposition; then Olive Chapel Road area, 80 to 100 were opposed to any changes to the pastoral character of the area. Sometimes judgment goes beyond current use if in the public interest, but sometimes you have to give some bearing to property rights and whether the power of government should be used to impose will on the people's personal property when it doesn't impact to a great degree, negatively the existing properties.

Commissioner Schulze commented both of these roads were major thoroughfares, and if they were not, he'd say leave it, but thinks it's the town's obligation to provide services to these people. Commissioner Grimes agreed and thinks even a convenient store would probably be an ideal use for this location, but it's not compatible with what's there, or with what we'd like to see there. Lots would use it and love to have it. He can understand why they don't want it and he wouldn't either. The O&I uses described and considering the deletion of some uses, there's nothing offensive there at all and would provide an opportunity for someone to provide a service that is low intensity, compared to a purely retail establishment that can be nicely landscaped well buffered an institutional look; he doesn't see it as a deficiency.

Mayor Weatherly commented O&I had always been looked at as a transitional use adjacent butted against residential in many instances, because it was considered appropriate to put it adjacent to residential when it was appropriate; in this case, it's another issue but the rezoning classification is considered transitional.



Public hearing # 2 continued

Commissioner Meckes commented another idea as far as traffic is ideally, if there were something there that would not be time period traffic intense, rather something where there is flow of traffic continuously throughout the day, rather than peak times (8 am. and 5 p.m.), if with a daycare, people go by it anyway and some would come against the traffic to come to it. A dentist office would be a small flow of traffic all throughout the day and the impact would be conceivably less than if there were 8 residential units there which would join the flow of traffic that already comes by. He feels the same way as everyone else, it's a tough call.

Commissioner Schulze was more incline to wait to rezone; he'd rather see a bigger picture of the development, He agrees it needs some type of O&I in the general area otherwise the nearest intersection is NC55.

Commissioner Meckes asked if all the land west of there was the Poe property. The big square is 200 acres Poe property.

Commissioner Jensen asked where the Peakway was located. Director Rowland noted it a couple thousand feet if you went by the road. He noted houses at this intersection and if the Peak Way goes through, he recalled north of Salem Oaks there was office with commercial; asking would we allow. Director Rowland stated on the map there's a circle denoting commercial, office, high-density residential at an intersection. Commissioner Jensen noted at Apex Barbecue Road there was not, but in fact it may be at least as well traveled as the Peak Way, with Director Rowland agreeing.

Commissioner Jensen reviewed the list of standards with No. 2 troubling him... appropriate for the location and compatible with the character of surrounding land uses. If O&I with buffering of today, maybe it would be compatible. Home Depot helped – more buffer tones down more compatible with the area and could see his way; it is more compatible with the area. With No. 8, he guessed the Planning Board hit on this, ...will not be substantially detrimental to adjacent properties. He thinks commercial would be, but O&I once again, properly done with adequate buffering would probably not and would give the community the folks in Scotts Mill access to services and we do want to provide services. As Commissioner Grimes stated people would not have to go to another place. Those were two standards he's hung up on and maybe if these folks could get together, he had personally rather see a month go by and have them get together. He noted Mr. Poe had said he was set against it, but maybe there's a few more limits that could be put on this and maybe there could a better buffer and in the long hall have a win-win situation, not looking at O&I but pine trees or hollies, because O&I will lend it's self to that to not have that much visibility to the road and maybe could get there. He's still troubled and would like to slide this one month to give these folks time to discuss this.

Marjorie Britt asked how this would affect Scotts Mill, do they want this? Mayor Weatherly responded this was not relevant to the rezoning.

Commissioner Grimes stated even if someone else came back with a site plan, there's still criteria that if it dangerous, there's criteria to deny the site plan, if it is deleterious and detrimental to the neighborhood and dangerous traffic patterns; it could be shot down.

Mayor Weatherly commented buffering would clearly come into play on a site plan and the issue is rezoning uses that is allowed under and is it appropriate for this piece of property. Those issues of traffic access and buffering will come into play, and have always applied very tough standards under the UDO to site plans and will continue to do so and in this case one that would see what would be submitted if anything in the near future for development.



Public hearing # 2 continued

Commissioner Jensen agreed there are good buffering requirements for most situations. Sometimes when situations are in a more rural area as this, he thinks this is the opportunity where the petitioner could say, I will buffer greater amount, he's tied to the general buffer requirements area and maybe not fit too well there; would like to see more commitment to slide anything that goes in here O&I more comfortably in the rural type setting to be set up to look more rural to go the extra step; then he could feel good about it, he's on the fence.

Manager Radford commented the Land Use Plan for the smaller tract opposite the road is zoned low-density residential, and is exactly the same in every way and based on this being at a major intersection, the Land Use Plan would dictate that it too could have some O&I use.

Mayor Weatherly asked if the Board wanted to put a motion on the floor and then debate the motion.

Action: Motion by Commissioner Grimes that the petition be allowed on the grounds that it does meet the standards indicated 1-10 and is not in conflict or contrary to those standards, and for this reason it be approved.

There was no second to the motion, so the motion fails for a lack of a second.

Mayor Weatherly asked if there were another motion.

Action: Commissioner Meckes made a motion to continue this issue for one month to the first meeting in November to give the petitioner and the residents more time to attempt to come to some agreement. He thinks the option is to turn it down and doesn't know this would be the best thing. Commissioner Grimes made the second to the motion. Motion carried.

End of public hearing # 2

Public Hearing # 3 - Proposed Transportation Plan

Public hearing regarding proposed Transportation Plan maps for the Town of Apex.

Staff Planner Khin gave an overview of the process and workshops held; Planning Staff worked with Kimley-Horn and Associates and Transportation Plan Advisory Group (appointed by Board - 11 citizens, business owners, and developers) to review and revise Town's Transportation Plan. Based on public input and TPAG and Kimley Horn's technical advice, Transportation Plan maps feature the Thoroughfare and Collector Street Plan, Bike/Pedestrian/Equestrian Plan and Transit Plan. There is a time constraint for approval of Thoroughfare and Collector Street Plan Map in order to get map to Capital Area Metropolitan Plan Organization by end of October for inclusion into their plan update process.

Plan report will be provided with October 14 Planning Board agenda packet and will be reviewed by Board of Commissioners October 15 and does not have a time constraint.



Public hearing # 2 continued

Planning Board reviewed proposed maps September 9 and unanimously recommended approval with conditions outlined in the staff report and incorporated as a part of the minutes.

1. Priorities for completion are:
 - a. Funding and completion of I-540 from US 1 to NC 55. Without this connection, I-540 does not provide a true bypass for commuters.
 - b. Complete the eastern half of the Apex Peakway as it is shorter and more complete. The western half is also important, but is second to the eastern half.
 - c. Connect Zeno Road to Kelly Road and have a Zeno Road and Green Level Church Road connection to US 64.
2. The equestrian trails need to be looped through western Apex to connect the two proposed trails. Maintenance issues need to be worked out with the Parks, Recreation, and Cultural Resources Department.
3. All new street locations shown on the Thoroughfare and Collector Street Plan should be flexible and not fixed to an exact location.
4. Request from NCDOT that truck traffic be routed from NC 55 south of US 1, to US 1 east to US 64, west on US 64, back to NC 55 north of US 64 to avoid truck traffic through the middle of town.
5. The interchanges on I-540 from US 64 south to US 1 continue to be investigated by staff, the Transportation Plan Advisory Group, and the Board of Commissioners with NCDOT to include design-build options.
6. Changes to the Bicycle/Pedestrian/Equestrian map (*These recommended changes to the Bicycle/Pedestrian/Equestrian map have already been made and are shown on the map included with this agenda.*)
 - a. Make the connection of the Lake Pine sidewalk between the apartments and the park more visible.
 - b. Connect the sidewalk on Old Raleigh Road from the Catholic Church to Kingsway Dr.
 - c. The Zeno Road multi-use path needs to go all the way to Kelly Road.
 - d. The legend states "Pedestrian bridge"—it needs to state "Pedestrian bridge or tunnel"

The Parks, Recreation, and Cultural Resources Board will review the Bicycle/Pedestrian/Equestrian map at their meeting on September 25, 2002. Their recommendations will be reported to this Board at the October 1, 2002 Board meeting.

Staff recommends approval of the maps as submitted.

Mike Rutkowski, Kimley-Horn & Associates, presented an overview of the draft map plans. He noted the study area of the unincorporated lands which would apply over the next 25/30 years. Plan objectives include enhancement of connectivity of interconnected collector streets with bike amenities, promote pedestrian friendly environment by improving sidewalk system, implement roadway system, and preserve the rural character of Apex. The biggest interest involves US64; removing left turn at signals with potential "U" turn or square loop concepts; equestrian plan linking greenways to the American Tobacco trail (granite screened for bikes); pedestrian crossings – tunnels or bridges on US64/US1/NC55. The transportation plan would piggy back with Triangle Transit Authority and include the commuter routes with bus service and rail service.

The Board of Commissioners will hold a Worksession October 8 and consider the item at their October 15 meeting.



Public hearing # 3 continued

Comments were made regarding NCDOT planning for I-540 connection from US1 to NC55; the US64 plan and their impacts on Apex and what is best for the Town. Kimley Horn representative stated there should be serious lobbying from the Town as the Town would be cornered by three interstate roadways. He advised the requirements for the Apex Parkway should be modeled after the Cary Parkway with 4 lanes divided as it would carry too much traffic for a two lane roadway.

Mayor Weatherly opened the public hearing at 8:55 p.m.

Leslie Kennedy, 1217 Goodwin Road, off US64, addressed the greenway trails supporting multi-use trails to include equestrian needs. She is a member of the NC Horse Council and serves on various boards including the American Tobacco Trail and hopes there would be connectivity from the greenways to the ATT. She proposes the greenways continue from Hollands Crossing to I-540 and north to a US64 tunnel and reach Jenks/Wimberly Roads to the ATT again, completing the loop. She noted the trail along sewer easements were wider than greenway paths and could have multi-use (equestrian, bikes, kids, and hikers) with a parallel track. She recommended working with PR&CR for maintenance of horse manure.

The hearing was closed at 9:00 p.m. No action was taken by the Board.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others to speak.

No one spoke during public comment.

NEW BUSINESS

There were no New Business Items to consider.



CLOSED SESSION

Mayor Weatherly asked to amend closed session to include discussing a legal matter with the Town Attorney. Motion by Commissioner Jones and second by Commissioner Meckes to move into closed session at 9:00 p.m. to consider potential acquisition of real property and to discuss a legal matter as recommended. Motion carried. Closed Session minutes are recorded separately. Motion by Commissioner Grimes and second by Commissioner Meckes to move from closed session back into open session at 9:30 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Meckes and second by Commissioner Grimes to adjourn the meeting 9:31 p.m. Motion carried.

The above minutes were approved on the 15th day of October 2002.

Georgia A. Parker
Town Clerk

Henry D. Weatherly
Mayor



SPECIAL MEETING OF THE TOWN OF APEX BOARD OF COMMISSIONERS

Minutes of Tuesday, October 8, 2002 Worksession

Mayor Weatherly called the special meeting of the Town of Apex Board of Commissioners to order on Tuesday, October 8, 2002 at 7:00 p.m. in the Conference Room, 2nd floor, Apex Town Hall, 73 Hunter Street. The purpose of the meeting was to hold a Worksession of the Board of Commissioners to discuss Transportation issues and the proposed Apex Transportation Plan.

Mayor Weatherly, Commissioners Jensen, Meckes, Jones and Schulze were present.
Commissioner Grimes was absent.

Staff present: Bruce Radford, Town Manager, and Mike Wilson, Assistant Town Manager,
David Rowland, Director of Planning and Dianne Khin, Staff Planner Kent Jackson, Director of Construction Management and Robert Gron, Town Engineer and Georgia Parker, Town Clerk

Representing Kimley-Horne and Associates, Inc. was Mike Horne and Mike Rutkowski.

Manager Radford stated the meeting was to discuss transportation issues and the proposed Apex Transportation Plan, particularly I-540 and US64 access issues and how to approach CAMPO and NCDOT, with the Board holding a public hearing October 15 regarding the decisions to be made if any.

Staff Planner Khin reviewed the issues that should be addressed.

1. NCDOT Plans to begin a study in January and look at making US64 a freeway from US1 to Asheboro. Results of the study will likely have serious impacts on access to US64.
2. Need for a full 4-way intersection at Green Level Church Road and Zeno Road at US64. NCDOT's current plan for this intersection allows no access from Zeno Road onto US64 and to restrict access from Green Level Church Road onto US64 to right-in/right-out turning movements only. Rowland explained the effect on Beaver Creek Commons, and thinks there will be more growth to the west and the more need for better access of the area.
3. NCDOT's current plan for Kelly Road is to restrict access from Kelly Road onto US64 to right-in/right-out turning movements only. They are also considering a grade separation at Kelly Road, which would cut off all access to US64 from Kelly Road. According to NCDOT, the grade separation is the CAMPO-preferred alternative.
4. Location of the Old US1 and I-540 interchange and its possible relocation to Apex Barbecue Road, which is a more central location between US64 and US1. A timetable was formulated by NCDOT-PDEA that considers increase in amount of time by one-year and one-half that would be required to build I-540 through Apex if the Old US1 interchange were to be moved to Apex Barbecue Road (attached).
5. Need for the section of I-540 from US1 south to NC55 to be completed at the same time as the remainder of the Western Wake Freeway (north of US1) in order for I-540 to function as a true bypass.

Khin advised there would be an increase in the time for completion of I-540 by 18 months should the Town ask for an interchange to be located at US64. Any changes would be an environmental impact.

Khin advised CAMPO wants people to continue on US64 and not have to turn off. Staff was advised of this change # 3 above less than a month ago. Khin advised the only access, that's not a freeway to freeway movement for Apex, is at Old US1. One would have to travel over to NC55 and up to US64 and then over to I-540. Old US1 is expected to be the most expensive interchange for the entire I-540 due to the railroad. Manager Radford noted this would afford an opportunity to put a Peakway in the general area due to the turmoil that this would cause.

Jackson asked if there were a full interchange at Green Level Church, how would Kelly Road be affected. Khin advised this was a recommendation to have this as access onto US64 and not have to go back to the NC55/US64 interchange. Kelly Road residents would have to back track to get up to the I-540 interchange but would open up both north and south of US64 in the immediate area. Kelly Road is not a perfect solution but better than nothing.

Khin advised Item #4 regarding the timetable occurred after a meeting with NCDOT. Manager Radford commented the Board had expressed they do not want to delay construction of I-540. The list of issues was reviewed with them and the delay time after expressing interest for this interchange was 18 months. Time schedule was discussed by the Board.

Khin advised # 5 – NCDOT agreed with the need for the section of I-540 from US1 south to NC55 to be completed at the same time as the remainder of the Western Wake Freeway (north of US1) in order for I-540 to function as a true bypass, but funding is not there.

Parks, Recreation Advisory Board met October 7, 2002 and recommends approval of the Bicycle/Pedestrian/Equestrian Map with conditions:

- Include an additional bike/pedestrian link from Hollands Crossing Park along Beaver Creek to the American Tobacco Trail.
- Designate greenways which are off road facilities for multi-use paths which are in the right-of-way on the transportation plan. When the map is redrawn greenways will correspond with Parks, Recreation Open Space Greenways Plan. Six links were added two links removed – their plan needs to be amended.
- Horses are to be prohibited on public greenway trails within town limits and only be allowed where specifically designated on the bike/pedestrian/equestrian plan. These are fully within the county (one from Hollands Crossing Park down to the American Tobacco Trail the other along Jenks Road up Wimberly Road to the American Tobacco Trail). They agree with these two lengths but do not want to see additional ones. An agenda item will be on the Board's October 15 agenda with the recommendation from the Parks Advisory Board to change the town's code to not allow horses on the town's greenway trails. Staff stated horses are a maintenance issue, safety issues with bikes/children/strollers, and equestrian uses were not a part of the master planning process as a priority.

Director Rowland asked the focus be placed on the major items that had to be addressed with CAMPO regarding any proposed changes rather than the recreation portion.

Item # 4 - Interchanges were identified with and without access and noted on the maps; Horne advised there's controlled access on US1 and I-540, you can't enter and get off. You have to look at proper spacing with interchanges, and right locations for an interchange and asked if moving the interchange makes sense and the impacts on the area and the people and express concern of how people would get to I-540; would change area completely. Proposed future collector streets could help, but NCDOT doesn't build future roads.

Rutkowski called attention that with three expressways Apex would be wedged in and getting access is critical. Horne advised with US1 being a major interchange (freeway to freeway) may preclude getting a future Jessie Drive interchange and pointed to the NC55 interchange. Town of Apex owns the right-of-way and is listed on the CAMPO thoroughfare plan as an interchange. Rutkowski stated there are opportunities to put in collector distributors to allow the interchange to go in. Horne stated this is based off current design and appears to him that NCDOT would be short sited to come up with a design that would preclude their own plan at this location.

Horne noted need to address concerns by NCDOT - Apex may want to delay I-540 and to consider an approach. NCDOT would like a blessing of their plan, but feel they already have it in that I-540 is coming through Apex, and went through a difficult process requiring multiple public hearings. The alignment has changed not so long ago, but feels they have tried their best. He advised the Board should make a decision; to go back and asked for modification would delay the project, but the road will be there for a long time, or do we agree with what NCDOT has done and try to modify it on our own to make it work the best we can, but not stand in the way of getting I-540 built.

Rowland stated the plan shows Kelly Road as a full service with a signal and staff agreed, but this had been changed by NCDOT. Horne responded US1 interchange may effect Jessie Drive, but may want to consider more detail to access I-540 - comfortable with that and now look at the west side of I-540 - the road network proposed. Other than Kelly Road, a major thoroughfare, the growth part of Apex will need more roadways. Taking Kelly out of the mix leaves no access for Green Level or Zeno Road and becomes more of a problem. If we can't get to US64 from Zeno Road, let's get a road over to Kelly Road, it's an alternative, but then up to Kelly there's no access. NCDOT has changed this recently. Horne thinks the Board can discuss and work with NCDOT - set in stone is the alignment of I-540 and where the interchanges are to be located. Environmental document is clear on this.

Horne asked which direction the Board wanted to rethink, access I-540 of US64 or US1 - we've grown faster than they had realized.

Jackson asked how the study of US 64 in January would affect Apex, if we say OK to I-540 with access to US64 or Kelly Road and Green level Church, took the approach we would tackle those two things as part of the converting US64 to a super street, partially separating the two. Horne answered NCDOT thoughts on US64 is a large concept on how we move people from Raleigh to Charlotte and will come down within a mile of each other and spend anymore time trying to focus their process is big and global and could try to focus them in on - they are thinking more global. If wait - it could get loss in the global thinking of theirs.

Rutkowski thinks this is where the opportunity is. IF do not delay I-540 the access for mobility is US64. We can deal with the interchange at Old US1, but if improve the access along US64, that's where the northern growth is and the access point that can eventually get to I-540. Without this, it's retrofitted into a freeway - one access point with the next one 4 and 1/2 miles up at High House. He thinks this is the opportunity, don't wait until it's engraved in stone what their ultimate solution is. The stage is set that we think it's almost impossible to retrofit this into signalized interchanges and is how the super street concept came up in protecting the integrity of that facility. From I-540 to the west would be freeway standards.

Jensen asked why the traffic couldn't be pushed north and around. Rutkowski, says when looking from Charlotte to Raleigh – he thinks there's an opportunity to impact what's done to US64 and impact I-540.

Manager Radford asked if there were an opportunity to build a collector that came down Apex Barbecue and get a full service intersection at US64 – at Wimberly and have a major intersection there – Kelly's gone. Rutkowski stated if US64 is retrofitted into a freeway, it become a grade separation idea and supported by CAMPO too. Manager Radford stated the Abbington intersection is history at US64, with access from the back.

In looking at a study do they consider just transportation issues or...Rutkowski stated the project goes from US1 to Siler City (40 miles) and will have representatives from Cary, Apex, City of Raleigh, CAMPO, and NCDOT. Horne stated at this meeting, NCDOT folks were at odds, but the people that were giving them reasons to leave, are the people trying to put I-540 in and is their job. They've worked on it for years. Roadway design is get them permitted, built and to the public and not look back – they build roads. They want to assure we don't look down a path that would give them a hiccup – He advised don't do the hiccup of trying to delay I-540 - lets go and hammer them hard for US64 – lets figure out the bells and whistles that can be implemented on I-540 that makes it look – we said we wanted another grade separation at green level. Let's do that. Yes, it means getting it over to Kelly, but think about what else can be done to improve this ---- On that side of I-540. We've asked them if that's right-in and right-out – look at the distance. Kelly road which is a major thoroughfare to us carry's a bunch of traffic and there's development up and down.

Horne asked how many Apex residents can get to I-540. Meckes asked if it were conceivable with the difficulties of I-540 as presented – everyone will still be far better off than they are now. Horne thinks this portion of I-540 – they could come up NC55 and get to it. He noted the missing piece has to be in to do this otherwise they come up NC55 and hit the current interchange and work up and not a bad way to do it, not the greatest way but can do it. Horne stated these are not Apex people but you are getting none Apex people off Apex Roads – otherwise they come up NC55 through Town. Jones stated the reason for this is to get them off NC55. Horne stated he thinks NCDOT is honest about it and agrees to add this link and will try hard to have it in, if this is the case, it does tend to get the non-Apex people off the road within Apex.

Schulze hopes NCDOT when doing their study will not cut Apex off - they will see taking I-540 westward. Horne is hopeful from this point on, it become a freeway and will not do this. One key thing Apex is asking for is some form of access – and this is shown as an interchange, but we're asking for some form of access at Green Level Church Road that ties across from Zeno. NCDOT says Zeno Road will not connect over to Green Level Church Road and now that this is brought to our attention, we don't want that one either.

Manager Radford noted a proposed project at this intersection and wanting visibility from I-540 and we've asked it be fully signalized and they are not willing to do that. Mills has contacted Faircloth, Former Transportation Secretary and he's willing to take up their cause and look at the site and see if he can help.

Horne noted Olive Chapel location has a school and NCDOT distance is too short (2 and one-half to three miles. Then another good distance. Horne looked at the US64 freeway and an interchange as being two separate issues – the US64 will be a study and by giving in on I-540 and saying OK you got it, we're going to try to put bells and whistles on it, we've got to win this one. Rutkowski stated we have a better opportunity to make change on US64 than we ever will I-540.

Jones stated it came to our attention we should try to move it was due to the changes they made. Rutkowski noted it would ideal if we could move OLD US1 - Horne asked what the chances are if NCDOT gets I-540 complete, Apex pursues in the future another interchange later - Rutkowski thinks the chance would be slim to none - because of the location of the interchange to be built. The interchange will be built on the north side of Old US 1 because of the railroad. Apex Barbecue is forced to build to the south side- the ramps would be too close.

David Rowland asked what if we asked for the interchange at Apex Barbecue Road - either do this or in return give us the two crossings, the Peakway, and some other stuff. Horne stated just saying you want something there has delayed I-540. Rowland stated we're willing to do this, but if you don't want to then do this. Meckes asked what's the basis that we can say that. Schulze asked about the study. Horne noted it will be done by a consultant. Schulze asked if they only look at traffic issues or commerce and what it does to the town. Horn responded typically not. They have I-540 and do you think they did with I-540.

Rutkowski thinks Apex would be forced that way, but Apex could direct that - Cary will be doing that. Access is so important not only to our community but others.

Horne stated the study is successful, but this point out it become a freeway and from here in it doesn't - he's not gotten access; still trying to cut off excess at Green Level Church Road and nothing at Kelly Road.

Commissioner Jensen asked if this were a super highway, did we have a chance of getting Green Level Church Road. Horne stated it was too close to this exiting NC55 ramp and it is close. But, it's working.

Mayor Weatherly asked the time frame for the consultant. Rutkowski estimated over a year. Mayor Weatherly continued we have zero representation on the Board of Transportation and no one to carry our plea to. With two years out and a possible change there, he's looking at when the cards may be reshuffled and the Town may have better leverage. There's no one now to talk to about this, if we represent the at large and Cox from Durham doesn't know where Apex is.

Commissioner Jones asked if this is an all or nothing freeway from US1 west or is it potential for some of it to be freeway and some not, based on the politics of the situation. Horne stated they would not come in and make piece freeway and this piece not. Jones asked specifically Lake Pine west.

Horne stated in at least the Apex Town limits, you are going to have a fairly good voice. He thinks everyone at the one meeting had said the druthers is that if you go to a freeway from this portion of I-540 westward, and we're not interested in talking to them about doing this in this section. They have heard this and think it will be heard within the study, but that doesn't get us access.

Rutkowski stated the next step, what if we didn't have freeway standards to west of I-540, would right-in and right-out north and south of Green Level help us --- Horne stated westward is a freeway type connection, what we are seeing is grade separation and therefore would be no access at Kelly Road. What we would try to come very hard would be that be an interchange and get this converted to an interchange and instead of being shown as an overpass. Rutkowski responded we have allies in Cary, because of their north/west development - 49,000 population and a key corridor down US64 - further to the east - no. Horne stated this almost calls their bluff, in that they are going to close it, even their public hearing maps doesn't show Green Level on the map, it's cut short and he finds it so comical that it's not on the map and they have decided to cut it. He thinks it's all trying to think of the future if this is a freeway, they better not allow anymore at grade intersections. It's like the railroad, letting you cross them anymore at grade - no. NCDOT is taking the same stance - if we think of US64 as a freeway, no more.

Commissioner Jensen clarified the 4 miles to the next access point, and looking at Roberts Road, to get on I-540 going north and couldn't get access, he go up NC55 take it over and get on. Mike Rutkowski supported that concept at the first workshop putting an access and interchange at Roberts, but you're adding an interchange to I-540 and impacts right-of-way, delaying the project – going back to the environmental impact statement.

Manager Radford told us they were approved for a particular corridor through the EPA and an interchange puts them outside that corridor. Commissioner Meckes said they never look back!

Whatever the consequences, they never look back. Horne was there to defend them or bully them too much, they have a very difficult job and understand we are concentrating on three or four miles of roadway but they have the connection that ties back up Cary, Morrisville, and the entire length of it.

Commissioner Meckes bought into Rutkowski's proposal that we forget Apex Barbecue Road, forget another interchange – the last hat he wants to wear – the Apex Board just knocked us back 18 months – with Commissioner Jones saying 18 months on their calendar is two/three years with Commissioner Meckes agreeing. Commissioner Meckes stated it really in practical speaking makes sense everything west of I-540 limited access, everything east is just like it is now. They can't put an interchange at Laura Duncan and Knollwood and Lake Pine. Horne stated you can, it's just expensive. Commissioner Meckes stated this is the question: what we want to try to get. You get an Apex Barbecue Road interchange, and your US64 interchange. Commissioner Jensen clarifying, Kelly Road ends or goes under.

Commissioner Schulze wanted to assure Apex gets what it needs and wants out of US64; if they do as they have planned, he can live with leaving the I-540 interchange down on US1. Commissioner Meckes noted this eliminates the traffic coming through. Everyone else in Apex has more road space to utilize. Commissioner Schulze wanted to put all the efforts and energy into getting what we need on US64. Commissioner Jensen added and the Apex Barbecue Road at the same time an interchange there. Commissioner Jones agreed – Khin responded you're talking US64 Extension.

Lots of intermixed discussions occurred.

Horne stated:

- i) we're not going to tell NCDOT that we disagree with them, but say OK I-540 go ahead, we'll live with it, with Commissioner Jones saying, we don't want to be the ones to day I-540, with Horne continuing, we want it, we know it's in the best interest to get it in as fast as we can.
- ii) now we're going to jump into US64 with Commissioner Jones saying even though you have made some changes to this in the last month, we're willing to deal with those changes and not delay this. Horne continued, now, the concept was let's take Zeno Road across over/under I-540 and get over to Kelly Road, his personal feeling is that's worthless, why do that anymore – Kelly Road is not going to help us – he guesses we could make the connection – Kelly would take us farther, but not sure it plays the role that the Town wants it to play. He's not sure we take it off, but this is where he thinks, as difficult as it sounds, what Apex wants, even though they have not told us no, is we want this. We want to break the control of access – we want to do it. Rowland asked if you can get it better if you go back and keep the interchange at US1 and request another interchange, leave it and if they say we are not going to do this, we are willing to take this one off for – Horne responds sure, lets talk about it and they go back and go to Cary, and others and say Apex has just delayed your road 18 months –

Rowland asked do we get anything by putting something on there to take it off in the future – or in exchange for something else. There was mixed discussion. Commissioner Jones stated there are NCDOT folks who may think this is a good idea to make US64 a freeway, but how much money are they talking about to make this happen. Rowland stated when you consider having to build a totally new road; they can't widen I-40 and I-85 anymore.

Horne continued I-77 south of Charlotte, one of the most developed roads in the state, the most expensive right-of-way anywhere in the state – turned into a freeway, bought out many people. NCDOT's concept is to move traffic move it as fast as they can. Horne was hearing the areas that was taking on importance and noted them on the map, but asking reconsideration of certain areas with discussion on-going about the locations on the map. Rutkowski asked if we were pushing a freeway or an intersection.

Horne continued if its not a freeway and is never going to be and not consider it a freeway – if they consider this internal as a freeway – he thinks this is an at grade intersection. He thinks there needs to be strategy to get it as so. He's talking in his opinion that the first thing to do is get a traffic signal is by warranting the volume that would have a traffic signal. If new development is proposed in the area that would add traffic to Green Level Church Road – that would do it – this development would be responsible for any roadway improvements required on G.L. Church Road that would be needed for a traffic signal. Would a traffic signal at that location in his opinion – you kind of have them. You have a three legged intersection – a tee.

Commissioner Meckes asked if this is where Faircloth can come in. Manager Radford responded he would probably support the Mills project and is what's driving it, without it, they are not coming. Commissioner Meckes stated it's got to have an intersection for Mills to have a project.

Horne felt he could keep the tee intersection the difficulty would be getting the four legged intersection and the cross on the other side to get to Zeno Road. That's the break in control of access and is one not just controlled by NCDOT but held by the Federal Highway Administration. Senator Faircloth could talk until he's blue in the face – break in control of access is a very serious procedure.

Commissioner Jensen asked if there were right-in and right-out from the Zeno Road side was this a break in control of access and Horne responded it is – access is access. Once you break the line, in his twenty years. Khin asked if we do get an at grade intersection for green level church road and a traffic signal and three legs, you can get the fourth leg – maybe. Horne stated it's a lot easier of an argument to go to NCDOT and tell NCDOT to lets work this out – we've given in on Kelly and we given in on the interchange location – you've got to work with us. His point with a signal there, it's hard to deny. They do not have to give that fourth leg – but thinks – we would like possibly before the US64 study, that we sit down with NCDOT and say we don't want to delay I-540; but we did want an interchange here, either move it or do a new one – we want it, but we're going to back off. We thought we had at grade intersection here and signalized, that's a major thoroughfare for us – four lane divided – with all this said, we are going to work with the US64 corridor, what we are telling you is that we will not live with this being a freeway – being honest, we need access full movement signalized intersection here – we're the Town of Apex, we're going to have to work together - with Commissioner Meckes saying we don't want to cut our Town in half, we don't want to disrupt with Horne saying we've got to do this before the study. Horne thinks NCDOT has felt the people coming to them has been coming for other reasons – not piece mill, the staff, Kimley Horne – what has the Town – we've not formally approved this – they like to deal in concrete things, with one of the things he sees – we've got to get an approved plan showing what we want to do with it as quick as we can. The only thing he's seeing Apex wants to change is changing the black dot.

Manager Radford stated NCDOT feels like Apex goes to them in support of development and we talked about what could go at Green Level Church Road and what is going to be at Beaver Creek, why we want to lessen the impact on NC55 due to the development that is there. Why do we want to talk about a Peakway crossing because of the development that would prosper on that side of town? He stated they go there thinking it's not for the development, but we know it's going to come. We're talking land uses and what will come down the road and they are talking about moving traffic.

Horne didn't know how quick a new dot could be placed on the map, but has to ask the question. Does it go back to committee? Khin stated in the past the Board would recommend approval of the plan with the condition of the change in dot to an interchange after instruction to officially do so, the change would be made.

Schulze stated if we shoot for this interchange and with no interchange there, and Kelly Road is a major thoroughfare and we don't have Kelly Road access, how does this impact the thoroughfare plan. Rutkowski stated there is an interim and a long-term; with interim you will have access and is Apex's access to I-540 everything else will have right-in and right-out – and will be the main access when and if the time arises where NCDOT will retrofit the western section and US64 becomes a freeway, it becomes a grade separation and they support that, and it continues to be a north/south major thoroughfare because it carry's a lot of traffic. It's like surface road – Khin stated you could go up to Green Level to get over to I-540.

Horne stated with this as an interchange, this becomes a major thoroughfare to Kelly Road. Rutkowski, noted either one is four lane going major to major – to support the idea of an interchange and continue that to a major thoroughfare to the north – a critical corridor. Coming home, Khin responded go down NC55 or to Old US1 and come back up Kelly Road and the other end you'd get off at US64 and NC55 and come back Olive Chapel. Some will make U-turns. Abbington Subdivision may get cut-through traffic short term.

Horne noted the changes being considering is Green Level be an interchange and from US1 and up be a major thoroughfare. Rutkowski noted it connecting to Cary and they are proposing a four lane divided tying in – you have to consider whether or not it is a major four lane. Lots of mixed discussion.

Commissioner Meckes asked what the fall-back plan would be. Horne stated he didn't have a fall back plan. Rutkowski thinks we have allies – Horne thinks going in saying we don't want to delay I-540 means a lot. Commissioner Meckes thinks we have a local basis for what's being talked about. Horne agrees it makes good sense.

Rutkowski stated we're showing the connection to Green Level Church Road and Zeno Road an at grade intersection and insistent with the super street concept which means no freeway. He believes a connection there is important. Horne thinks we wanted it with Beaver Creek Commons, and thinks US64 will become a freeway from I-540 out. Horne asked if the freeway should start further westward – Schulze thinks the further west the better. Horne doesn't think it would hurt. Manager Radford stated if you are going west of I-540 you may as well start at Wilsonville and ask. All along we said if NCDOT would start at I-540 and go west – they've not been willing to take a hard look at this. Horne doesn't think we've lost anything if we take it from I-540 westward, they may want to bring it in to I-540 but we draw the line at I-540. Schulze noted the future development of the area and the problem.

Commissioner Meckes noted for us there will not be any development beyond I-540; that's our outer boundary. Horne stated we would swallow up I-540 and he hated to say, he was born and raised in Raleigh and could remember the beltline being the road you drove all the way around to get to the other side of Raleigh; the beltline was swallowed up and he'd go to the next interchange to get off and used it as a cut-through.

Horne stated NCDOT was difficult when allowing interchanges and wanted to move traffic, not move it from a short distance. Commissioner Meckes didn't have a problem asking for NC751 but I-540 was as far east as it would go.

Horne thinks with NCDOT we should say we understand what's happening and we're not going to delay I-540, but need access here and are ok with Kelly Road, but need better access at this location and interchange here and need it to be a major thoroughfare to pick up where the traffic and accessibility we will lose with Kelly Road. Horne thinks the Town should discuss with NCDOT and make them understand the desire for an interchange there and not want anything to be constructed that would prohibit that from happening.

Rutkowski noted Apex extension interchange would help our needs, but what is a fall back if we can't get a signal at GL Church Road – full access – can we keep the concept of a super street in tact in that we have right-in and right-out on both sides with a median u-turn. There's room to go around it. Horne stated once you've broken the control of access, it's broken. Let's do it. The people on that side will be upset. We've caught what NCDOT has thrown to us and we are trying to move it back their way. Horne says we're saying we need to have some form of access on US64 whereas NCDOT says we want to get rid of it. Khin stated we could ask for the interchange with the fallback being the signal, which is what we want. Horne stated we have to ask for the signal. Rutkowski said if we say the interchange, then we're telling them the freeway is ok. Horne agreed.

Horne advised he could go the meeting of NCDOT on the 28th and wanted to get with people before then and tell them what the Town is thinking to build support. Commissioner Schulze would like to have NCDOT work with the Town. Horne asked if we should talk with Deborah Barber. Manager Radford didn't feel she would help us.

Manager Radford asked the Board to revisit Green level Church Road about a three or four legged intersection. Connell Radcliff, Client, wants it to be three legged as it bests serves his needs. JDN wants it four legged so it serves everyone involved – JDN was in the game a year plus ago. He's having trouble with a three legged intersection and thinks the need to ask for four. To him the direction was ask for three.

Horne is for the four – understand development – if Radcliff presents to NCDOT – here is my plan showing Green level widening, intersection, median opening, signal etc., and the cross over to break control of access – NCDOT can say no and hand it back. He has no right to be asking for the break in control of access – he doesn't technically need it. The thought is he shows the widening of Green level Church Road, shows paying for the signal, it accommodates his traffic, we push hard, it happens - NCDOT you have a signal here, what difference does it make now. We play more of our card when we go to NCDOT and tell them what our plan is. Who builds the fourth connection – Radcliff, who – Manager stated no, as high a priority as that has been set, he comes to this board and says, we have asked for this, we know how much money it will cost and will make a tremendous change in that quadrant of town and we need to put together a partnership between the town that will do it. Horne didn't disagree, but was not sure that's with the developer on this side of the road (Cole's side). He's trying to think the process through, because without permits, he's shot down.

Manager Radford indicated nothing would go there. Horne indicated he could come in with a tee intersection and its there – NCDOT says we're thinking of closing it, that's the one issue we are pushing as hard and as quick as we can. They have said we are thinking of closing it – not on the public hearing map, off the map, and have done it. Manager Radford was considering telling them we are thinking of locating a fire department within the shopping center he's proposing to build. He's stretched it as far as he can stretch it – there's a municipal use in the future there and he's hand-strung without access to that part of town. Horne thinks they would have a hard time taking a state highway and closing that median, if the volume of traffic and it's close to warranting today it would not take much to kick it into the threshold of warranting a signal. We want NCDOT to allow the signal when we get the signal we have a much greater shot of getting the fourth leg. It's a matter of timing and who does what. In his opinion, the fourth leg – go back to JDN, will you look at this and I might think something else up – his guess is JDN will look at it and be all over it. Manager Radford has no problem approaching it this way. Horne continued, would you let the Radcliff development on the other side if it is only a tee intersection. You have to consider it, if no, then do what is said, enforce it. Is that a condition you are willing to put upon this person. Horne stated it wasn't his decision, but if so, then do that way, if not, you let him fight his battle.

Khin asked direction from the Board: You could leave the maps the way they are – they are not different than what the Planning Board saw. Board would recommend changes.

- Interchange at Apex Barbecue Road and US64 – Apex Barbecue would be a major thoroughfare for its entire length.
- Green Level Church Road and Zeno Road at US64 will not be an interchange but an at-grade intersection, signalized.
- Super Street starting at I-540.
- Kelly Road is right-in and right-out and at grade separation.

Mayor Weatherly asked if we wanted to speak to the freeway at I-540 of NC751. Commissioner Meckes stated it has nothing to do with the map. Commissioner Jones stated showing all these intersections, it shouldn't be a freeway. Rutkowski noted we are meeting them half way with the freeway west of I-540 and showing the interchanges. Horne doesn't think at this time, we should say one way or the other, we said signalize at grade intersection and we've shown interchanges are ok with Kelly. He thinks we don't play the cards, let it speak for itself.

Manager Radford stated after Tuesday night's meeting we would propose a map with these changes and say as a result of this meeting we submit this map. Khin stated there are two options: a whole new map which would not be the same as the Planning Board and Advisory group saw, or could instruct staff to make those changes in the motion approving them. She advised there was not time to go back to the Planning Board. Manager Radford stated last word. Khin asked if at the meeting and not earlier. Manager Radford stated we would have them at the meeting on the 15 th.

Commissioner Meckes stated what this amounts to is political consideration but at any given intersection transition from dirt road to major thoroughfare, we are subject to criticism from the locals, but we've not looked at any individuals but looked at the entire picture and our decision is what's best for the entire community of Apex, not one single area.

Mayor Weatherly responded any changes to lessen or increase the impact that would adversely affect someone else – Commissioner Meckes continued from the big picture view, we feel we've done the best for everyone that's involved – Mayor Weatherly interjected as a comprehensive plan with Commissioner Meckes agreeing.

Khin stated we have to show the section on the map, are we looking at four lanes divided, whatever. Manager Radford asked if this were Apex Barbecue Road to US64. Commissioner Jones stated he would have a problem with four lanes. Rutkowski said he would suggest if keeping it as is – it's a major thoroughfare. Horne stated major thoroughfares get consideration for funding through the state, if designated as anything less, and then it's the town's money. NCDOT would not consider their funding for it at all.

Horne thinks taking Kelly road off which is a major thoroughfare and down grading Kelly, you need a major thoroughfare and knows we may have a problem with it being four lane, but we were considering Kelly Road to be four lane, it doesn't need to be – the volume of traffic is most likely going to be there – consequently Apex Barbecue should be four lanes, divided from Kelly Road – Horne stated from Old US1 – this is the most likely way to get out. Commissioner Meckes indicated the expansion would come south obviously.

Horne stated Commissioner Schulze had caught his attention, and is correct – we've talked a lot here and thinks they should concur with what's being said, not necessarily a vote, but thinks they need to ask, are we ready to go forward with this. The last thing we want is not to concur with this. Manager Radford asked if this were from Old US1 to US64. Khin responded and beyond. Horne showed it on the map. Commissioner Schulze felt it was beneficial it was the way out. Rowland agreed. There was multiple discussion.

Commissioner Meckes asked if everyone was happy with this. Commissioner Schulze was. Rutkowski advised the option on the table was four lane divided from Old US1 all the way through US64 to Green Level West, rather showing over here, if we build it with two lanes with turning lanes at the appropriate key intersections, today on a four lane divided right-of-way to be widened if needed. Rowland asked if NCDOT would lessen – Horne responded major thoroughfare. Khin stated there are two different maps – one shows major/minor. Commissioner Jensen asked when we build these first two lanes we would put the divided median in so all we have to do is go out two more. Rutkowski responded they do not build two lane divided roadways and the state pays for it. Commissioner Jensen asked if we could pay the difference. Rutkowski stated it's been done in the past. Why build two lanes side by side and if we make them four lanes and then have to get out jack hammers and hack up the highway to do it. It doesn't make sense. Horne stated this is a detail that needs to be discussed later – there are all sorts of options, but he can tell you concerns and problems with each; we don't need to get to this level of detail at this stage.

All agreed to show it a two lane on a four lane right-of-way. Khin will do it that way.

Commissioner Jensen asked if they were going to talk about the greenways. Mayor Weatherly stated the advisory commission had already given their recommendation and will be on the agenda of the 15 th. Commissioner Jensen suggested a greenway connection from Waterford Green where it goes down the power lines and one coming back up – there's a short way to go from Waterford Green into McGregor Park an alternate and suggests it, as we may not get the one down the other way. We may not use it, but would know its there. He'd like to see that connection – it's just a walkway there. He knows Lloyd owns the property and may be upset if he didn't suggest it.

Khin didn't have a problem with it. She asked if the Board wanted to show the changes the PR&Advisory Commission recommended. There was multiple discussion. Khin advised they are reasonable changes. There are for the next meeting. There was no further business to discuss.

Action: There was a motion by Commissioner Meckes and second by Commissioner Jones to adjourn at 8:57 p.m. Motion carried.

The above minutes were approved on the 5th day of November, 2002.


Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 15, 2002 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, October 15, 2002, 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation was given by Commissioner Jensen.
Pledge of Allegiance was led by Mayor Weatherly,
Welcome by Mayor Weatherly.

CONSENT AGENDA

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

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

1. Minutes of September 1, 2002 Board of Commissioners Meeting.
2. Minutes of September 1, 2002 Board of Commissioner's Closed Session (separate cover).
3. Finding of Fact, Conclusions of Law and Ordinance approving Rezoning and Conditional Use Permit #02CU06, Ronald Crabtree, petitioner, containing 1.196 acres, located at 509 Center Street from Office and Institutional District to High Density Single-Family Residential Conditional Use District.
4. Minor Site Plan request from Stantec Consulting for proposed full service car wash (Scruffy Duck) in Laura Village Shopping Center between Jiffy Lube and Winn Dixie.
5. Resolution Authorizing Purchase of Public Right-of-Way/Easement for Mason Street Widening Project.
6. Town of Apex Fire Department Membership and Benefits Handbook.
7. Parks Recreation Advisory Commission recommends amending existing ordinances related to use of public greenways.
8. Downtown Business Association requested closing Salem Street between Chatham and Center Streets for a Street Dance, Saturday, October 26, 2002.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford asked the Board as a part of the approval of the Transportation Plan a Resolution be adopted reflecting changes to the Plan as a result of the Boards Worksession. The meeting agenda was set as presented.

Public Hearing # 1 - Proposed Transportation Plan (Staff Planner Dianne Khin)

Public hearing regarding proposed Apex Transportation Plan Report; possible motion to approve the Apex Transportation Plan maps and report.

Staff Planner Khin gave a recap of the past meetings. Parks, Recreation Advisory Commission reviewed the Bicycle/Pedestrian/Equestrian map at their October 7, 2002 meeting and did not recommend adding a loop to the equestrian trails in the western part of Apex as the Planning Board had recommended. They did however recommend approval of the Bicycle/Pedestrian/Equestrian Plan as presented with the following conditions:

1. Include additional bicycle/pedestrian link from Hollands Crossing Park to American Tobacco Trail along Beaver Creek.
2. Designate greenways (off-road facilities) and multi-use paths (in right-of-way facilities) differently on the Apex Transportation Plan Bicycle /Pedestrian/Equestrian map. The greenways designated in the Apex Transportation Plan shall also be designated in the Parks, Recreation, Greenways, and Open Space Plan so that the plans are consistent.
3. Horses are prohibited on public greenway trails within the Town limits except where specifically designated on the Apex Transportation Plan Bicycle/Pedestrian/Equestrian map.

Khin asked the Board if they would like as part of the approval to include items # 1 and # 2 on the Bicycle/Pedestrian/Equestrian Map as recommended. Planning Board recommended approval of the plan report with recommendation the Apex Peakway section have four lanes and median as shown in Appendix A (last page of handout). Per the Board's request from the October 8 Worksession, staff revised the Thoroughfare and Collector Street Map in the Thoroughfare Plan (two maps included in the handout) as well as associated report pages to be consistent with the maps.

The two amendments;

- Green Level Church Road and Zeno Road shall have a signalized intersection at US64 and
- Apex Barbecue Road shall be a major thoroughfare with an interchange at US64 to connect to Wimberly Road north of US64.

Khin answered questions:

Commissioner Schulze asked why the designation would differ in item # 2 above. Khin responded: Location; Parks and Recreation Advisory Commission (PRAC) asked it be designated differently – greenways located in subdivision and land dedication would fall under their review and fall under the requirement to fulfill a greenway; if within a right-of-way would be a part of the road section built by a developer and fall under town review and meet the transportation requirements for a subdivision or site plan. PRAC wanted it clear that if it's in right-of-way, you do not get credit for the recreation portion of the subdivision.

Public Hearing # 1 continued

Commissioner Jensen asked if there were four lanes instead of two lanes and turn lanes at every major intersection, what happens to the bikeway and walking way – was there enough right-of-way to do all of this with a centered divider, to him it didn't look like there was. Mike Rutkowski, Kimley Horne and Associates responded: Current ordinance dictates 90' of right-of-way and recommends accommodation of the cross section noted in Appendix A of 100' of right-of-way; not to say it could not be retrofit and keep 90' ROW and settle for less on the lanes – when they get to this point, taking what's there and retrofit what they want, then decide how wide the median should be – 18' length could be narrowed to 14' or settle for a small turn lane and narrower median. Commissioner Jensen asked what happens to the bikeway/walkway. Rutkowski responded: They will be included within the 90/100' – and proposes a sidewalk on one side and multi-use path on the other – which may mean settling for a narrower median.

Commissioner Jensen noted trees along the sides and asked if this would accommodate all of this by adding just 10 more feet (double the lanes and still have all of this). Khin responded referenced Appendix A in the Transportation Plan showing wide outside lanes for bikes as well as multi-use paths particularly in areas where wide outside lanes are not feasible, multi-use paths would accommodate bikes for any portion they want to traverse the Peakway; also available for pedestrians so they would not have to cross the road to get to a sidewalk, but walk on the multi-use path.

Rutkowski gave a review of the Transportation Plan: Study Area (out to Chatham County), visions and objectives (connectivity of sidewalks – bike amenities – street access - intersection/corridors – crash locations), future conditions (growth – corridor planning – 40,000+ build out in the western section), thoroughfare and collector streets (CAMPO focus on major/minor thoroughfares – prioritized list of projects for next year (design standards will use this information to help make decisions regarding major roads and constructability issues: Peakway, NC55 Olive Chapel Road and Old Raleigh Road; US64 super street – square loop concept for the area), and pedestrian bike and transit improvements and recommendations (better connectivity to downtown, parks, and shopping area; cyclists – wide outside lanes for advanced cyclists – dedicated bike lanes to cater to all levels of cyclists – not for children which creates the multi-use-paths for anyone); regional bus and rail transit – NC54 corridor from Durham and RTP and the second phase for Chapel Hill and RDU - the first phase and connectivity – construction data – need for sidewalks); implementation plan – schedule and adoptions through CAMPO and NCDOT – setting priorities is critical – mid term action plan to identify high and medium priorities per element (thoroughfare, collector, bike/pedestrian and transit) with no definitive time line due to growth – Corridor constructability - Appendix A & B to be used by staff ,

Commissioner Meckes clarified the recommendations, asking if it showed cross sections of Olive Chapel to Jenks and from Old US1 to Olive Chapel Road. Rutkowski advised the recommendations were: Apex Barbecue to be a major thoroughfare with an interchange at US64 and continue up to Wimberly, two lanes with turn lanes at all key intersections on four lane right-of-way.

Rutkowski advised the next steps after this meeting is to submit the thoroughfare amendments to CAMPO for review with potential revisions; next year set the priorities with I-540 being highest priority, especially the connection between US1 and NC55.

Rutkowski concluded his presentation.

Public Hearing # 1 continued

Commissioner Grimes asked if round-a-bouts were being considered, possibly at Laura Duncan and Old Raleigh Roads. Rutkowski responded: Three (3) round-a-bouts are proposed. North Carolina doesn't have two lane round-a-bouts but he supports them. Charlotte, Asheville, Winston Salem will have the first two round-a-bouts and noted one in Raleigh on the state campus, others being considered on Hillsborough Street. There will be a pilot project for a two-lane round-a-bout (Winston Salem). He advised a one lane round-a-bout compared to an average signal is safer and makes sense - people are more apprehensive in making decisions. There's an opportunity to incorporate round-a-bouts in future development plans on the collector street system (2 in the southern area of Apex Barbecue) and encourages them as a traffic calming device.

Mayor Weatherly opened the public hearing at 7:35 p.m.

1) Lisa Glover, 115 N. Tunstall Street, advised the Board she is an Attorney for NC Department of Justice and the agency she represents is NCDOT, but was not here as a part of NCDOT and has nothing to do with I-540 or any other areas and asked they not ask her any questions. She was representing environmental law issues and may get into I-540 issues but not now. She referenced Tunstall Street Figure 4.1 and conditions for granting a recent rezoning on Tunstall Street to preserve a corridor for Tunstall Street Extension. She pointed out connections for collector streets and a 17 acre parcel not built out which may be used for connectivity of more streets and agrees with it. She notes Tunstall Street was very narrow and was used for cut-through traffic and was concerned as well with the speed. She feels if the Tunstall Street connection is made, there will be increased traffic in the residential area where there are no sidewalks and there are children and elderly. She notes a connection would necessitate widening of Tunstall Street to accommodate traffic - houses are close to the road - wider also means faster. She noted the closeness of intersections: Center and Old Raleigh Road, Mason Street, new Tunstall Street Connection and Peak Way - there would be back-up of traffic and turning movement problems for those trying to turn left on those streets. She asked if there was need for a north/south Tunstall Street connector and doesn't think the Peakway will affect cut-through traffic, but when it connects to NC55, feels some traffic would be alleviated.

Requests: Remove the north/south Tunstall Street Extension from the Plan - could see better the east/west connection though the parcel connecting the Peakway which is suppose to be the major road that handles traffic and Mason Street that gets heavier traffic, and keep it off the neighborhood Tunstall Street.

Related request: Finish the Peak Way to four lanes - statistics tells if I-540 is not built out soon, there will be a need for four lanes and even if it is built, four lanes are needed and two lanes will not handle the traffic and then complete the Peakway to the major roads. The Peakway section between Center and Old Raleigh Road is good but does not do much good for the downtown neighborhood until it connects all the way to NC55 so people have access to NC55 from that street. She would like to speed up the building of the Peakway and the building of it to four lanes and its connectivity.

2) JG Gritton has worked with the 800 acre expansions to the west of Apex. He noted turn-a-bouts are ordinary in other parts of the state; but generates a lot of traffic - two or one lane, more people use them and he prefers turn-a-bouts rather than speed bumps.

He represents property owners on both sides of Kelly Road and US64; the property has been zoned for shopping center development for years, and currently under contract for development.

Public Hearing # 1 continued

Problem: Traffic getting off I-540 – will they be able to access the property. He advised there were concrete guides for traffic which allows anyone from east/west to access Kelly Road but not to cross US64. He noted less traffic on the north side of US64 and Kelly Road everyday, and being less than those parked in the town's parking lot and there will not be anything there. There's no interest in development there from the land owners. Green Level Church Road will be diverted; Jenks Road will be the major east/west traffic generator from NC55 to US64. He noted numerous NCDOT plans for Kelly Road and confusion as to what will work. The land there has 500' depth zoned for highway-commercial, industrial or non-residential use and for many years labeled for this use and would serve many without getting on major roadways. Kelly Road south of US64 is the only access to US64 until you get to NC751, and to eliminate or move this access so it could not be used does not make sense – no crossovers, but he wanted the Board to make sure traffic could come in/out. He asked if traffic gets off where are will it go if there's no interchange. US64, I-540 and Kelly Road could be made to handle traffic in that direction and he wants to work to make sure it happens. To say access will not be made available to this property no one wants to look at it and he wants to work with NCDOT to make this happen, if it doesn't he says there's major problems.

Mayor Weatherly closed the public hearing at 7:48 p.m.

Commissioner Jensen noted in a past proposal for connectivity of Parliament and Bledso Streets from Waterford Green into Buckingham and had a problem with the connectivity remaining and recalled the neighborhood had come out being opposed to a connection. He noted there's already a collector street effect through Surry Meadows and their problem would be transferred to the east and make it worse, asking if it were put back in or never taken out. Khin responded: It was not taken out. Commissioner Jensen noted the two-lane streets and some towns when there are volumes of 500 or more on a collector street they do not allow drive cuts. Rowland responded: The parcel where Waterford Green is located was planned initially as a commercial site and was not designed for connection but overtime it was rezoned to residential and only provides for those residents one major access in/out and there may be a future time it's needed. Because there is no access out to the major thoroughfare that serves this subdivision, he recommends it remain, not build out now but be there for future use. Commissioner Jensen noted there will be a second connection, but not much farther from the one access; he was looking at an emergency situation more than anything. He continued in the bicycle/pedestrian/equestrian plan the back end of Waterford Green includes a walkway to a street that eventually connects into Parliament and thought when considering a emergency, consider a multi-use and post "not used for traffic" unless an emergency situation arises. Rowland responded in an emergency, seconds are important and recommends not foreclosing the possibility in that one day it might be needed and keeping it on the plan. Commissioner Schulze asked what would be lost in taking it off. Rowland responded in theory it could be built, but sets it up that if it were ever needed, there would not be a process or surprise anyone that this will be built, it's been on the plan for a long period of time, and a time there might be need for this connection.

Commissioner Jensen noted Waterford Green was built-out and asked for a scenario as to why would there all of a sudden be this need. Rowland responded at a time of disaster the intersection could be blocked and emergency vehicles could not get into this entrance and thinks the Town would want to have the possibility for this connection. Commissioner Jensen responded: It would need to be connected before a disaster. Rowland responded you may have to have a disaster to get it built; policy has been to connect subdivisions with multiple entrances. Commissioner Jensen noted the power line easement that backs up to commercial development, and a possibility for multi-use for an emergency if a fire truck needed to get in, but not be open all the time. He lives in the back of the neighborhood.

Public Hearing # 1 continued

Commissioner Meckes spoke out that politically, it's not possible to do; there was no way the road through Buckingham could handle anymore traffic and anyone that went there could understand the concerns. Commissioner Jensen agreed, but thought it politically possible to do other things such as an emergency use, or bike path.

Commissioner Jensen noted connectivity in Waterford Green (eastern side) into McGregor Park of Cary, and proposed adding from Water Glen Drive the connection straight into Cary for an alternate access into McGregor Park, making an ideal situation for Waterford Green residents for walking/biking. He's sure the developing company and Cary would like this connectivity. Rutkowski has coordinated with Cary and agrees with the idea of connectivity. Commissioner Jensen felt Lloyd Corporation would be favorable and felt Cary would be as well.

Commissioner Jones noted Figure 4.1 Collector Streets and the North Tunstall Street Extension, stating existing Tunstall Street would not be a collector street and asked how staff envisions a collector street merging into a none collector street, and if existing Tunstall would become more of a cut-through than it already is. Rowland responded the solution for cut-throughs on the Town's older streets is the Peak Way, but still sees need for the collector street (the old grid pattern which provides the best means of disbursing traffic vs. coming back to a major thoroughfare).

Commissioner Schulze had indicated he desired a pedestrian crossing on NC55 from Haddon Hall when Beaver Creek was approved and didn't see it on the pedestrian plan. Khin responded: There has to be warrants, but is showing a crossing directly across from the main entrance of Apex Professional Park when warranted.

Commissioner Schulze referred to the Shepherd's Vineyard Greenway, stating the homeowners desire to keep it a private greenway. He appreciates the idea, but understands the concerns of the homeowners for additional traffic through their back yards in connection with the library and maybe Laura Duncan Park. He asked if there was a way to cut off public traffic; and most concerned with bike traffic. Shepherd Vineyard Homeowners Association would have responsibility to police it from being used publicly; the Association maintains it and spends a lot of money on it. Rowland responded: Maybe the homeowners would want the Town to take it over to maintain and connect the greenway. Rutkowski added the intent for connectivity is for the kids and is what it does; he sees the concern, but if its maintenance and ownership issue, hopefully it could be resolved through the town; a public/private issue and if it needs to be widened then it maybe something the Town would want to undertake since there's a big demand for the corridor along Old Raleigh Road. Commissioner Schulze stated he personally didn't see the homeowners association wanting to turn it over. There's already public traffic from Vintage Grove and they didn't want to put up a gate at the end of the greenway, and puts the association in a bind; he's not suggesting a solution, but putting it out there. Commissioner Jones noted the association may want to keep it their separate greenway, or may want to have connections and may be willing to give it up. Commissioner Schulze responded the majority living along the greenway doesn't want it public. Commissioner Jones stated if it's not shown the areas as they develop will not have this opportunity. Commissioner Schulze was not saying, not show it, but raising the issue.

Commissioner Jones referred to the multi-use path and as far as the PRAC and having to pay their fair share as far as greenway does not want to get it confused with NCDOT right-of-ways as part of the dedication and the reason for showing it separately on the map, so people will know what they have to do to get something approved.

Public Hearing # 1 continued

Commissioner Jensen asked when looking at the greenway plan did staff look at sewer easements for bike paths. Khin responded: A portion of them were included on the Parks Recreation and Greenway plan, and staff use the plan as their base map, and assured all the major ones are on their, and some future easements; staff was fine to add the additional link to Waterford Green. Commissioner Jensen added power lines could be linked to Waterford Green. Khin responded it could be shown on the plan but would have to deal with the properties. Commissioner Jensen added it may not be fair since power lines cross between properties, but could ride a bike on them safely.

Commissioner Grimes asked if Kelly Road was proposed to be at grade intersection, and if reconstructed, and US64 is to be constructed to freeway standards, was it recommended it be grade separated on the condition that additional access points be available. He asked if freeway standards would make it impossible for there to be an at grade situation. Rutkowski responded: Based on the current design of the I-540 interchange it would be free flow movement; right-in and right-out and would have to meet grade separation or severed. Commissioner Meckes commented this was a significant portion for US64 and was NCDOT's proposal. Rutkowski stated NCDOT would be looking at the entire idea of retrofitting US64. Commissioner Jones stated their recommendation was to encourage NCDOT to make the freeway from NC751 west. Rutkowski responded: It was from I-540 west.

Gritton commented he is for the Town and has studied the town westward and the 2500+ acres in design concept; 60+ property owners say they are not interested in the town, people who live there or accessing the road there and to build over or under and to them doesn't make sense – and to start an expressway do it beyond NC751. He asked the Board to tell NCDOT this. He commented NCDOT has certain attitudes about this part of the county.

Action: Motion by Commissioner Schulze to approve the Transportation Plan with the amendments suggested by staff:

1. Include additional bicycle/pedestrian link from Hollands Crossing Park to American Tobacco Trial along Beaver Creek.
2. Designate greenways (off-road facilities) and multi-use paths (in right-of-way facilities) differently on the Apex Transportation Plan Bicycle /Pedestrian/Equestrian map. The greenways designated in the Apex Transportation Plan shall also be designated in the Parks, Recreation, Greenways, and Open Space Plan so that the plans are consistent.
3. Horses are prohibited on public greenway trails within the Town limits except where specifically designated on the Apex Transportation Plan Bicycle/Pedestrian/Equestrian map.
4. The amendment of the pedestrian signal across NC55 at Beaver Creek, and
5. The path designation from Waterford Green to Cary McGregor Park.

Commissioner Jones asked if this motion was to approve the resolution with these things. The Manager noted this to be correct. Commissioner Jensen confirmed the connectivity of Parliament would be left on the plan – it will be. Commissioner Jones had not voted for this in the past, but felt if there is opportunity for development there, he would be concerned about this if development occurs, it should send a signal for connection. In this case, he thinks there would not be any immediate development, but there should be a connection somewhere, maybe not at this line, but somewhere. He's in favor of there being an out.

Public Hearing # 1 continued

Commissioner Jensen asked if at the end of Waterford Green into Buckingham it could be for an emergency exit. Commissioner Schulze was ok with this, as it didn't change the plan. Mayor Weatherly didn't think there was anyone that would give three votes from this board to do this, unless there was some absolute compelling reason to do so and in that case if it were on there or not on there, it would get done. Commissioner Jensen was thinking of what would come next, he knew this was a good board and hopefully the next.

Motion carried unanimously.

End of public hearing # 1

Public Hearing # 2 – UDO Amendments (Staff Planner Dianne Khin)

Public hearing regarding Rezoning #O2TRZO9 and associated amendments to the Unified Development Ordinance; possible motion regarding same.

Staff Planner Khin indicated the overlay district represented an additional quarter mile extension beyond the initial one mile area of about 1928. She stated the intent of the district is to encourage that when vacant land within the area is developed, it will be developed with the character of existing neighborhoods and applies to vacant land only to allow for infill development and infill subdivisions and only applies to single-family residences and duplex development. Any new single-family or duplex development that complies with the current requirements of the UDO would not be subject to the overlay district. Those that do not wish to comply with the current requirements and located within in this district could meet the less restrictive requirements of the overlay district, however, in this case administrative approval would be required for developments that do not meet the definition of subdivision. Any requirements meeting the definition of subdivision would still be required to go through subdivision approval.

A positive impact is expected on the neighboring properties because the vacant properties within the overlay district boundaries would be able to be developed in a way that would reduce non conformities and create a better fit with existing neighboring properties. Public interest is also served because vacant properties are cheaper to serve with public services such as police, fire, utilities, trash collection, etc. than outlying properties outside of town. The overlay district will make the area more attractive to builders and developers.

The rezoning is consistent with the 2010 Land Use Plan Update which promotes infill development as a solution to sprawl and with the Growth Management Plan which promotes the concentration of growth near existing and planned infrastructure to minimize costly service area extension.

Sections of the UDO should be amended by ordinance to form consistency with the overlay district: Sections 3.29, 3.35, 6.31, ABCD. Standards must be met before administrative approval or Subdivision approval will be issued for single family residences and/or duplexes within the residential infill Development Overlay district and a part of the ordinance amendment Section 3 items 1 – 8 and incorporated as a part of the minutes.

Planning Board and Staff unanimously recommends approval of the rezoning and associated changes to the UDO.

Commissioner Grimes asked if the one square mile was large enough. Khin responded: Staff had looked at the area or "grid network" and felt the area was most likely the area to be continued and more appropriate for the overlay.

Public Hearing # 2 continued

Commissioner Jensen commented the area contains a good portion of trackside and concerned there was no RCA required, and other areas on the east side and doesn't look at it as areas of infill, if the area is too big, it's another subdivision or large development. He could see it applying to smaller zones but not this one. Khin responded: As far as trackside, it only applies to single family residential, and doesn't know any of this is in Trackside's plan. She stated earlier: The properties located in the downtown area have not been developed with RCA and the majority has not been developed with buffers and more urban form and more in keeping with what already exists to not require RCA and buffers for these projects. Rowland responded if Trackside happens, it will be a TND development and would negotiate RCA at that time and this doesn't apply to Trackside. Commissioner Jensen noted Section 4 of the ordinance states all ordinances in conflict are hereby repealed.

Attorney Kaus stated he interpreted this to apply only to a solely exclusive single-family development TND by its definition.

Mayor Weatherly opened the public hearing at 8:25 p.m. With no one speaking the hearing was closed.

Commissioner Jensen continued his concerns with the eastern side, and accepts what was said about Trackside with multiple development, but outside the Peak Way...Commissioner Jones interjected it was covered under Section C, 2nd paragraph, subdivision approval it has to meet the subdivision requirement. Commissioner Jensen said he was confused with Section 4 in conflict with what was said. Khin responded: The subdivision excludes RCA requirements also; the subdivision requirements she was referring to were street improvements, recreation dedication, basically the items in Article 7 and are required, neither RCA nor buffers which is in Article 8. If you are doing single family or duplex subdivision in this area, you can do, but still meet the subdivision requirements, but it excludes RCA and buffers. Commissioner Jensen pointed out the area he was talking about but was O&I which was excluded. Commissioner Jensen stated he was satisfied.

Action: Commissioner Jones moved for approval as presented with a second by Commissioner Meckes. Motion carried unanimously.

End of public hearing # 2

Public Hearing # 3 – UDO Amendments (Dianne Khin)

Public hearing regarding amendments to certain sections of the Unified Development Ordinance; possible motion regarding same.

Staff Planner Khin reviewed the amendments and addressed comments in Articles 2, 3, 4, 5, 6, 7, 8 and 12 that are presented in an ordinance to amend certain sections of the UDO and incorporated as a part of the minutes and outlined in the staff report.

Planning Board and Staff recommends amendments for approval.

Mayor Weatherly opened the public hearing at 8:45 p.m. With no one speaking, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the UDO amendments as presented by adoption of Ordinance. Motion carried unanimously.

End of public hearing # 3

Public Hearings continuedPublic Hearing # 4 – Mixed Use Focus Group Report (Director of Planning David Rowland)

Public hearing regarding the Mixed Use Focus Group Report, amending the UDO relative to TND and amending the 2010 Land Use Plan to designate four areas for mixed use development.

Director of Planning Rowland summarized the Planning Board's comments regarding:

Wastewater Allocation and Rezoning of Trackside:

Recommends Board of Commissioners review the wastewater allocation periodically at their discretion and consider any adjustments need be made after any adjustments of the recommendations are made. The idea was there may not be any mixed used developments immediately and may want to reallocate this capacity to conventional development; staff feels mixed used development takes longer to put together and recommends the Town not be quick if there are no mixed use developments right up front, to not automatically reallocate this back to conventional development, but wait for a while. Planning Board recommends rezoning of the TND property and at the same time, the Town commit to obtaining the necessary permits to extend the Peakway across both sets of railroad tracts and devise a way Trackside could be developed by multiple developers and preserve the Trackside plan. Further recommends working with property owners and try to implement the crossing of the railroad tracks.

Amending UDO making TND more descriptive.

Planning Board recommends this be done, but expressed concern there is a requirement in the chart that details the TND application with developments over 80 acres, suggests 30% be developed as an urban core and the Planning Board felt it may not be appropriate out on the fringe of town but more appropriate in a Trackside setting closer to Town in a more urban form. The Board has in the proposed TND amendments a special exceptions section that gives flexibility and wants something in place to not do this dense type development on the edge of town if it occurs.

Amending 2010 Land Use Plan in four areas of mixed use development

New section of the Peak Way (vacant area zoned O&I)

Proposed section of the Peak Way between Old #1 and Tingen Road (southwest of Town – 80+ acres or greater, that may require a portion to be the urban core, but Planning Board thought may not be a good idea, but could have flexibility and not require a dense urban core)

Area bounded by Old #1, Apex Barbecue Road and proposed I-540 (west of Town – near Scotts Mill – in view of I-540 and the Old # 1 Interchange)

Zeno Road area (northwest of Town)

Zoning is not being changed but suggests for developers areas for TND development.

Commissioner Grimes asked if TND could be an alternative form of development opposed to a preferred type development. Commissioner Meckes interjected not an absolute, which he thought was what was said, strong consideration could be given to it. Rowland responded: An example of O&I zoning, if a site plan came in, staff would process it for O&I. Commissioner Grimes felt it would be more appropriate than on the fringe of town – Scotts Mill there and being on the fringe of Town.

Public Hearing # 4 continued

Rowland continued, when connecting the area nearer the interchange, and the volume of I-540 traffic and it's convenience of coming off the interchange, he thinks it changes the area. He continued, if there are other areas and compelling reasons, more could be added. These are staff and mixed use thoughts for potential areas, with no changes in zoning map, only land use plan and vision of what Town would like to see. Commissioner Grimes would like to see mixed use development succeed – his concern is will it fill out that way, only residential with no other development of commercial. Rowland responded: The reason for putting it close to major thoroughfares – needing traffic for retail – ex. Peak Way will carry a lot of traffic.

Commissioner Jensen stated it depends on the layout of TND and would want it on major thoroughfares; Scotts Green being across the street from the one area; it's almost a combined TND. Commissioner Meckes sees the point, if looking at these areas, commercial doesn't fly – and may not come to pass in the Green, they way it looks. Concept is great, but no one wants empty buildings not being used – those mixed use entities are those that have access to major roads with Commissioner Grimes adding where those commercial parts are visible to others beside those in the community with Commissioner Meckes noting it may or may not work because there's not enough density to support them. Commissioner Jones commented it could also be due to recent economy with Mayor Weatherly commenting on Southern Village – upscale restaurant there with limited cliental. Commissioner Meckes noted the community had to subsidize the operation as a matter of convenience and practicality for them to go there than somewhere else. Commissioner Schulze asked if the rezoning of Trackage is a future goal. Rowland responded: Yes, what he sees on the cover sheet is a recommendation from the Mixed Use Focus Group and the Planning Board to look at the rezoning of Trackage, not asking it be done now, but consider it. Trackage has been changed on the Land Use Plan, but not rezoned. Commissioner Meckes added a dilemma for the committee, was that no board had ever rezoned a piece of property without the request of the owners; his feeling and has been that Board discussions have been that more uses are opened up for this piece of property as TND than there are uses for it now; the point to be discussed and determined.

Commissioner Jensen commented all agreed but it was a give and take and concerned about the rezoning of Trackage and how it's managed. This is a recommendation, but not solid in concrete from his viewpoint. Rowland continued one main concern was if we don't take action, it would continue to be piece-milled.

Commissioner Meckes noted the points by the Planning Board, the most important was the railroad, and asked the latest state. Manager Radford informed the Board there are three locations on the Peak Way for railroad crossings. NCDOT Rail Division would conduct a rail crossing study on the Town's behalf at a cost of \$60,000 and over two years before they could do the study. After an 18 month study, the Town would have to abide by their study and if we do not abide by it, then the Town doesn't get the crossings, but pays for the study. He knew the results of the study to be the number of potential conflicts each day – (20 trains, 1000 cars crossing, are 20,000 conflicts; - the potential loading of the Peakway crossing - 100,000+ conflicts daily). The Manager had discussed the possibility of trading some of the private crossings located along the northern section – the landowner asked about trading the crossings – they want to trade formula for formula, can't do it. He indicated the town would have an extremely difficult time getting this done. The best shot is with the southern one and its impacts at South Salem Street and the new I-540 and the congestion and boundary *-540 will create and how we can operate inside it with a Peak Way crossing. It will help some, but a better relationship with CSX will help some as well, but we're two years out from a resolution with CSX. Persons have come to talk with the Manger to find a way to develop some of their property in anticipation of the mixed use focus group issues, but without a Peak Way crossing they can't.

Public Hearing # 4 continued

Commissioner Meckes clarified if we agree to what they say; we don't pay for the study. Manager Radford stated what they say is trade conflict for conflict; they will make suggestions – one being Moore Street crossing be closed (south of Chatham) – Thompson Street may or may already be lost, we say it's not closed, they believe it has been – this is potential to gain even though there are no cars crossing it. After those, the decisions get tough. Commissioner Jensen asked if we should pave Thompson to be more usable.

Rowland continued these were issues not addressed by the Planning Board but the Mixed Use Focus Group –

1. Future subdivisions/site plans subject to new rules, suggesting November 1 be the effective date of adoption.
2. Wastewater Allocation that 50% minimum is devoted to mixed use with a maximum of 60%.
3. Growth Rate is an average of 4% over the next 6 or 7 years to 2010.
4. Process requirements of the way a developer gets an allocation – site/subdivision plan approved and secure the capacity by paying capacity fees in advance to reserve their capacity.
5. Allocation process – follow the TRC schedule and follow the rules to stay in the process – (limit to 4 in process at one time).
6. Rezone trackside development.

He noted options for the Board to consider regarding the above: Could pass the amendments to the TND by Ordinance; amend the LUP for the four areas for mixed use development and adopt the recommendations of the MUFG that dealt with the wastewater allocation and process requirements. Adopt all of the recommendations or wait.

Mayor Weatherly opened the hearing at 9:15 p.m.

Bob Boltz, Zeno Road, would like to maintain its character, asking what's included in TND and if his 6 acres of property was included or not and to match up with what's happening leave his property out of it and the surrounding properties southward; those owners want to maintain the same character. He sees more commercial and thinks O&I is a good mix and is surrounded by commercial – town has pushed commercial to major intersections and left connectors to less dense development with this having the opposite effect. The shopping center is convenient to walk too from his residence. He can't vote for the Board, but hears the concerns they have regarding their own neighborhoods and asked they represent his concerns for his neighborhood, even if he can't vote.

Tom Colhoun, 1506 N. Salem Street, was concerned

1) trying to make the nodes mixed use, and makes it more difficult to allocate sewer for mixed use 50/60% - why have nodes or specific areas designated for mixed use when developers will be market driven as to where they think mixed use should go; they are in it for the money to make it happen, not loose. Crossing the railroad tracks is almost impossible and from Tingen Road, it will dead end at the railroad tract with mixed uses within the cul-de-sac – and doesn't understand how it would work. 100+ acres could be used as residential, but doesn't know if it should be designated as mixed use.

Public Hearing # 4 continued

2) Trackside rezoning – he represented one of the owners and another one was present and has talked to the other two owners, Dr. Sugg and Bill Goodwin and all of them prefer not to have someone rezoned their property until it's under contract. There's limited right-in/right-out access to the property from US64 and basically controlled by the Linderman property next to Extra Attic. He continued not being able to get the Peak Way, much less the crossing they were trying to focus on near the church on Salem Street that would align with Haddon Place, doesn't look like it would happen even if other crossings are closed. He asked why rezone the property, you can't get to it, it would sit there, something may occur in the next couple years, and then if it's set as mixed use, may not be what they want to do nor what the property owners want to do – it may not be the focus of the Town at that time. He thinks it's important for the Town and the Planning Department to talk with the four property owners and discuss what they would like to see, and how they would like to go about doing it. If the Town has skin in the game, you'd be amazed what the owners would do to say we're with you, let's make it happen – you'll help them sell their property.

3) Peak Way - there needs to be a date of completion – by the time it's complete, it would be antiquated and outdated since you can't cross the railroad tracks. Get it done, even if you have to float a bond referendum – he'd pay his share. It has to be complete for the Town to grow and can't continue to wait for sections to be completed and developers pay, it has to be done, 4 lanes or 2 lanes, it has to go around town. He noted areas on the map that are not built out but on the overlay district – they have road problems and the reason they are undeveloped – railroad tracks – and it has to be built, but is being left to the developers to do it. If the town puts skin in the game, it can happen.

4) Approval Process - opening the flood gates for residential and mixed use – one has to have site plan approval prior to getting sewer – he wouldn't do this as a developer, where you spend a lot of money and putting time and energy, etc. hard money and the process to get approval with a minimum of four or six months, your money is tied up, given money and then you find out you don't have sewer allocation – he doesn't think so; you can't take that chance. Reserving allocation for a plan and giving an amount of time to have it done and if you don't make it, you out – but saying we're not going to give allocation until your out of the process, it's not fair.

John Linderman, 219 Queensferry Road, Cary, and is a property owner of Trackside land area; noted lots of issues and felt it would be more clear to hear to deal with one issue at a time; confusing, particularly in voting. He sees the cart before the horse, and was the issue to rezone or not. He feels before the property could be rezoned, it needs access and seems that it would be three and one-half years before the Town would know if there could be access if the process starts today. He stated two years ago, the Town needed to talk to the Railroad; they control what will happen to Trackside, and with no access you can't develop it. The Town has yet to sit down and start this process with the railroad, and the Town is the only one to do this, he can't, it's not his right. Last concern, is when applications are made for approval within the Town and if not done by the book they lose their place in line, and this effectively gives him control of what's going to come before the Town and what's not; he's been in this position and if you don't go exactly by the book the Board of Commissioner never hears about it and it never gets to the Board and you lose your spot in line and get set back 30/60 days because the Planning Department is in charge of what's determined by the Town's Commissioners and doesn't think this is the proper process of Government. You're voting on whether you're going to give the Planning Department control of what moves forward, what pace and what comes before the Board to be decided on; it's the Board's responsibility to make the decisions, not the Planning Department.

Public Hearing # 4 continued

Mayor Weatherly closed the public hearing at 9:25 p.m. Mayor Weatherly asked if anyone was comfortable to move forward with any of the options or defer any or all of them and consider them later; there was a lot of information in the report and he would like to have more time to consider it.

Commissioner Meckes noted the railroad issue throws a wrench in it for him; all had been operating under the assumption there could be access to this property and it doesn't appear this will happen for sometime in the future. Manager Radford stated this is one of his strongest priorities and wants to see this work and wants to develop connections to make it work as well as develop a plan for such. Commissioner Jones noted the land couldn't be rezoned today, and required a public hearing before doing so.

Commissioner Meckes stated the reason for creation of the Mixed Use Focus Group was to provide to them some means of determining what comes to pass for the limited capacity that is available to Apex in the future, so it's not used up in projects the Town doesn't want to have. He agrees with the idea and is a part of the Board's responsibility, as elected officials, to assure we do the best we can for the community with what's left. There's a growth cap of 40,000 and there's enough sewer to provide for those additional 15,000 people coming to town and he wants to assure we can do the best we can with what's left.

Mayor Weatherly agreed, relative timelines were being talked about; the railroad issue is clearly within the line that the Town would have additional sewer capacity – 10 years for a regional sewer plant, not that it will dictate what's done with Trackside, but could use up a large amount of existing capacity to do it, but the time frame of this vision for the future will exceed his horizon and should go far beyond that; there's lots of issues and then what they are talking about has a great amount of impact. He wasn't sure how the Board wanted to proceed. Manager Radford suggested in the next couple of weeks, the Board hold a Worksession to discuss all these issues.

Commissioner Meckes noted the Board had been asked to put skin in the game and he invited Colhoun and other folks to come and attempt to make it workable for everyone involved, the Town and the land owners; he didn't want to do anything to preclude landowners use of their land on a long term basis, thinking it's not fair and by the same token would relish the opportunity to have something that adds to the uniqueness of our community and potentially, some of these ideas could fulfill those criteria.

Mayor Weatherly asked if the Board would like to hold a Worksession and follow up with action November 19 meeting. Commissioners were in agreement to do so. Manager Radford advised the ones that were more significant and needing immediate attention could be identified. The Worksession will be held on Tuesday, November 12 at 5:00 p.m. in the Conference Room, 2nd Floor of Town Hall.

Commissioner Schulze addressed Linderman's comments regarding all control being placed in the Planning Department. He disagreed and noted the process is put in place, and if you don't play by the rules – Planning Department doesn't decide what's approved and what's not – they are assuring the rules are obeyed. As long as you play by the rules, it will get to the Board for them to decide. Linderman indicated he would like to debate this with him. Commissioner Schulze said he would be happy to do so.

Mayor Weatherly stated no motion was necessary he would call the work session.

End of Public Hearings



OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others opportunity to speak.

Herman Jaffee addressed the Board regarding shipment of spent fuel rod rail transports through North Carolina to the Shearon Harris Plant, putting NC citizens in danger, and saying rail transports themselves pose terrorist risks. He read a news article "Don't Ship the Waste"; called attention to a article regarding a study and report by State Attorney General Roy Cooper asking Congress to step up efforts to protect nuclear power plants from vulnerability to terror attacks, asking to centralize those efforts in a task force run by the Nuclear Regulatory Commission (NRC) and Office of Home Land Security. Progress Energy continues to ship by rail and asked how trains can be safe; further stating the Attorney General's Office sees no need to take action against them, but will continue to seek information regarding safety. He asked the Board to write a letter to congressional leaders asking them to stop transports as they are at risk, and further to step up standards to protect nuclear power plants from terrorists.

Mayor Weatherly closed public forum at 9:40 p.m.

NEW BUSINESS

There were no New Business items to consider.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session to discuss a Personnel matter.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to move into Closed Session at 9:40 p.m. Motion carried. Minutes of Closed Session are recorded separately.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to go from closed session back into open session at 10:50 p.m. Motion carried.

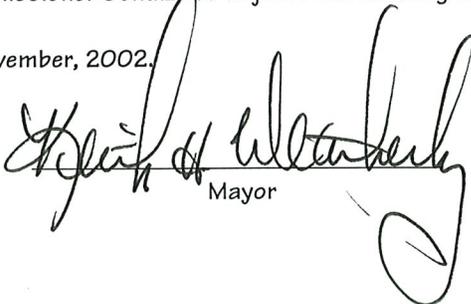
With the Board being back in open session, Commissioner Meckes made a motion to give the Town Attorney a 4% merit pay increase effective on the anniversary date of employment (October 16, 2002), in addition to the 2% COLA received by all Town employees effective July 1, 2002. Commissioner Grimes seconded the motion. The motion carried with a vote of 5 - 0.

ADJOURNMENT

With no further business to come before the Board, Mayor Weatherly asked for a motion to adjourn. A motion was made by Commissioner Jones with a second by Commissioner Schulze to adjourn the meeting at 10:51 p.m.

The above minutes were approved on the 5th day of November, 2002.


Town Clerk


Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 5, 2002 Meeting

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, November 5, 2002, at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation by Commissioner Jones
Pledge of Allegiance led by Mayor Weatherly
Welcome by Mayor Weatherly

PROCLAMATION

Mayor Weatherly read a Proclamation in Celebration of "WORLD TOWN PLANNING DAY".

CONSENT AGENDA

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

1. Minutes of October 15, 2002 Board of Commissioners Meeting.
2. Minutes of October 15, 2002 Board of Commissioner's Closed Session (separate cover).
3. Minutes of October 8, 2002 Board of Commissioner's Work Session.
4. Minutes of October 9, 2002 Finance Committee Meeting.
5. Resolution Authorizing Bruce Radford, Town Manager, to file a grant application in the appropriate State Office for the purpose of obtaining certain Federal Financial Assistance under the Disaster Relief Act (Public Law 288, 93rd. Congress).
6. Ratify revised Agreement between Town of Apex and Wake County Public School System (use of Community Center Gymnasium).
7. Contract - State of NC /Towns of Cary/Apex for Water Supply Storage-B. Everett Jordan Lake.
8. Approve 2002 Cable TV Rate Order.
9. Order closing portions of Salem Street and Chamber parking lot for Annual Christmas on Salem Street event to be held Friday, December 6, 2002 beginning at 5:30 p.m.
10. Order closing portions of Salem Street, Hunter Street, and Moore Street for Annual Apex Christmas Parade to be held Saturday, December 7, 2002 at 5:00 p.m.
11. Ordinance reducing speed limit to 45 miles per hour on West Williams Street from Olive Chapel Road northwardly to where it intersects with Old Jenks Road.
12. Wake County Tax Report for Town of Apex.



Consent Agenda continued

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the consent agenda as presented. Motion carried.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. There were no modifications to the agenda. The regular meeting agenda was set as printed.

PUBLIC HEARINGS

Public Hearing # 1 – Conditional Use Permit #02CU08 (Director of Planning David Rowland)

Continuation of a public hearing regarding rezoning and conditional use permit #02CU08, Ashley Ansara, petitioner, seeking to rezone from Residential Agricultural to Office and Institutional Conditional Use District, 2.8869 acres located at the western portion of the intersection of South Salem Street and Apex Barbecue Road; possible motion regarding same.

Director of Planning David Rowland was administered an oath by the Town Clerk. Having been sworn, he oriented to the location of the property as noted above and noted the hearing was being continued regarding the conditional use rezoning request. Petitioner was requesting rezoning from residential agricultural to office and institutional conditional use district. The petitioner had talked with the adjacent property owners and amended his petition to include:

- 1) Access to subject property; Two full-service driveways off Apex Barbecue Road and Old US-1 as close to the western property and as far from the intersection as it can be, and
- 2) The required buffer on the western property line will be supplemented with additional plant materials to achieve an opaque type A buffer.

Adjacent property owners are still opposed to the rezoning. Planning Board reviewed this item at their September 9, 2002 meeting and unanimously recommended denial of the rezoning request based on the following:

- 1) It is inappropriate for its location and is incompatible with the character of surrounding land uses
- 2) It will be substantially detrimental to adjacent properties
- 3) It will constitute a nuisance or hazard due to traffic impact or noise because of the number of persons who will be using the conditional use

Planning Staff recommends approval of the rezoning request for the following reasons:

- 1) Over the past years properties have been developed over the entire Beaver Creek Basin (bounded by NC55, Olive Chapel Road, Kelly Road and Apex Barbecue Roads), and many residents of this area who pass the subject intersection on a daily basis are in need of convenient, community-type services that an O&I land use with conditions could provide; and
- 2) Subject property is located at the intersection of two major thoroughfares, traditionally where places of commerce are located.



Commissioner Meckes asked if the thoroughfare plan would indicate the future four-lane of Apex Barbecue Road. Director of Planning responded the site plan would indicate it.

Commissioner Schulze preferred the entire area be developed under one master plan. Director of Planning responded: staff too would like to see a unified plan for the area, but this request is for a separate lot and has no involvement with the rest of the area. November 12 Worksession of the Board is to discuss areas designated for mixed use, with the area around this site being an area that could be recommended as such, but noted this lot could be tied into this tract.

Commissioner Meckes asked if the access points would be approved. Director of Planning responded: NCDOT would grant the drive access off US1 and Apex Barbecue Road.

Commissioner Grimes asked the petitioner if he were willing to forfeit the 30% commercial space thinking it would be less obnoxious to the neighbors to have O&I without commercial. Director of Planning read the uses that could use 30% of the square footage in the building for commercial.

Commissioner Jensen asked the petitioner what he had done to mitigate the concerns of the planning board regarding the detriment to adjacent properties, asking if the widening of roadways were a possible option and greater extent of buffers, giving the BP station as an example. Director of Planning responded there's a 30 foot thoroughfare street front buffer, with Commissioner Jensen noting it was not an opaque buffer. Director of Planning advised the buffer along the western property line would increase, but would not want to cover the exposure of the business. Commissioner Jensen didn't see anything to mitigate Planning Board items one and two, but felt extending buffers, would be better, but could understand the visual problem, with the Director of Planning noting the property was vacant farm fields. Commissioner Jensen asked what can be done to minimize O&I to make it better, still having trouble with items one and two.

Mayor Weatherly ask to continue the public hearing at 7:16 p.m. beginning with those wishing to speak in favor of the rezoning request.

Bill Johnson was administered an oath by the Town Clerk, Having been sworn, he noted previous information had already been received by the Board and responded there would be no problem to remove the 30% commercial space use from the petition, wanting to put something here the Town would be proud of, using his office as an example. He continued he had no problem with good landscape along the road, but didn't want to hide it.

Commissioner Jensen commented the 30' streetscape Type "B" buffer was not opaque, wanting the same as the BP station. Director of Planning responded by reading the portion of the UDO pertaining to Buffers, Type A and Type B with B buffers being used between land uses and Type A buffer being opaque, but did not apply to street front buffers.

Mayor Weatherly asked those wishing to speak in opposition to the rezoning request to come forward. Doug Poe and John Britt were administered an oath by the Town Clerk.



Public Hearing # 1 continued

Doug Poe, having been sworn, was one of the adjacent property owners, advising he had spoken at the previous meeting and since had talked with Mr. Johnson. He understood Johnson's perspective, but they had not reached an agreement, but did approve the buffers, but did not agree to rezone the property as it was not in the best interest at this time since the acreage around the site was undeveloped and no idea as to what would happen. He knew it would not stay residential agricultural for ever, but at this time was not compatible with the agricultural land and would set a precedent in an agricultural area. He agreed with commercial in the Scotts Mill development because it was inside the development, but he doesn't agree there should be business at every corner, like on other streets within Apex. He views it more appropriate to rezone the property when you know what will happen with future development around the area and would be more compatible, but doesn't know now. He sees the rezoning as no benefit to the adjacent land owners or to the community or sees any reason for development of these 2.8 acres, knowing new intersections were coming, but not knowing what will happen.

Commissioner Meckes asked if anyone knew how the 2.8 acres occurred. Poe responded, it was a parcel cut from the road alignment and indicated a smaller parcel of the one larger tract as it was severed by the road.

John Britt, having been sworn, advised he lived across the street from this property on Apex Barbecue Road. He prefers houses on the site since its agricultural residential, as houses would be more compatible. He continued if planning calls for dual lanes for Apex Barbecue Road, it would require an additional 30/40 foot and he only has 50 foot of frontage from his front porch to the road. He continued if this lot changes, most likely the footage would come from his frontage. He asked to hold off on the rezoning and plans for Apex Barbecue Road to four-lane until the thoroughfare plan is nailed down, stating it cheaper to construct before a building is on site. He further agrees with Mr. Poe's comments.

With no one else wishing to speak, Mayor Weatherly closed the hearing at 7:30 p.m.

Commissioner Grimes asked Mr. Johnson if he were willing to limit the building height to one story. Mr. Johnson responded he had no problem with this.

Attorney Kaus advised if Mr. Johnson were committing for the applicant, the added conditions should be included as a part of the motion.

Commissioner Jensen desired to have the B Type Buffer. Mr. Johnson responded he had no problem with this, but the site would be well landscaped with a B Type buffer.

Commissioner Jensen questioned the number of homes on the residential agricultural site, as one home per five acres. Director of Planning responded the site was non-conforming and would allow only one home, and if more dense would allow three to five units per acre or approximately 10 homes on residential agricultural zoning.

Commissioner Jensen asked if Apex Barbecue Road were built out to four-lanes, do we know where it's going or would it be taken off the Britt property, and if so, then should plan ahead for this. Director of Planning responded the same amount would be taken from each side - 15 foot on each side for a total of 90 feet, with the site plan dictating this and it being built to thoroughfare standards.



Commissioner Jensen questioned the setbacks for the building and buffers, and when looked at consider the future of the road and insure it from that. Director of Planning responded it would be.

Mayor Weatherly asked if there were a motion.

Action: Motion by Commissioner Grimes and second by Commissioner Meckes to approve the rezoning request as previously amended with conditions by the petitioner and with added conditions, 1) Structure would be one story in height, and 2) No commercial retail uses for the 30%, and 3) Type B Buffer shall be planted in thoroughfare buffers along Apex Barbecue Road and Old US1.

Commissioner Jones felt the rezoning with the conditions was reasonable; he was sensitive to the inappropriateness to the surrounding land uses, but thinks with O&I there could be something else around this area in the future. The Worksession would be to discuss whether it would be an appropriate area for mixed use or not; but he was leery to put O&I here, maybe something else beside it, but is sure the building would be something to be proud of, but was not certain a rezoning tonight was right.

Commissioner Meckes commented next weeks meeting was to guide land use designations (LUP), not to rezone. Commissioner Jones understood it would guide the petitioner when he comes in, and on the other hand granting the use, you can't tell them they can't, but saw this as a timing issue.

Commissioner Meckes commented we operate under the current 2010 Land Use Plan, and O&I was acceptable at major thoroughfares; it comes to us, but if we don't like it, is it legitimate to say you can't do anything here until others around you do it. Director of Planning responded the map indicates low density residential, but you also consider the written language; you can't predict every intersection, but indicated this site appropriate for O&I.

Commissioner Grimes commented the surrounding property was zoned as low density residential, and the people were not happy believing this rezoning to be incompatible; it was hard for him to see it as incompatible, when the church down the road is an O&I use and isn't incompatible with the farm land. He noted the site to be almost three acres, buffered big time, and he failed to see it incompatible, He continued the only request was to see a comprehensive plan, and the people opposed would have to consent to a comprehensive plan, and hard to support until someone wants to do something with it. He respects the positions, but doesn't see it as incompatible with surrounding land uses; heavy traffic is already there, and this wouldn't add anymore traffic, but allow residents to take advantage of services nearby, rather than going greater distance and the petitioner was willing to limit the petition to O&I, one story and greater buffer, and he doesn't see it as a problem.

Mayor Weatherly commented the rezoning to O&I was acceptable and consistent with the past decisions that O&I was an acceptable transition with most conflict being residential next to it.

Commissioner Schulze was concerned with two drive cuts and more growth; the small piece of land almost seemed as if it were spot-zoning instead of piece-mill, wanting to look at the entire area. He noted this as "beginning of trouble" here and wanted to look at a long term comprehensive plan for this area.



Public Hearing # 1 continued

Commissioner Jensen had been opposed to the rezoning initially, but after listening to Commissioner Grimes, there's a strong buffer and the building would look like one house, and even looking forward wasn't sure it would ever get better as far as buffering.

Commissioner Schulze commented on the visual effect of one story vs. two-story and with limited land most would want maximum use of it. Commissioner Grimes debated that two-story was less compatible. Commissioner Jensen stated long term without commercial, would be less intrusive, and possibly if framed correctly, could be added on to, with the impact to the area being less.

Commissioner Meckes likes the idea of preservation – the pond and deer – being a wonderful area, and would like it to stay that way; if it were up to the Town to buy land and maintain this and keep it an area of integrity, referring the Triangle Land Conservatory and looking towards the future, with potential as a park, not being oblivious to what's there now, could be a farm next to heavy commercial development.

Mayor Weatherly noted a valid protest petition existed and would require a super majority vote to adopt the rezoning petition. Vote on the motion was 4 in favor of and 1 in opposition. The opposing vote was cast by Commissioner Schulze. The rezoning was approved with conditions.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others opportunity to speak.

Herman Jaffee again restated his comments from the previous meeting to write a letter to Attorney General Roy Cooper to stop shipment of spent fuel rod rail transports to the Harris Plant. He noted previous inquiry to the Attorney General's office was no local input had been received, but since then, notes receipt of some correspondence asking to stop shipments. He asked the Board again, to write or email requesting stop shipment by rail transports and further to send him a copy of their decision by mail. Mayor Weatherly responded the Board would take his comments under advisement.

End of public comment

NEW BUSINESS

There were no New Business items to consider.



CLOSED SESSION

There were no Closed Session items to discuss.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Grimes and second by Commissioner Meckes to adjourn at 7:50 p.m.

The above minutes were approved on the 19th day of November, 2002.

Georgia A. Parker
Town Clerk

Keith W. Westbury
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 12, 2002 Work Session

Mayor Weatherly called a special meeting of the Town of Apex Board of Commissioners to order on Tuesday, November 12, 2002 at 4:30 p.m., held in the Conference Room, 2nd floor, Apex Town Hall, 73 Hunter Street. The purpose of the meeting was to hold a Worksession of the Board of Commissioners to consider recommendations of the Mixed Use Focus Group.

Present: Mayor Weatherly, Commissioner Jensen, Commissioner Meckes, Commissioner Jones, Commissioner Grimes and Commissioner Schulze.

Staff present: Manager Bruce Radford, Assistant Manager Mike Wilson, Town Attorney Jason Kaus, Construction Management Director Kent Jackson, and Director of Planning David Rowland. Bill Booth, Tom Colhoun and Jay Gilleece were also present.

Manager Radford called on David Rowland to highlight the most difficult issues regarding the Mixed Use Focus Group recommendations and seeking direction regarding them. Director of Planning Rowland stated the four most difficult items, giving the Planning Board recommendation, the MUFG recommendation and the staff recommendation.

Rezoning of Trackside

Planning Board recommends Town work with property owners to rezone property to TND. At same time, Town should commit to obtaining necessary permits to extend the Peakway across both sets of railroad tracks and devise a way Trackside could be developed by multiple developers, yet preserve the Trackside plan. MUFG recommends Board of Commissioners rezone approximately 180 acres from Hunter Street to US64. MUFG believes entire tract could be developed as TND or developed into several TND's. Staff recommends both PB and MUFG (appropriate zoning and avoiding piece mill development).

Commissioner Meckes supports rezoning of the property as it enhances land use for mixed use development; but concerned rezoning without railroad crossings precludes development. Manager Radford met with CSX and NCDOT Rail Division and was encouraged that if the Town were willing to do certain things (close Moore Street crossing and the three crossings on the Booth property), getting the crossings may be possible. He doesn't recommend closing Chatham Street (serves school and churches); there wouldn't be no other crossing until the Peakway was built. Representatives of CSX and NCDOT had suggested closing SR1010/Center Street crossing thinking the public intent would be to come around and use the Peakway (access would be from the Duncan property). Mayor Weatherly received optimistic readings from this, and felt it would be to the Town's advantage. Commissioner Meckes viewed closing SR1010 crossing an advantage to the Town, as it would open up parking to the Duncan House since Apex Auto was moving. Manager Radford advised crossings would be at-grade until high speed rail service comes and doesn't anticipate it during our life time. Manager Radford was optimistic Town will get the crossings, and offered that to postpone any decision on this matter until the crossing issue was clearer.

Mayor Weatherly saw it more meaningful for Apex to get the crossings with Commissioner Schulze noting two crossings were needed for the Peakway. Manager Radford preferred to hold the Center Street crossing to offer as trade later referencing the south side of Town.

Tom Colhoun and Bill Booth commented on the three private crossings (Upchurch, Burkehead, and Fish) and referenced the south side of Town, and looking at agreement to close those to get a public crossing at the church, and noting provision for access probably would require purchase of the house across from Haddon Place. Tom discussed land development, noting the Town had retained 90' right-of-way to access the 93 acre tract (McKay and McGregor were working on a project, but without access it couldn't work). Manager Radford noted both crossings at-grade until high speed rail service, and John Lampe was willing to talk about it. Tom noted 300' between the crossings would not work. Manager Radford commented on the Peakway alignment and the process involved.

Commissioner Meckes considered the land more valuable than the mini storage units, if there's access. Bill noted the tower has to have access 24 hours a day; he saw no problem to close access if there could be a path on the easement he has. Commissioner Meckes noted the need for emergency access. Tom wanted to see TND, but didn't want to rezone the property if it was not going to happen or the Town annexes the property and owners paying Town taxes with nothing happening. Bill didn't want to pay Town taxes and nothing happen, until something was concrete. Tom noted the other property owners were in agreement with this as well. Commissioner Meckes noted there would be access from Hunter Street. Manager Radford suggested that in 90 days the crossing issues would be clearer and could possibly make a better decision if the rezoning were delayed for this amount of 90 days.

Tom asked the reason for the break down of development for 80 acres. Rowland responded the 5-80 acres meets the General Urban standards, with greater than 80 acres meeting the Urban Center standards and was looking nearer Town Hall (idea of downtown development and light rail service).

Commissioner Schulze asked the turn around time regarding rail access. Manager Radford commented two or three years. He commented on the NCDOT mandate for two hour train trip from Raleigh to Charlotte, but noted it a long way to get it done and referenced the closing of crossings to make it happen. He stated Paul Worley was more willing to deal and reduce the number of vehicles around the CSX workshop, and would have one less crossing (Moore Street) not minding the trade off of two for two.

Commissioner Meckes asked about the financing for the Peakway crossings with Manager Radford responding there had been some moneys left from previous project that could be used, with development being responsible for the majority and being carried by the developer. Tom desired Town purchase some of the property available and use it. Manager Radford noted Clint Jobe, Wake County Schools, interest in purchase of the Duncan property for a school and would gain access for the Peakway.

Consensus of the Board was to delay decision for 90 days with Commissioner Meckes pushing for encouragement of CSX to work with the Town to obtain the crossings needed for Trackside.

Amend Land Use Plan to designate four areas for mixed use development

- a. Along both sides of the newly installed section of the Peakway between Old Raleigh Road and Center Street
- b. Along both sides of the proposed Peakway between Olds US1 and Tingen Road
- c. North of the existing section of the Peakway between Olive Chapel Road and NC55, and
- d. In an area bounded by Apex Barbecue Road, Old US1, and the proposed I-540 Expressway.

Planning Board, MUFG and Staff recommends approval. Rowland advised it up to developer as to the extent of size and should a site plan for O&I come before the Board, it could be done; mixed use will guide but not change the zoning which is currently Residential Agricultural, Rural Residential and some O&I (Zeno Road area – 50+ acres).

Commissioner Meckes commented on the way future boards may handle amendments to the Land Use Plan. Director of Planning commented if the LUP were changed to mixed use and the idea had not caught on at the time, a future board could amend it and change the zoning.

Amend the UDO relative to TND

The amendment would act to make the existing language in the UDO more prescriptive.

Planning Board recommends approval but wants flexibility on “Urban Center” requirements if TND is at the edge of town. Staff believes Sec. 2.3.4(G) (2) (l) of the proposed ordinance provides flexibility. MUFG and staff recommend approval. The intent is a two tier type mixed use development – (5-80 acres with less density requirements and 80+ acres for 30/50% more intense type development i.e. Trackage with urban Center – density would be the factor, competing for wastewater.

Commissioner Schulze likes the concept. Director of Planning noted they must be placed on major thoroughfares with Commissioner Meckes agreeing to the concept, noting commercial has to be placed where it can be seen. Mayor Weatherly commented on the concept which provides choices and a menu of options for developers. Director of Planning noted a trip to the existing TND that is prospering (Huntersville). Commissioner Meckes sees this as unique, and that market has to embrace this to make it happen, but likes providing a menu. Tom and Bill prefer to stay in the process at this time.

Wastewater Allocation – 50%/50% - mixed use, conventional development

Planning Board recommends approving with the condition that the allocation be reviewed periodically at the discretion of the Commissioners. MUFG recommends approving. Staff recommends to approve the allocation ration proposed by MUFG, but does not recommend an annual review of that ration. Mixed use by nature is more complex and requires more upfront planning and marketing than a single-family detached subdivision. If Town wants unique developments that can help create a sense of place and are less auto-dependent than conventional developments, town should be willing to wait even if it means toward the end of the allocation period to perhaps re-allocate capacity.

Manager Radford gave a review of the sewer picture for the future (1 mg coming from Raleigh). October rains have met maximum flows and there are no problems to report, but 200,000 gpd is not realistic. To add some commercial development could be done, but in terms of 1 mg, he has concerns with the Kelly Road pump station not taking any more, and noted the commercial capacity (looking NC55 property) and would take what's left of the commercial capacity. The big picture of 1750 units is slightly more than the greatest number of units built in Apex in one year and talking about making it last 7/8 years; it will create issues in terms of operation and have already starting dealing with these issues. 1750 units of mixed use development should be 3 to 5 years ahead, to have the ability to even do a golf course (ex. 1200 units of wastewater) with a recommendation that it's a good idea but to hold that in the back of their minds. Treatment capacity is 3.6 mg and on rainy days and is close; normal treatment is around 2.25 mg; taking in 1 mg of I&I or sometimes more – rainy days 40% I&I, with common being 20%.

Mayor Weatherly asked how the 50%/50% came to be. Director of Planning noted MUFG started at 100% mixed use and went downward and not based on any amount. Mayor Weatherly noted this was a starting target, and if there's something that appeals, that's overwhelming, let those in charge at the time make their decision. Commissioner Meckes noted they wanted to be amenable to innovative ideas, something really unique comes and we want to do what the Town can to accommodate them, because that's what we want to see. Commissioner Jensen noted Lewis Ioannoe's comments regarding a market driven concept or 35% residential, thinking the number has to be flexible. Commissioner Grimes asked if this were a policy decision or ordinance. Mayor Weatherly commented it would be codified (Town Attorney will draft an ordinance).

Commissioner Grimes asked how many of the four possible areas identified for mixed use could be accommodated under this allocation. Director of Planning responded it was hard to tell how many residential units there would be; it's possible only one or Trakside could take all (800/900 units – density could change).

Growth Rate – 4%

Planning Board believes this is a policy issue and did not comment on this. MUFG recommends an average growth rate of 4% until 2010 or until new regional wastewater treatment plant is built. Staff recommends same as MUFG.

Mayor Weatherly was comfortable with the MUFG recommendation, with average being the key; attractiveness being something that's such an addition to Apex that we can't pass it up, but allow some flexibility.

Commissioner Schulze asked how we allocate what will get 4% a year, and then cut off development. Mayor Weatherly responded he hopes that criteria is such that we can say 0% for a year, if something doesn't meet the standard of excellence with Commissioner Meckes asking if we had gotten there, that was the idea behind it.

Mayor Weatherly asked the attorney if we are going to get there, allowing us absolute to say, you've met all the standards of the ordinance, but we can still deny. Attorney Kaus responded if the development meets the standards being talked about, amending the UDO making TND more descriptive, then you would not have the right to, so there's not a catch all.

Mayor Weatherly asked if the zoning were appropriate, we could always, or we have pretty much carte blanche on rezoning. Attorney Kaus advised some of these things they may want to discuss at another time.

Commissioner Meckes commented they were trying to make this a beauty contest out of five, maybe, which one was the best for Apex, with Mayor Weatherly responding if any, and Commissioner Meckes agreeing. Mayor Weatherly asked what if all of them met the test, then we have to cap – with Commissioner Jensen interjecting maybe we need to cap on the 4% that we are going to allow. Maybe 6% one year, but not double it in one year. Mayor Weatherly stated the problem may be we went to 6.1% and we have to say no with Commissioner Meckes interjecting we have all the market factors in there that dictates what is economically feasible for the developer - is it economically feasible for him to put in the infrastructure with Commissioner Jensen saying there's no reason why we can't approve something and have it phased in and is what was talked about before.

Commissioner Jones commented on the number of approved lots and the growth rate per year being different, with Commissioner Jensen interjecting if we allow everything to go in one year, in Construction Manager; these guys wouldn't have a job.

Mayor Weatherly addressed the Attorney again, saying, if we put an allocation ordinance over top of the approvals, we could approve something, but keep that percentage manageable by allocating a number of CO's that we would approve each year. Attorney Kaus responded that the Town could do that, and another thing to think about is one of the things that will control all of this, is the new process that's being suggested of prepaying capacity fees, so the idea of hitting 6% right up front, you're talking massive developments at least at the beginning with 1 million or 500,000 gpd; you're talking market factors limiting us, which is another thing that will prevent the apocalypse. Commissioner Jensen commented 6% today is 4% in 10 years.

Mayor Weatherly noted the planning board didn't weigh in on this, but asked what the comfort level was, average of 4%. Commissioner Jensen stated if you do an average over a year, lets go to the other extreme, if you do an average of 10% or 4% over ten years, then you go 40% one year. Mayor Weatherly asked what if you get one project that is absolutely so ... Commissioner Jensen interjected, he agreed do it, and then we're back ... with Mayor Weatherly commenting we're back to a moratorium war. Commissioner Jensen continued then let's phase it in. Commissioner Jones stated phasing in, you've spent your allocation, with Commissioner Jensen thinking that's what Cary was doing; building over a sequence of time, and thinks if we could do this; it's a great management tool.

Commissioner Meckes commented, we could get into the first year and could have four proposals and commit all the sewer allocation we have and then build it out. Mayor Weatherly commented, we could have another 25% a year allocation ordinance, and could build them out 25% over four years or 5 years, or so.

Manager Radford commented the new treatment plant is finished in 2009 or 2010 then you have 7 years at 4%, we wouldn't make that number of units, if we take the commercial out of that, which would work out fine. Manager Radford commented the closer you get to that window, a year and one-half before the plant opens, we will already be under construction, and would have a good idea, if someone comes in 2007 and wants 500 units of this, and is in the planning process, would not use them until after the plant is open. Commissioner Meckes stated an average 4% of 30,000 is 1200 or 400 units a year. Mayor Weatherly stated for draft purposes, it's an average of 4%.

Process Requirement and Allocation Process

Director of Planning David Rowland commented go together.

Planning Board believes these are policy issues and did not comment.

MUFG on process requirement recommends that a developer pre-pay the capacity fees within 45 days after receiving approval of the plan. Staff agrees; developer would prepay, and would control some of the growth, one thing to get your plan approved, but prepay, makes your project happen. You not only submit a plan, but prepay to get a reservation. .

MUFG believes with the allocation process, recommends to basically follow the TRC process where projects are submitted at first of the month. Once the project is approved (takes 3-4 months), the developer would pre-pay the capacity fees. MUFG recommends a payment system be developed where a developer could make a down payment with pro-rate payments as units are developed with an expiration date. Commercial development would pre-pay 100% of their fees, while residential would pay 50% as a down payment. Staff agrees with MUFG but recommends that no more than 4 projects be reviewed by TRC in anyone review period; when one gets approved and prepays, you still have 3 and could add another one (date, time and stamped and processed). They would pay their fees within 45 days of approval of the site plan; they are serious about the project.

Commissioner Jones asked for the reasoning behind 100% and 50%. Rowland stated MUFG felt the commercial was surer that it comes on line quickly, where a subdivision is built out over a period of years. Commissioner Jones commented sometimes a site plan for commercial happens as well. Rowland stated this says, be serious and sure about what you're doing before you start the planning process that it will happen.

Commissioner Jones asked if this would be reimbursable if they didn't do their project. Rowland felt the Town should look at this, if submits, prepays and finds out it's not working, then ... Commissioner Jones interjected a commercial project site plan is approved and the closing date on the sale of the land is two months later and they pay 100% capacity fees Commissioner Jensen interjected; you can't hang them for that.

Commissioner Meckes interjected you can make it transferable as well, if someone has that capacity. Manager Radford commented we went through the transferability issue months ago, and never became solid footing, with Commissioner Jones interjecting transferable for that same site. Commissioner Meckes stated we're not in that business of cutting checks.

Attorney Kaus advised they should keep in mind that it doesn't rule out the existing option that they don't have to prepay the fees, they could "roll the dice" and wait to pay their fees.

Mayor Weatherly commented six years from now, we would have more security in doing this than in two years. Manager Radford asked how they felt about the process of keeping four cued up. Rowland stated staff feels once the doors are open, they will start the process, with one approved, the fifth one will take cue in line, but not having more than 4 at one time. Manager Radford stated there would be more than four at one time, but thinks there's some demand for conventional, based on the people coming the last few months anticipating this happening. There have been general plans before us – will be first come first serve. There was continued discussion of the process.

Commissioner Grimes asked if there are plans with no merit, would you consider those vs. others that do have merit. Mayor Weatherly stated he guessed the planning board would consider them and then give the Board a negative recommendation, and would deny and allow the next one in play. Commissioner Jensen wanted to know if they would know what was in the cue all the time. Manager Radford noted they would be in the standard TRC process. Commissioner Jensen maybe we're looking at one not so good, may not want to permit anything.

Mayor Weatherly hoped there would be some framework to deny or approve only those that really are worthy of using our finite sewer capacity. Attorney Kaus commented it's how high you raise up your standards; there's no way to write something ...if we like it we will approve it, if we don't... with Mayor Weatherly interjecting beauty is in the eye of the beholder. Commissioner Meckes stated that's what we're trying to get to and there's no way to do it. You establish the criteria significantly high enough that anything that comes in is acceptable is going to be pretty high and feels that's what's been done with the UDO. Mayor Weatherly commented consultants have said we are at the cutting edge of that standard. Mayor Weatherly guessed it should be staff driven, and if they say four as what's manageable, then agrees. Consensus was for four in the cue at one time.

Summary or other issues.

Manager Radford asked about the criteria for small subdivisions or infill projects and small projects. Rowland stated he didn't set a limit or amount. Jay Gilleece commented on development infill, asking where he would fall in being treated on a fair basis; from a rezoning to a subdivision could be six/eight months down the road. Rowland stated it was divided up into small subdivisions, but first come first serve. It all relates to the fact that there's a limited amount of capacity, with Mayor Weatherly interjecting we must be thoughtful about the process.

Manager Radford asked where we got off tract when talking about infill. Mayor Weatherly stated it's not precluded here, with Attorney Kaus responding 50% - business as usual. When talking about six to eight months delay, come and get your rezoning or your subdivision approval, there's 500,000 gallons set aside for exactly that standard conventional process. Jay asked so the definition between infill projects and projects that is outside the loop or with Commissioner Meckes interjecting no projects outside the loop. Commissioner Jensen stated we actually should prefer the infill projects. Commissioner Meckes commented if a golf course came in outside, they would have to look at it as one of those unique.

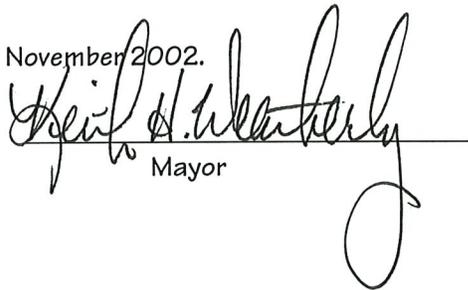
Mayor Weatherly asked would it rate high on the criteria. Rowland stated we would have to have it written down if that is going to be the criteria used. Commissioner Grimes interjected is there an administrative review that doesn't require the Planning Board or Board of Commissioners action. Rowland responded if it falls below or doesn't meet the definition of subdivision or site plan, for residential units, it is an existing lot and they want to reuse the existing lot, it doesn't require review by the planning or board of commissioners, but when you subdivide property or doing a site plan, which is any development of four or more units, then requires a site plan and goes before the Board of Commissioners. Rowland continued four rental units do not trigger a site plan. Gilleece asked if you divided a tract into four single family one acre lots - Rowland stated it would still be a subdivision.

Mayor Weatherly asked if any further business needed to come before the Board, being none, there were a motion by Commissioner Meckes and a second by Commissioner Jones to adjourn at 5:55 p.m.

The above minutes were approved on the 19th day of November 2002.



 Town Clerk



 Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 19, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, November 19, 2002 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation was rendered by Commissioner Grimes.

Pledge of Allegiance was led by Scout Abel Shores, Troop 205 with participating scouts of Troop 226.
Welcome by Mayor Weatherly.

PROCLAMATIONS

Mayor Weatherly presented a Proclamation Endorsing the 2002 Scout Luminaria Project to Scout Troop 205.

RECOGNITIONS

Recognition of Town of Apex Employees:

Planning: Lissa Parrish, Code Enforcement

Police: Jennifer Sanders, Tele Communicator and Mike Prince, Police Officer

Waste Water: Lori Shell, Lab Tech and David Hall, Plant Operator/Mechanic

Electric: Michael Tysor, Line Trainee and Fred Locklear, Line Tech

Street: Randy Brodhead, Sr. General Maintenance Worker, and

John Cannon (promotion) Public Works Operations Supervisor, and

Dan LaMontagne, Solid Waste Coordinator

Parks and Recreation: Josh Enoch, Maintenance Worker

Construction Management: Adam Stephenson, Engineer

Mayor Weatherly recognized Deborah Judd, Planning Department, Recipient of the "Vocational Community Service Award" from Cary/Kildaire Rotary Club.

Mayor Weatherly recognized Steven Yates, Zoning Code Enforcement Officer, Planning Department, for receiving Certification by the North Carolina Association of Zoning Officials.

CONSENT AGENDA

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

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the consent agenda. Motion carried.

1. Minutes of November 5, 2002 Board of Commissioners Meeting.
2. Minutes of November 12, 2002 Board of Commissioner's Work Session.
3. Annexation Petition # 330, Edward Riggsbee, et al., owners/petitioners; and
 - 1) Resolution directing Clerk to Investigate Annexation Petition # 330;
 - 2) Certificate of Sufficiency of Petition by Clerk, and
 - 3) Resolution setting date of public hearing for December 3, 2002.
4. Findings of Fact, Conclusions of Law, Decision and Ordinance regarding rezoning permit #02CU08, Ashley Ansara, petitioner; 2.89 acres located at the western portion of the intersection of S. Salem Street and Apex Barbecue Road, changing zoning classification of lands from Residential Agricultural District to Office and Institutional Conditional Use District.
5. Site plan for MoJo's Tavern and Billiards, 2005 Vision Drive.
6. Site plan for Apex Village Center, 546 East Williams Street.
7. Contract to Audit Accounts with Mills, Rouse & Company.
8. Resolution Accepting Dedication of Public Rights-Of-Way and Easements for the Mason Street Widening Project.
9. Resolution Authorizing Condemnation of a Portion of a parcel of land for Public Waterline.
10. Parameters governing the opening of Apex Community Park Lake for limited boating.
11. Adopt wording amending Apex Code of Ordinance Section 15-7(g), prohibiting horses on public greenways within the Town's Municipal Corporate limits.
12. Resolution Authorizing Electronic Advertising of Bid Proposals.
13. Resolution to amend section 12-21 of the Apex Code of Ordinances to authorize a limited exception to the Prohibition Against Out-of-Town Water and Sewer Service.
14. Formal acceptance of Yard Waste Recycling Agreement with Highway 55 C&D Landfill, LLC.
15. CSX Pipeline Crossing Agreement for waterline installation under the railroad at Salem Church Road.
16. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. With no amendments to be made, the meeting agenda was set as presented.

PUBLIC HEARINGS

Public Hearing # 1 – Rezoning Case #02CU07 (Senior Staff Planner, Dianne Khin)

Public hearing regarding conditional use rezoning case #02CU07, Stephens Property Group, LLC, petitioner, seeking to rezone 294.25 acres located on NC55 between US1 and future I-540, from Light Industrial to Planned Unit Development; possible motion regarding same.

Mayor Weatherly asked all persons that would be speaking during the hearing to come forward and be administered an oath by the Town Clerk.

Senior Staff Planner Dianne Khin, being sworn, gave an overview of the staff report for the proposed rezoning, orienting to the location of the 294.25 acres (Cash-Maynard Lands) on the west side of NC55 at Jessie Drive Extension (south of US1, north and east of future I-540), stating the current zoning as light industrial, and the requested zoning for Planned Unit Development, and identifying the adjacent zoning and land uses. Applicant: Stephens Property Group, LLC. The staff report is enclosed and incorporated as a part of the minutes.

The Riggsbee parcel to the west is not a part of the rezoning request, as it is not yet annexed. The Annexation Petition will be considered by the Board of Commissioners in December, and if annexed, a conditional use rezoning to PUD (a part of the PD Plan included with this petition) will follow. Proposed use of the property is for Apex Town Square PUD. Impacts on neighboring properties are listed in the staff report and the restrictions/conditions proposed by applicant also noted in the staff report.

Applicant has submitted a Transportation Impact Analysis (TIA) prepared by Kimley-Horn and Associates and submitted with the rezoning package and reviewed by Wilbur Smith Associates. It is agreed by the applicant and the Town that all future site plans for any phase or phases of the project must have a separate TIA completed that will specify what roadway improvements are needed for each phase and who will be responsible for completing these improvements. Kimley Horn and Associates responded to the comments in the attached letter.

The proposed rezoning is consistent with the 2010 Land Use Plan that calls for commercial uses around NC55/Jessie Drive Intersection and for Major Employment Center uses surrounding the commercial core; and proposes to have commercial uses around NC55/Jessie Drive and Major Employment Center uses surrounding that commercial core. The zoning designation of PUD allows applicant to rezone the entire tract the same zoning while keeping the uses consistent with the 2010 LUP. Public Interest is best served by this request because it will be impetus to the implementation of the NC55 Corridor Plan; when the project is built out, there will be significant improvements made to the area in terms of access and infrastructure/utility improvements.

To approve the conditional use permit the Planning Board must find that 10 standards are met; to deny the Planning Board must find those 10 standards are not met and are listed in the staff report and incorporated as a part of the minutes. Staff recommends approval of the conditional use rezoning based on consistency with the NC55 Corridor Plan, the 2010 Land Use Plan, and the Apex Transportation Plan, as well as on the conditions placed on the subject property as specified in the PD Plan for Apex Town Square.

The Planning Board met on November 11, and recommends approval with the conditions offered by the petitioner and further with the exclusion of arena, auditorium or stadium from Section 3.0 Permitted Uses due to the size.

Commissioner Grimes asked the mix of residential uses and if it meant multi-family, apartments, or other. Commissioner Jensen noted the executive summary calls for 520 apartments and 60 townhomes; to him against the guidelines. He continued that on page 5 of the PD Plan it notes the RCA designation as no less than 25% and no more than 30% of the entire PUD shall be designated as RCA, asking why this limit. Khin responded there is no minimum or maximum, with 25% being reasonable for non-residential, and the 30% was their decision to offer a range not a minimum. Commissioner Jensen offered that in regard to run-off the NC55/US64 developers had based their discharge on a 50 year storm event asking what the plan was for this development. Khin responded the applicant will address this question.

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

Phil Stephens, having been sworn, introduced himself as President and Chamber Executive of Stephens Properties Group, LLC, Atlanta, GA. The company was recipient of the Award for Excellent for the Phipps Plaza and currently has five projects in development. He gave his vision of the mixed use project, with urbanism concepts, achievable due to growth, location, best serving southern western Wake County, and being an appropriate development that would fit well in Apex.

Jon Wilson, Kimley Horne, reviewed the project goals, commenting on the topography of the land and the creek corridors in respect to the environment, complimenting the character of the property with a proposed greenway, with the goal of a pedestrian friendly environment and a quality development that Apex residents can be proud of. New Urbanism Goals: i) quality architecture, human scale, buildings and specifications, ii) pedestrian friendly environment, iii) assure connectivity with Apex, iv) reduce auto trips, v) create a sense of place, and vi) feeling good about the proposed "Apex Town Square". The proposed zoning for Planned Development Conditional Use includes those conditions in the PD Plan. A Life Style Center is being proposed for mixed uses to live, work and play and will include residential variety type housing (conventional, apartments, townhomes, condo's, and cluster homes), assuring connectivity with other uses. MEC (offices) will be integrated into the Life Style Center. The Conservation Plan respects the creeks and buffers with a 27% RCA with designated RCA and some areas not designated RCA along Jessie Drive. Roadway Network: A Transportation Impact Analysis was conducted; Utilities will be networked with the Town. The next step is site plan process. He noted the site difficult to develop to due to creeks, but the size and layout will work well with this topography and with the creek corridors.

Commissioner Jensen saw a large amount of apartments (90%) and desires a reasonable amount of apartments; he prefers whatever prefers homeownership vs. rental properties. Wilson prefers the wording multi-family and non-detached single family, with intent not to have strictly rental apartments. Commissioner Jensen asked what they were willing to commit to as far as ratio of homeownership vs. rental. Wilson stated they have not yet dealt with how much housing occurs in the life style center, but has not developed at this point.

Khin verified to Commissioner Meckes there are 2.5 persons in single-family homes and apartments. Commissioner Meckes ask if apartments and townhomes were included as a part of the retail. Wilson responded a portion would be, but not in addition too, but is not sure what percent, but as much as possible over the life center. Commissioner Jones asked if the number of apartments were coming from the TIA, but was from the executive summary (520 apartments and 60 townhomes) and are a part of the zoning request.

Commissioner Jensen referred to the TIA stating no indication there would be anyone going from the apartments to the work environment on the land (the internal capture) and was concerned with the objective of a PUD to bring people together, and were not doing this. Mike Horne, Kimley Horne and Associates had reviewed traffic trip generations concerning apartments and the projections, and was comfortable with the trip generations. Commissioner Grimes commented the hearing was not to endorse or approve the plan with this rezoning or a particular allocation of housing units, and noted this was an outline of development rather than specifics. Commissioner Jensen responded he understood, but wanted to get over the hurdle and see what direction this was going, so it would not come back at them. Commissioner Grimes agreed they should know the concerns up front.

Commissioner Schulze directed attention to the EMC and the office space portion of the development, wanting to see a major employment center in Apex where people could live and work in Apex, and had envisioned this area for this type need. He felt the office space portion was weak and would like to see more office space, not really being able to tell how much office space there is. Wilson responded there is 750,000 square feet with lots of office space and was challenged by the topography and the creek corridors, actually going vertical to get six or seven stories; quite a bit of square footage given the land. Commissioner Schulze was in favor of the vertical. Commissioner Jensen asked with the vertical, how would the parking be handled, under the building or off side or spread out. Wilson responded it depends on how high you go, because of walking distance under the building, typically over three or four stories, you have some type of structured parking, underneath or associated nearby next to the building; it would be too far to walk and not convenient for people.

Commissioner Meckes commented on the ownership/apartment situation, asking if apartments could be built to specifications so they could be converted to condo's later, creating a more desirable and with the amenities located here would be a unique situation. Wilson responded his preference would not be tied to a percentage for rental vs. ownership so early in the process, but would be back with the site plan. Commissioner Jensen felt it best to head in the ownership direction. Wilson understood.

Commissioner Jensen asked how many jobs would be generated. Wilson responded this has not been studied at this point. Commissioner Jensen hoped they would have a decent match in PUD, where we generate more housing than we are available jobs; the object is to mix and get that nice mix of houses and jobs. He asked when you build commercial and office, is there anyway to tie the two together and hopes to link the commercial or office ownership with ownership of the buildings to try and get the companies to push their employees, asking them to look at this, feeling it's important to tie those two in some manner. He didn't think it has been done and feels it's a good method to get employees to be there; they buy an office and buy a couple of houses and offer them to their employees. Wilson responded it's an interesting concept and thinks it would benefit everyone, but an interesting challenge would be how the market reacts, but was willing to look at it.

Commissioner Jensen commented on the stormwater control run-off for pre-development, and offered the other development had agreed to a 50 year storm event; were they willing to base their development on a 50 year storm.

Harland Britt, Kimley Horne, having been sworn, responded they have not looked at a 50 year event, in that the state water quality rules and in this particular watershed is not high quality water, but the state rules calls for a 10 year event. He believes the Town to be looking at a policy that would incorporate the two year and the 10 year event (about 5 1/2" of rainfall). He stated a 2 storm is about bank full flow (storm that fills up the creeks) and he hopes the Town would have its policy in place and could meet the 10 and 2 year, but was not looking at this time at a 50 year event, which is a 2% chance occurring in one year.

Commissioner Jensen commented the 50 year event might be 8" rainfall, and are heading in this direction, and even if it's not high water quality, every water basin should be higher quality, with Britt interjecting it's your basin.

Mayor Weatherly asked what other municipality that he knew of did a 50 year event. Wilson was not aware of any other one that has a 50 year storm event; most people looking for water quality are looking for additional levels, which Apex is doing here, but from a storm event, the highest he has seen has been a policy being looked at by Fort Bragg for a 25 year event. Commissioner Jensen added the larger event you look for, the higher quality you have coming out of a smaller event. Britt agreed.

Kevin Mason, Dixie Pipeline, having been sworn, stated DP's interest; owners and operators of DP Terminal has been in Apex since 1961, and are located on the east side of NC55 with the rezoning being to their west. The company is a propane storage facility with distribution and transmission lines; the interminus point of the 1300 mile propane transmission line that starts in Texas (major propane distribution system in the south and across seven states). DP acquired acreage and pipeline 50' wide right-of-way through the west side, bisecting the proposed development area; operate a 6" pipeline with 1700 miles of line and running north and east across the property; 110 truck shipments daily – 10,000 gallons a truck load and complies with state standards and has a 41 year safety record. DP must look at how things are handled with existing facilities and property development when it comes in place. DP in the past has negotiated additional setback areas to the pipelines and discussed the zoning but no exact details and restrictions. DP position is that if they are willing to issue a Letter of Intent to continue to negotiate with DP in good faith toward the end of negotiating additional setbacks outside their existing pipe line right-of-way, they could ultimate arrive at some mutually agreeable terms, they would not be opposed but would work with this development in the future, and are interested in the project. Commissioner Meckes asked if this issue had risen before regarding major development in close proximity to DP lines. Mason responded they have worked with other developments in the past, and has been able to negotiate setbacks and other types of legal instruments that modify or give them buffer zones for their existing pipeline; recognizing their 1961 lines have been there for some time and had good prior rights behind them. Commissioner Meckes didn't have any problem with the storage tank, but when the sky lights up, it concerns him. Mason stated they do have a good safety operation record. DP has proposed, but waits to see, 50' to either side of the existing 50' right-of-way, not an expansion to either side of right-of-way, but 50- of setback with conditions to be negotiated. One particular condition that frequently appears is no engineered works and any load barring there might be. The right-of-way runs northeast to southwest across the property. Commissioner Jensen thinks it would be great to buffer the tanks.

No one else spoke during the hearing, and there was no opposition. Mayor Weatherly closed the hearing at 8:10 p.m.

Commissioner Grimes noted the PD Plan for Commercial/Retail is expected to use 250,000 gpd of sewer capacity, and requires less than a typical residential development, asking what capacity would be needed for the residential portion of the development. Britt responded, ultimate build-out would be 1 mg of sewer capacity and would be phased in and hopes the wastewater facility would be in place and capacity would be available, but in talking with staff (Tim Donnelly, Director of Public Works) believes capacity is already available. Commissioner Grimes commented we have that much, but not much more than that.

Commissioner Jensen asked if the retail/commercial would be the first phase. Stephens responded, it was hard to say which phase would come first, but explained both market for office space and multi-family is soft in the Triangle and hopes would come back in three or four years. His most keen interest is retail as fast as he could attract tenants and have the roads set up, but have planning in front of them. There is good market for retail. Commissioner Jensen referred to trying to develop commercial/retail at the same time as the houses, but asked if he were looking at developing, obviously market driven, would he try to do office and institutional and light manufacturing at the same time as the houses, so people would not flow in and out. Stephens responded there would be more of a market for office and research facilities if the commercial were in place and will function as an anchor for development. He felt the same would apply to housing with retail in place, making a good market for the rest of the development.

Mayor Weatherly reopened the public hearing to allow Stephen Keith, Troop 205, and resident on Tunstall Street to speak. He was administered an oath by the Town Clerk. Being sworn, he called attention to the traffic problems on NC55 to Fuquay, and the increase in traffic at NC55 and US1 with the proposed development or at least until I-540 comes near completion.

Mayor Weatherly closed the hearing at 8:15 p.m. asking for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve rezoning case #02CU07 with the conditions proposed by the applicant and the Planning Board, and as agreed to by the applicant.

Commissioner Jensen was concerned if another 600 homes come, and don't have jobs out there, they are on the wrong side of town in respect to RTP and looks like a fifteen year program and the I-540 should be through, but felt NC55 was critical and should be addressed. Commissioner Jones stated it should be addressed at site plan. Commissioner Meckes commented on this was conceptual and early in the process, with a lot to be done regarding roadways, environmental issues, and seeing this as a unique opportunity to have a wonderful situation for the community where there can conceivably have jobs and be a walking community, and asked how we could disagree with this, not seeing how they could, and supports this concept.

Mayor Weatherly commented there have been reservations for every project along NC55 for the last ten years, with improvements are coming to NC55 and hopefully will expedite I-540; there are legitimate traffic concerns, and more appropriate to discuss those at site plan. Commissioner Jensen referred to the US64/NC55 development and fairly micro in respect to traffic and sure the town will look macro in respect to this development.

Action: Commissioner Jensen wanted to add that with the recommendation to the motion that stormwater run-off would be based, as a recommendation on a 50 year storm event and that we maximize homeownership over rental ownership. He offered this as an amendment. Commissioner Grimes made a second to the motion understanding it as a recommendation and not a requirement.

Mayor Weatherly asked for a motion on the amendment.

Commissioner Jones understood it as a recommendation, and agreed as far as townhomes, the 50 year storm event that we want to protect water quality, but thinks we need to know whether this is a reasonable level of quality to obtain before we jump in. He continued it is fine to say it's a recommendation, but wants to make sure we don't throw it out there as a requirement until it's been studied further.

Commissioner Jensen responded that's why he put it forth as a recommendation. Mayor Weatherly commented it sets a bad precedent that we recommend it and it clearly indicates we have some credibility scientific or otherwise, 50 years, why not say 100 years if we are after absolute stormwater retention, but, experiences of other communities that have a lot of experience with stormwater, none seems to find credibility to a 50 year event, as a requirement and recommendation may be fairly innocuous as these things go, but clearly sets a precedent that we wouldn't recommend it if we didn't feel it has some credibility. Someone could substantiate scientific or otherwise credibility in requiring a 50 year event then that's something we need to establish as a policy of the Board, otherwise, we want to do what we reasonably can, but even to recommend something we don't find a strong backing in the community or other places.

Manager Radford noted in the MUG recommendations, the 50 year storm issues are involved there as well and might set a policy that might have already attributed itself to this particular issue prior to it coming back for site plan review. Commissioner Jones stated the Board sets policy and make decisions rather than recommendations; with recommendations typically coming from other directions. Commissioner Meckes stated he wasn't ready to do this either; this is all conceptual at this point and thinks everyone has an understanding of their concerns and issues they want to be addressed, but those would be addressed during site plan process.

Commissioner Jensen commented that it comes back to economics vs., wanting to develop and flush downstream to someone else. You try to clean it up economically as you can but Tim Donnelly Director of Public Works stated the best we are doing in respect to Swift Creek is still degrading year after year, and as practical every other river in the Piedmont, year after year. He continued we need to set the bars as high as we can to keep quality up for future generations and don't have to make it a recommendation, but hopes and is sure the developer is a quality person and hopes this could head that way.

Mayor Weatherly asked for a vote on the amendment to the motion. Vote on the motion was 1 in favor and 4 in opposition. Commissioner Jensen voted in favor of the amendment with the other Commissioners voting in opposition. Amendment to the motion failed.

Mayor Weatherly asked for further debate on the original motion. Being none, he called the question. Vote on the motion to approve the rezoning petition with the conditions proposed by the applicant and the Planning Board, and as agreed to by the applicant. Motion carried unanimously.

End of Public Hearing # 1

Mayor Weatherly called for a brief recess at 8:25. The meeting reconvened at 8:30 p.m.

Public Hearing # 2 – UDO Amendments (Senior Staff Planner Khin)

Public hearing regarding amendments to certain sections of the Unified Development Ordinance; possible motion regarding same.

Staff Planner Khin recommended adoption of an ordinance to amend sections of Articles 4 and 8 of the UDO and outlined in the staff report. Planning Board recommends approval with 2 minor revisions: Section 2.E deletion of the word care in the text and deletion of "or" after the word and in Section 8.3.9(D) 10. Staff recommends approval of the amendments as presented.

Mayor Weatherly opened the public hearing at 8:35 p.m. With no one speaking, he closed the public hearing and asked for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the amendments as presented. Motion carried.

End of Public Hearings

OLD BUSINESS

Items # 1 – 4 (Director of Planning, David Rowland)

Old Business Item # 1 – Allocation Mechanism for Rationing of Wastewater Treatment Capacity

Possible motion to adopt an Ordinance to Provide for an Allocation Mechanism for Rationing of the Wastewater Treatment Capacity Provided to the Town of Apex by the City of Raleigh Pursuant to an Interlocal Agreement.

Director of Planning Rowland recommended adoption of an Ordinance providing for an allocation mechanism for rationing of the wastewater treatment capacity provided to the Town by the City of Raleigh. It states 50% of the allocation from Raleigh would be used towards mixed use development and 50% towards conventional development and that would look at average annual growth rate of 4% to begin January 1, 2003. The Growth Management Plan looked at 2004, but at this point in our allocation, and we have the 1 mg from Raleigh, we think it appropriate to start it in 2003.

Commissioner Meckes inquired about those things approved three years ago asking if it could still go forward and doesn't fall under the 4% cap. Rowland responded it can go forward. Commissioner Jones commented everything approved three years ago is using our existing wastewater allocation. Rowland responded they already have allocation. Attorney Kaus advised Section 3 addresses this, in not such clear language, Ordinance #990817 is the QRD Ordinance, pre-approved residential development essentially says this ordinance only deals with the 1 mg from Raleigh and nothing to do with pre-approved allocation.

Commissioner Jensen asked when talking about average of 4%, we do have the right to limit it to 4% even three or four come up before us; we saying we can go up 6% or 8% in one year, will we have the ability to make sure we don't want to have a run away year on the first year.

Attorney Kaus offered this could be talked about in open session or in closed session and left it to the Board's discretion. Commissioner Jensen agreed to talk in closed session for his advice, with Attorney Kaus agreeing this was probably advisable and could possibly add it to the closed session portion of this meeting to consult with the Town Attorney.

Commissioner Jones agrees the target is an average of 4%, not to all happen in one year and is why the allocation plan took place three years ago, so at whatever point in the last three years we wouldn't have a moratorium, and spread it out over a period.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adopt the ordinance as recommended. Motion carried.

End of Old Business # 1

Old Business Item # 2—Amend Certain Sections of Unified Development Ordinance

Possible motion to approve an Ordinance to Amend Certain Sections of the Unified Development Ordinance.

Director of Planning Rowland recommended approval of an ordinance to amend certain sections of the UDO relative to Traditional Neighborhood Developments and being specific to the closest criteria setting up two general areas – General Urban Area (at least 5 acres, but less than 80 acres) more like you see on new sections of the Peak Way as you get away from the center of town, and the Urban Center (greater than 80 acres) and more like Trackage Type Development.

Manager Radford addressed the storm drainage issue under section (h) Storm Water Management ...the stormwater structure shall be designed for a 50-year storm event.... and felt was the appropriate time to discuss this. Mayor Weatherly noted the lack of support as previously discussed in the last rezoning. Rowland asked the Board if they desired to remove this section, staff would come back with an amendment for an overall, not just how to handle storm events in TND, but an overall amendment that would handle all development. Staff has prepared the language but needs to put it in ordinance form. Manager Radford asked if he proposed to do so in the next couple of weeks. Rowland responded it were possible, but should be done through the public hearing process and would take longer. Manager Radford anticipates proposed development by the first of December and would like those folks to know what kind of plan is taking place; this would create a dilemma for them.

Commissioner Meckes asked if new language would supercede what is done here. Rowland responded if you want to make an exception by using a 50 year storm, it could be done, but staff would be proposing a particular language to handle the entire town. Mayor Weatherly responded there shouldn't be anything special about TND as far as stormwater run-off, it there is policy for TND; it should be there for other development. Commissioner Jensen noted specific language in PUD. Mayor Weatherly recalled it in Worksession. Manager Radford noted it wasn't pulled, but discussed that there would come a time to make a decision.

Rowland responded Dan LaMontagne had poled other municipalities and found the normal to be 10 year storm event. Manager Radford recollected a 2, 5 and 10 with Garner having a 10 and was the highest found. Commissioner Grimes asked was it advisable to have a more stringent requirement for a TND. Rowland didn't think so, but had rather experts address this.

Mayor Weatherly suggested if there were no other issues outstanding in other parts of the ordinance, he suggested to pull this and allow staff work on the stormwater section and bring a recommendation later and proceed with adoption - approve with exception h. Commissioner Meckes doesn't want to get into dictating different requirements for every possible with Mayor Weatherly interjecting absolutely. Manager Radford stated this had come from direction of the MUFG, amendment from Mr. Jensen's comments at that time.

Attorney Kaus suggested that in taking out all of subsection h) if there were one sentence relating to the 50 year storm event, he suggested just take it out. If you were take out all of subsection h) there would be no stormwater requirements for TND if an application were to come in tomorrow.

Commissioner Jones didn't know what he was opposed of, 5, 10 or 50 but would like to hear more discussion before voting. Commissioner Schulze commented to leave it in as 50 year, it's the worse case scenario so the developer could plan for that and if the final version comes through, it's easier, and so be it. Commissioner Meckes asked what the consequences of a 50 year storm event were; on a 100 acre TND they have to have a 23 acre pond; it depends on topography.

Commissioner Jensen commented a 10 year storm event may be a 7" storm and 50 year storm may be a 10" storm for the same site and if you allow for longer retention of this water, it runs off at a much higher quality. He ran his own test on Swift Creek and stored it for a few months and it was clear, where if stored for few days or a week, it's cloudy and you're sending it downstream to other folks. He restated it was accepted by the US64/NC55 developers without an argument and had no problem with it; if built properly in a development, it would be an asset. Trackage would have three small ponds and incorporated into the development to give them quality of life issues to the development.

Commissioner Jones wasn't disagreeing, but wanted to do something that was comprehensive that doesn't target TND's. Commissioner Jensen stated we've already done that, he believes a 50 year storm was applied to that and a 50 year storm on NC55 awhile back. He used as an example, St. Andrews Church, there's problems there and always will be; he could take pictures of what happened to the development. You have to set bars higher and think the best quality you can't. He doesn't think it's a huge impact to the development community to do it.

Mayor Weatherly responded he didn't know what the impact would be and Commissioner Meckes wanted someone that was an expert to come in and say this is what it means in terms of impact to have a 10 year, or 25 year, or 50 year.

Mayor Weatherly thought this was done for this site, asking if a sketch was done by Commissioner Hilt, for less than 50 and how much this 12 acre site would require, either how deep, or how much surface area ..., but was eye opening as to what it required when talking about capturing that amount of water.

Mayor Weatherly asked if everyone was comfortable with the rest of the ordinance, except stormwater issue, and asked if anyone objected to taking out the 2nd sentence and come back later with what would apply not only to TND, but to all development.

Commissioner Jensen objected. Commissioner Schulze asked if it's taken out by default, what do you tell developers. Rowland responded that's the problem, it's been on a case by case basis and need to come up with a solid policy and staff has that ready to offer. Commissioner Schulze asked if we would get in a jam if we took this out and the developer says you don't have a requirement now. Attorney Kaus advised it would be business as usual. Commissioner Meckes stated we're talking about quality, but we still have a quantity issue. Commissioner Jensen stated the larger quantity you plan for, the higher quality you have and this did go through the MUFG and Planning Board and now the Board has concerns about it.

Mayor Weatherly asked for a motion:

Action Motion by Commissioner Meckes and second by Commissioner Jones to adopt the ordinance as written with the exception of subsection (h) second sentence - The Stormwater structure shall be designed for a 50-year storm event. Vote on the motion was 4 in favor and 1 in opposition with Commissioner Jensen casting the opposition vote. Motion carried.

Director of Planning Rowland will follow through with the public hearing process.

End of public hearing # 2

Old Business Item # 3 – Amend the Land Use Plan

Possible motion to amend the Land Use Plan by designating four areas for mixed use development as shown on the attached map.

Director of Planning Rowland reviewed the four proposed areas to amend the 2010 land Use Plan for Mixed Use Development. Manager Radford advised the Upchurch property on South Salem Street is under contract with the purchaser's and the seller's has been to see him with anticipation from the MUFG recommendations and in anticipation of tonight's meeting to know in the future at some point, would designate several areas as mixed use development areas. The developer has bought it under what we would do under the 50% mixed use development and 50% conventional development. It's his goal and desire to develop that as conventional development even though at the same time we have a requirement that major thoroughfares in places where commercial development is to be considered is something the Town Board would recommend and approve at site plan basis for commercial activity on major thoroughfares. He asked to hold this one for further consideration at later date. If this particular project doesn't work out for this particular developer with this seller at this time, then come back and do this, but is one that was anticipated may be caught up in mid stream.

Commissioner Jensen stated we had never started Trackage and is in effect a mixed use. Rowland responded it is already designated as TND on the land use plan. Commissioner Jensen stated the one between Old Raleigh Road/SR1010 in terms of access, would we require that the Peak Way be in, looking at this as a difficult access area. Rowland responded that's where the new section of the Peak Way has been built. Commissioner Jensen stated it goes no where and is concerned that we need connectivity of the Peak Way over to NC55 or some major flow out. He indicated some folks there was concerned as well as his self. He referred again to US64/NC55 looking at micro not so much macro, how do we insure that it will not attack the folks of Surry Meadows and Old Apex, are we going to make sure we come down the road line. Rowland responded we require traffic reports and adopted the thoroughfare plan to require development to connect to Tunstall Street, set up a network there so people would have a way in and out and then down to a specific site plan as to how they would propose access and that type thing but the backbone is the part of the Peak Way that's put in and also a connection over to Tunstall and to another connection out to Old Raleigh Road that is on the thoroughfare plan.

Commissioner Jensen stated Tunstall brings us back into Old Apex and in terms of thoroughfare; he would want to see the Peak Way put in at least over to Laura Duncan or preferably around and up to NC55 there has to be better access. Rowland responded not just for this development but the whole flow of the Town and agrees; he would like to think this would not be as auto dependent as some of our other developments, and is the whole idea is to make more walkable communities. He knows this is the theory the idea people want have to get out on the road as much as with a different kind of development; traffic will come down the Peak Way, with or without this development and idea of the Peak Way is to carry traffic. Commissioner Jensen wants to see the Peak Way before the development occurs, and wants to make sure we have better traffic flow all the way down.

Commissioner Jones agrees, questioning if this was the appropriate place for mixed use development and the Board's challenge is to match this with our transportation plan at the appropriate time. Commissioner Jensen wanted to make sure we have the Transportation Plan set up before we do this. Rowland responded the plan is in place, it's the implementation / money to do it. He stated the plan is solid, it's the funding. He thinks in terms of where we will position these mixed use developments; beside Trackage, he thinks this would be second priority in terms of where he thinks ideally this could work, in the center of town.

Commissioner Jensen was concerned it's a small site and that once again to insure there's employment equal around to what housing there is; got to be sure how these things are match and is critical, asking that maybe Planning staff could look at how developers can match the EMC portion with the housing and be woven so we get what we want to see.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Grimes and second by Commissioner Jones to approve the amendments to the Land Use Plan as recommended for the areas for mixed use development as shown with the exception of the Upchurch property on South Salem Street.

Commissioner Meckes understood even if the Upchurch property was under this, it still would not preclude conventional development there. Manager Radford responded this was accurate however our concern is it goes to the Planning Board with a mixed use designation then the likely hood of it being approved for conventional development is probably lessened. Commissioner Meckes asked how this came about; it had never been his understanding about this designation casting this into stone. Rowland responded in order for the Upchurch property to be developed more densely, it would have to be rezoned and one of the first things to look at is the LUP that guides and thinks what Manager Radford was saying was with the designation on our land use plan, if it went through as mixed use development, and one wanted to do a conventional development, then we would have to say it really doesn't agree with the LUP, not to say it couldn't be rezoned to a conventional development, but thinks Manager Radford was saying maybe right now, because of the impending...with Commissioner Meckes interjecting he's hesitant to make a designation; we may as well rezone it if the designation amounts to rezoning. Manager Radford responded there's some truth to that and thinks it true that a designation begins to cast into stone, saying it's the recommendation of this Board to look off in the distance and do some future planning and to say if not now, then one day, we intend this to be a mixed use area.

Rowland advised he had developers calling him and have heard about mixed use development and want to know what areas of the Town is being considered; it's an aid but does not change the zoning of the property but guides. Commissioner Meckes knew it didn't change the rezoning but we're almost saying it does. Commissioner Jones stated it does place influence on the property, with Rowland agreeing. Commissioner Meckes wanted everyone to be in mindful of this that it does not preclude other options as well. Rowland responded that it has been said that if there are some compelling reasons of any land use amendment that if it's not right, that you could simultaneously request a change in the LUP and the zoning. Commissioner Meckes responded a few weeks ago that it's conceivable that it could sit like this for 10 years and nothing ever come to pass and you have to be able to look at it again. He wanted to emphasize that this option is always available.

With no further discussion, Mayor Weatherly called for the vote on the motion. Vote on the motion was 5 in favor and no votes in opposition to approve the amendments to the Land Use Plan as recommended for the areas for mixed use development as shown with the exception of the Upchurch property on South Salem Street. Motion carried.

End of New Business Item # 3

Old Business Item # 4 – General Policies Plan Submission

Possible motion concerning general policies regarding plan submission, number of plans reviewed at any one time and payment of fees.

Rowland gave a review of the general policies regarding plan submission, number of plans reviewed at any one time and payment of fees.

1. Both "conventional" and "mixed use" projects will generally follow the current TRC process.
2. No more than four "conventional" and no more than four "mixed use" projects would be reviewed at anytime. Once a project receives approval, another project will be forwarded to the TRC in the order accepted by the Town as reflected in the date/time stamp affixed by the Town.
3. Non-residential projects must pay or secure with a letter of credit, 100% water and sewer capacity fees within forty five days of plan approval by the Board of Commissioners in order to lock in allocation.
4. Residential projects must pay or secure with a letter of credit, 50% of the capacity fees within forty five days of plan approval by the Board of Commissioners in order to lock in allocation, and pay a per unit amount of the remaining 50% fees due as units are permitted (due to limited amount of capacity).

Staff will provide the Board with more specific process policy in the near future especially those policies dealing with payment of fees and recommend approval of these policies to start processing projects.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the general policies as recommended. There was no discussion on the motion. Motion carried.

End of Old Business Item # 4

Old Business Item # 5 – Proposed Golf Course

Possible motion to approve and authorize Town Manager to sign a Consulting Services Agreement with Spear Consultants for a Proposed Public Golf Course.

Commissioner Jones stated the motion would be to provide a Feasibility Study for a proposed golf course. The Finance Committee gives a favorable recommendation to enter into an Agreement with Spear Consultants for a Feasibility Study based on the prices listed in the package for a proposed public golf course.

Action: Commissioner Jones placed this in the form of a motion. Commissioner Grimes made the second to the motion.

Mayor Weatherly asked if there was any discussion on the motion.

Commissioner Schulze asked how we know \$30,000 is an accurate amount of money for a study such as this and believes Spear approached us. Commissioner Jones responded a bit of both. Commissioner Schulze asked if there were any other consultants to review this and their costs.

Manager Radford responded in reality, this is a \$19,680 price, and the other \$10,000 is an option for a particular site facility and the answer to the other questions is no, they didn't do that, but he does understand Cary paid \$50,000 for their study, which he gave to them. Commissioner Schulze thought it was the right direction to take but felt funny about it.

Commissioner Jones responded typically have not and most places to his knowledge did such type of services as this consultant, and typically do not go through a bid process. Commissioner Schulze wondered if you could look through the phone book and say this is what we wanted. Commissioner Meckes didn't think so. Commissioner Jones was a fairly high level of comfort with this and hopes everyone else will be with the expertise that they are buying for this amount of money and was what he had based his recommendation on. Commissioner Schulze trusted his judgment.

Doug Spear commented this was typical in his line of work and is a specialty field. He wanted to assure every item in the future as far as any type construction would be required to be on a bid process. The only thing that is normally done when doing a potential golf course, is that you are investigating a possibility of doing one is that you would typically will hire three or four different consulting firms, there are others that specialize in different areas that may be appropriate in the future. Those people are usually hired based on their expertise because it is a limited field. Should this become reality and a public facility, everything has to follow the bid process. He stated to Commissioner Schulze if he used his own pocket book, it didn't have to be, but with public funding it did have to follow the bid process.

He updated that that an internal survey of other facilities in the area has been completed and their demand for this type public facility. The answer is there is demand for over 2.1 golf courses if they are an affordable daily fee (\$35/\$45) of affordable public type operation. If an upscale facility, (ex. Devil's Ridge) there is not a demand for that type. Preliminary projections have been done and are favorable. They have tried to match what they are in favor of and could be financed. He had offered a time table: draft review will be ready Thursday and if they Board does pass this, he would love to have a committee to continue to review the draft with them and make revisions based on their input and then it would be presented in December/January for Board's review. He continued it only needs the signature.

Commissioner Jensen asked could we push this over to those developing the site, he'd like to see that. Mayor Weatherly commented it depends on what we want to do, if owned by the Town or by the development. Commissioner Jensen understood if the developer would donate the land, we would end up developing the golf course and at that point the golf course would make out well with benefit of the houses. He thinks the golf course is a good thing for the Town, wants to make sure it will go. He asked how this would compare to Crooked Creek. Spear responded if Crooked Creek is a 6 1/2 on a 10 scale, this would be a 7 to 7.5 above that for playability. Spear continued he had developer approach him and the Manger in regards to Bruce a public/private scenario in which they would put up the money. This money is the beginning point that says we know it would work, lets find the land, then expend money to engineering for design; talking about sizeable costs and in that case you would probably have a have a public/private partner to consider.

Mayor Weatherly called for a motion. Motion carried.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

New Business Item # 1 – Audit Presentation

Presentation of June 30, 2002 Audit Report (Mills, Rouse & Company)

Keith Joyce, Mills, Rouse and Company presented the audit highlights and read the management letter for FY2001-02 which are attached and incorporated as a part of the minutes. Audit opinion was that it was a clean audit. The Town continues to receive the Certificate of Achievement of Excellence in Financial Reporting and the CAFR for June 30, 2002 will be submitted for review again.

One area for improvement: There were several instances where the construction of fixed assets were budgeted as capital outlay in either the general or proprietary funds but the asset was not completed during the current fiscal year. We recommend that long term contracts on which the completion date cannot be determined be set up in a capital project fund to accurately track all costs associated with these items.

Manager Radford expressed appreciation to Mills Rouse for the way they had performed this audit and to staff for their efforts. He noted the recommendation had been rectified in house and desire to continue to do as recommended. The Audit Report was accepted as presented.

End of New Business Item # 1

New Business Item # 2 – 2010 Land Use Plan (Director of Planning David Rowland)

Possible motion concerning a request to amend the 2010 Land Use Plan at the northwest intersection of Green level Church Road and US64 from Office and Institutional to Commercial.

Rowland stated staff has received a request from property owners at the northwest intersection of Green Level Church Road and US 64 to amend the Land Use Plan designation of their property from O & I to Commercial to give future developer an idea as to what the property could be used for. The properties are outside Apex's ETJ and are within Wake County's planning jurisdiction. The properties are zoned by Wake County as R-40 W (Residential 40,000 sq. ft. lot size-Watershed) and HD (Highway District — commercial).

At the February 6, 2001 Board of Commissioners meeting, the Board held a public hearing concerning the annexation of this property (copy of the minutes attached). In short, the annexation petition was denied because the property owner could not be assured that his land would be zoned commercial. While the order of business was an annexation petition, land use matters were involved in the discussion. At least ten people spoke in opposition to the annexation petition citing traffic congestion, non-compliance with the Land Use Plan and incompatible land use across the street from a residential use if the land is zoned for commercial. From the minutes, the Commissioners seemed uncomfortable with the request.

Staff would like direction on this matter.

Some options include:

1. Referring the matter to the Planning Board for a public hearing and recommendation.
2. Maintaining O&I designation.
3. Referring matter to the Planning Committee for further consideration.
4. Consider a different designation on the Land Use Plan such as mixed use.

Commissioner Meckes ask if it were fair to believe future development of this land depends on what happens with US64. Rowland responded absolutely with access being the key. He noted an ETJ request had been sent to the County, they said they were only willing to consider the request if Apex would close up the "dough-nut holes" where Apex has surrounded some County property through annexation, which gets into involuntary annexation which gets into extending future water/sewer lines and assessments.

Mayor Weatherly offered that this sets new policy. Rowland responded other boards have stated policy and Zebulon and Fuquay have gone through this. Mayor Weatherly responded maybe it's time for the Board to address this issue. Rowland responded could be. He thinks in looking at the history Mr. Mills didn't want annexation not being assured of the zoning. He thinks if it is approved as commercial, it would be a step towards some assurance that it would perhaps be rezoned and the owners have submitted the request to change the land use plan. He continued a public hearing is required.

Commissioner Grimes ask the feasibility of this site for mixed use. Rowland responded with good access, it could be a good candidate with residential (Walden Creek). There's approximately 50 acres. Manager Radford offered headway has been made for a traffic signal at this intersection and one would not work without the other. The project would not work without a stoplight and Town would not allow it without a stoplight – a hand/glove issue.

Mayor Weatherly asked if the Board would like to refer it to the Planning Board for recommendation. It was consensus to choose Option # 1 to refer to the Planning Board a public hearing and recommendation. Attorney Kaus advised staff would proceed to place on it on the Planning Board agenda.

End of New Business # 2

New Business Item # 3 – Downtown Parking (Manager Bruce Radford)

Review of Downtown parking regulations.

Manager Radford stated Commissioner Meckes had received a letter from the Downtown Merchants Association, expressing their concern with parking issues in the central business district and believe requirement to be three hours parking downtown and being there greater than 3 hours were in violation. The existing ordinance of 2002 has a parking requirement for 8 hours rather than for three. Staff has no specific recommendation for the problem. The problem is that merchants tend to park in front of their own business for a period of time that hurts them selves and their neighboring businesses. He asked if we should allow freedom of parking in the downtown or do we restrict parking to send the message to the majority violators who sit there on a regular basis when in reality most of his neighboring businesses park in the rear of their own properties or on public spaces provided.

Commissioner Meckes noted there is a mix of business, with some requiring a constant flow of folks in and out of their shops (restaurants, shops) with others having a great deal of business in some fashion other than a one to one basis and those that are less concerned about a constant flow into their shops are more inclined to park on the street for a whole day and doesn't matter to them. The issue is consideration for neighbors and is not coming to pass.

Mayor Weatherly asked if the downtown merchants had taken a position. Commissioner Meckes responded they had. Years ago it was two hours and they didn't want this enforced and now 8 hours is too long. Merchants in 2001 were not in favor of the two hour parking limit and now we're looking at three hours. All of this has occurred in the last month.

Mayor Weatherly recalls asking them to undertake a survey or make a recommendation and is how we came up with 8 hours, they never came back clearer than this.

Chief Hearn reported he believes 3 hours has been recommended by the downtown merchants. His concern is we continue to have some areas that are still two hour parking; he asked if the Board approves 3 hour parking, he asked it be uniform, due to enforcement. He noted only one car had been written up over the last few weeks that had been over the 8 hour period. He noted some of the cars would leave and come back and broke the 8 hour change, but are still parking throughout the workday. He noted most business conduct their business from 8 a.m. to 5:00 p.m.

Commissioner Jones recalled the merchants didn't want two hour parking, wanting more like four hours, with Commissioner Meckes agreeing, and was how they ended up with 8 hours. Commissioner Schulze noted the real objective was to keep the people that work downtown from parking 8 hours. He feels a three or four hour limit would accomplish the goal. Mayor Weatherly stated if they only moved their vehicle one time during the business day for four hours, by moving from one space to another, this would not be allowed; nor continuous parking in the same area. Commissioner Grimes stated it was hard for him to imagine they would not want to have a fairly stringent limitation. Commissioner Schulze asked how many people really spend more than four hours in the area shopping or eating with Commissioner Grimes adding or even three hours. Commissioner Meckes stated the Downtown Merchants had requested three hours.

Chief Hearn stated if 3 hours is approved in the downtown, he didn't really want to bore the sidewalks for signage, but would require them to be bored unless there could be something placed on the light posts that would be attractive. He will investigate the possibility of signs for poles, noting you would have to mark every space if on the ground. Commissioner Grimes asked if there could be one sign for each direction. Chief advised it would be at the courts discretion using a recent case as an example, but may be able to do so. Mayor

Weatherly commented on the esthetics of the parking lots, the depot parking for long periods of times, and this parking would be street restrictions, with Chief Hearn agreeing. Mayor Weatherly noted the problem with people parking there for long periods of time and referred to a car washer with Chief Hearn responding he has been moved elsewhere. The Police mark tires in this area as well. This lot is a 2 hour posted lot. The lot in the Police is public parking and pretty much unused and has encouraged businesses to use this lot. It was suggested it be a long-term lot and available for use. Rowland responded the parking signs are there. There are 13 spaces there. Commissioner Meckes commented with the parking in the rear of the buildings and with this lot, anyone that works downtown could park in this lot. Chief Hearn stated during the evening hours it fills up, but not much use during the day. Commissioner Meckes commented the parking places on the north side, and asked the hours. Chief Hearn responded if changed it would be three hours.

Action: Motion by Commissioner Meckes and second by Commissioner Grimes to approve the request to three hours. Commissioner Hearn added this would be from Center Street continuously southward to West Street and a couple of places on Chatham Street.

Commissioner Meckes asked if someone could park in front of their house overnight. Chief Hearn stated the existing ordinance is written with hours and are 8:00 a.m. to 6:00 p.m. except Sunday. He would recommend this as well. He continued he has recommended wording to the Town Attorney for review. Mayor Weatherly asked the Attorney to bring back the ordinance with the specifics for adoption, with the motion being withdrawn.

End of New Business Item #3

Mayor Weatherly recognized Tom Colhoun to address the Board of Commissioners.

Tom Colhoun asked if the Board would allow him to speak regarding New Business Item # 2. He has been trying to get a 56 acre tract of property into the Town's ETJ for over one year and it has not happened, but no fault of the Town's nor theirs, but the County. He would like to rezone the 56 acres to commercial, feeling it would bring tax base to Apex. Three months ago he discussed the situation with the Board that there's 50 million square foot of office space (O&I) in the Triangle area, with eight million feet available, a seven year supply. He thinks this amount is ludicrous, and no way will the space be filled. If market stays as is, there will be no partial of a recovery until June 2003. With this amount of vacant space to develop this property for O&I would be at least 10 years out. Commercial can be done immediately and if he doesn't act now, and if it goes back to the Planning Board and the Board has to wait for a recommendation; then NCDOT is talking about a US64 Corridor Study and this comes directly from Mike Horne working with the Town and the developer, who already has a tenant. To wait until January would put them in trouble and will kill the deal, due to NCDOT Corridor Study for a year. He advised they can't wait; they've already been working on this for one year. The Mills and Morris's have done all they could to get the property brought into the town ETJ for proper zoning; three more months and the deal is dead. The tenant is signed on and ready to move forward and has a scheduled closing. He told the Board there's no certainty, even with passing Phases I and II of Beaver Creek, that it's going to happen.

Commissioner Grimes asked the effect of a Land Use Plan designation by the Town when the property isn't even in the Planning jurisdiction. Colhoun responded they've tried to do this for the past year, and can't get Wake County to approve it. It's down to the last two months before the corridor study of US64 and NCDOT says you can't do anything with that property for one year.

Mayor Weatherly responded when this was considered before, they were asking for annexation and when we got to the issue of the zoning designation, they received signals from this Board that there were no certainties of that – residential situation, buffering situation, with Home Depot there, and he thinks Commissioner Schulze has a tremendous level of support from that residential subdivision there.

Colhoun agreed, and with Walden Creek, they will be upset with anything that goes across the street. Mayor Weatherly knew this, but deserves a fair shake. Colhoun agreed, but the point was these property owners have been working on this for a year and trying to get this land into the Town's ETJ and can't get it done through the County. Mayor Weatherly stated he wasn't taking issue with this, he was just stating the recollection he had when the annexation petition came to the Town and this Board was not all, or didn't give the right vive to the petitioner at that time, any reason to expect it would be a "slam dunk".

Colhoun stated this was a problem and had discussed this, they don't want to bring the property into the town limits unless they can get guarantee that the deal will happen and they can't do this unless they can make it coincide and to wait until January, NCDOT will really miss up the whole situation.

Commissioner Jones responded he needs to have the LUP amended so the County would allow it to be brought into Town. Rowland respond this wasn't correct, and continued the only way the Town could have any say so over the property is to have it annexed into the town's jurisdiction, and then it has to go through the public hearing process and this happened last time, and the property owner could not be assured that what he wanted would happen.

Mayor Weatherly continued the policy doesn't let it get into the ETJ and that policy would not change; and would not be a reasonable process to come to take before the fate of the judgment of the Planning Board and this Board, as to what the ultimate zoning would be.

Colhoun continued that if you do this, and once you are annexed into the Town, you pay taxes on a piece of commercial property and you would hate to do this without someone on the hook and the Cash's are having this problem with the Stephen's deal. He's paid commercial price for years for that property, and they do not want to run into this same situation; it was the same situation with the Mills and the Morris's several years ago.

Mayor Weatherly continued that he was hopeful a land use designation would tandem out to a zoning designation and wanted them to do that tonight. Colhoun responded "please sir". Mayor Weatherly continued he knew there were issues raised the last time they dealt with this and there was a balance of opinion in the room about it and he doesn't know that anything has changed since then.

Commissioner Meckes asked if this could even be done, they hadn't gone through any procedures. Rowland recommended they follow normal procedures and refer it to the Planning Board for a recommendation and then the public hearing. Commissioner Jones stated the land use plan had never been changed without a public hearing, and not a good idea.

Mayor Weatherly was sympathetic to the land owner's frustration with this issue, and the other related issues, but thinks it's an issue that public policy deserves an air in the public light. Colhoun asked if there was a possibility of annexation with a condition of being turned to commercial and if not being de-annexed. Attorney Kaus advised no.

Manager Radford voiced that this had been talked about at least three times about this particular tract and the easiest solution is truly for a petition for annexation, without having to go to anyone else. Mayor Weatherly interjected as far as suggesting they do that, he wouldn't suggest any submission implied that's just him.

Commissioner Jones responded annexation doesn't mean that you pay taxes on your requested zoning designation, it's R40. LUP indicates O&I but pay taxes on the zoned designation, not the land use. Manager Radford stated the actual effective date of annexation could be set for some period down the road, 24 months, 36 months, by his recollection there is no period of time. Attorney Kaus advised he would want to look into this; he knew there was a limit on some type annexation, but not sure it's on voluntary, but involuntary, but on voluntary there is a limit.

Commissioner Meckes stated he didn't want to take the heat, at 10:00 p.m., doing this without any public air, there would be an uproar, and with no notification to anyone in the entire community was not the right thing to do. Mayor Weatherly commented those folks have been involved before, and would suspect a conspiracy. Commissioner Meckes agreeing, they would suspect the worse.

Mayor Weatherly stated no action will be taken and other that there was discussion.

End of New Business

Mayor Weatherly noted this was the end of the Regular Meeting session and ask for a motion to be read as printed in light of the new state law to move into close session and to add to consult with the Town Attorney.

CLOSED SESSION

Action: Motion by Commissioner Grimes to move into Closed Session at 10:10 p.m. (i) to consult with the Town Attorney, and (ii) to discuss the potential acquisition of approximately 15 acres of real property in the vicinity of Lufkin Road and Pristine Water Drive in White Oak Township from James R. Rogers, III, Alton Smith, Carey Oliver Rogers McFadyen and Lois Ellen Rogers, for use a public street right-of-way, and (iii) to discuss the potential acquisition of approximately 45 acres of real property located at 7301 Apex Barbecue Road from Ruth Holleman for use as open space preservation and future park development. Second to the motion was made by Commissioner Jones. Motion carried. Minutes of Closed Session are recorded separately.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to move back into regular session. Motion carried.

There was a brief discussion of the Mills/Morris property,

Action: Motion by Commissioner Jones and second by Commissioner Meckes to authorize the Town manager to negotiate the purchase of the Holleman Property and to sign related grant documents. Motion carried.

End of Regular Session

ADJOURNMENT

With no further business to come before the Board of Commissioners,

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adjourn at 11:08 p.m. Motion carried.

The above minutes were approved on the 3rd day of December 2002.

Georgia Parker
Town Clerk

Heather Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, December 3, 2002
Apex Town Hall, 73 Hunter Street
7:00 p.m.

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Pro tempore Jones called the regular meeting of the Town of Apex Board of Commissioners to order, at 7:00 p.m., Tuesday, December 3, 2002. Commissioners Jensen, Grimes and Schulze were present. Mayor Weatherly and Commissioner Meckes were absent.

Invocation was given by Commissioner Schulze.
Pledge of Allegiance was led by Mayor Pro tempore Jones.
Welcome by Mayor Pro tempore Jones.

Mayor Pro tempore Jones informed the audience of the Town's annual Christmas events during the weekend, and advised the new section of the Peak Way from Old Raleigh Road to Center Street was now open.

CONSENT AGENDA

Mayor Pro tempore Jones presented the consent agenda to be set and asked for a call for action.

Action: Motion by Commissioner Schulze and second by Commissioner Grimes to approve the consent agenda as printed. Motion carried.

1. Minutes of November 19, 2002 Board of Commissioners Meeting.
2. Minutes of November 19, 2002 Board of Commissioner's Closed Session (separate cover).
3. Ordinance revising Sections 20-168 and 20-175 of the Apex Code of Ordinances to Designate Three Hour Parking Areas on Salem Street and Chatham Street During Certain Hours.
4. Standard Specifications and Construction Details have been revised to reflect necessary changes from the previous edition (c. 1993).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the regular meeting agenda to be set.
With no amendments, the regular meeting agenda was set as printed.

PUBLIC HEARINGS

Public Hearing # 1 – Annexation Petition # 330 (Director of Planning, David Rowland)

Public hearing regarding annexation petition # 330, Edward Riggsbee, et al., owner/petitioner, seeking to annex 53.939 acres, located south of US1 and west of NC55; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning oriented the Board to the location of the property as stated and advised it was a part of the Town Square PUD and would go through the rezoning and public hearing process. This tract was shown as a part of the PUD, but was not in the town's corporate limits.

Mayor Pro tempore Jones opened the public hearing at 7:08 p.m.

Phil Stephens, Real Estate Developer from Atlanta, Georgia supports the annexation of the property and wanted to reiterate all he had said at the last meeting regarding the rezoning of the property for the Town Square PUD.

With no one else speaking in favor or in opposition to the annexation, the hearing was closed at 7:09 p.m.

Action: Motion by Commissioner Grimes and second by Commissioner Jensen to approve annexation petition #330 by adopting an ordinance to extend the corporate limits of the Town by 53.939 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others opportunity to speak.

Herman Jaffee addressed threat of shipment of nuclear fuels to the Harris Plant, asking the Board to send a letter to stop the shipments and submitted an email of the Chatham County Board. He asked the Board account for the safety of all citizens.

End of Public Comment

NEW BUSINESS

New Business Item # 1 – Chamber of Commerce Report (President Karen Byrd)

President Karen Byrd presented the Apex Chamber of Commerce Economic Development Report (attached). The Apex Chamber of Commerce appreciates the Town's continued support. The Board accepted the report as presented.

Commissioner Schulze asked when businesses decide not to locate to Apex, what were the reasons given. Sheryl Bynum, Economic Development Director, responded there is little feedback, with small businesses referencing finances, but doesn't hear negative comments. Commissioner Schulze asked if fostering businesses have been discussed. Bynum responded incentives are big in the news and room for the town to do so, but thinks it's best to consider them on a case by case basis.

End of New Business Item # 1

New Business Item # 2 – 1st Quarter FY2002-03 Financial Summary (Director of Finance, Lee Smiley)

Review of 1st Quarter FY2002-03 Financial Summary is attached; finances are in good condition; \$370,000 in tax reimbursements are expected in the first 3 months of the year with reimbursement shortfalls totaling \$530,000. The reimbursements will help in putting together next year's budget. No franchise taxes were budgeted. Effective July 1, state distributions will be received monthly instead of quarterly. The report was received as presented.

End of New Business Item # 2

New Business Item # 3 – Concept Plans for Access (Director of Planning, David Rowland)

Discussion and possible motion regarding concept plans for access along US64 and the Zeno Road/Green Level Church Road area.

Director of Planning presented area maps orienting to the location of the US64/Zeno Road and Green Level Church Road in relationship to the proposed I-540. The Town has been working with NCDOT regarding access to US64 for future development in this area. Staff and Kimley Horn have developed two options.

Option #1

- Interim Phase (current NCDOT plans) — Kelly Road is converted to right-in/right-out at US 64. Green Level Church Road is converted to right-in/right-out at US 64.
- Ultimate Phase (concept rendering) — Kelly Road is bridged over US64. The two access points at Kelly Road (i.e. right-in/right-out) would be removed. Green Level Church Road and Zeno Road would be connected via a grade separation with "square loop" ramps to US 64. These ramps would be right-in/right-out providing full movements to Green Level Church Road and Zeno Road. The eastbound US 64 ramp to NC 55 would be removed and replaced by a loop in the southeast quadrant of the interchange. Zeno Road would be extended across I-540 to Kelly Road. This phase would be a separate funded project. Therefore, it would not be tied to the construction of the Western Wake Expressway.

New Business Item # 3 continued

Option #2

- Interim Phase (current NCDOT plans) — Kelly Road is converted to right-in/right-out at US64. Green Level Church Road is converted to right-in/right-out at US 64.
- Ultimate Phase (concept rendering) — Kelly Road is bridged over US64 with 'square loop' ramps to US64. These ramps would be right-in/right-out, providing full movements at Kelly Road. Green Level Church Road is converted to right-in/right-out. This phase would be tied to the construction of the Western Wake Expressway. In addition, Zeno Road would be extended across 1-540 to Kelly Road.

Staff recommends Option 1 be adopted by the Board of Commissioners as the first choice, with Option 2 being the second choice.

Aerial photos and maps were reviewed by the Board; questions were asked regarding buffering and entrance relocations were discussed in relationship to the Walden Creek Subdivision. The Land Use Plan designates this property as O&I. Land owners are requesting annexation of the property located at Green Level Church Road at the intersection with US64 and will request a rezoning of the property. In order for this area to function with commercial development, it will need appropriate access. After some minor critiquing of the conceptual drawing, staff will make minor adjustments and come back to the Board with revisions.

End of New Business

CLOSED SESSION

There were no Closed Session items to discuss.

ADJOURNMENT

With no further business to come before the Board, Commissioner Grimes made a motion to adjourn at 7:47 p.m. with Commissioner Jensen making the second. Motion carried.

The above minutes were approved on the 17th day of December, 2002.

Georgia A. Parker
Town Clerk

Keith A. Warrick
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of December 17, 2002 Meeting
Apex Town Hall, 73 Hunter Street
7:00 p.m.

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Commissioners:
Mike Jones
Don Grimes
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. Tuesday, December 17, 2002 in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Meckes, Jones, Grimes and Schulze were present.

Invocation and Pledge of Allegiance was led by Mayor Weatherly. Welcome by Mayor Weatherly. Mayor Weatherly announced the birth of the Town Attorney's daughter, Caitlin Ashley, born December 7. Mayor Weatherly announced the upcoming marriage of the Town Clerk to Bill Evangelist, December 20.

APPEARANCE AWARDS

Mayor Weatherly recognized and presented the Quarterly Appearance Awards:
Residential: William & Teresa Stern, 205 S. Hughes Street
Commercial: Archstone Olde Apex Apartments, 1000 Cameron Woods Drive

CONSENT AGENDA

Mayor Weatherly will present the consent agenda to be set and ask for a call for action.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the consent agenda. Motion carried.

1. Minutes of December 3, 2002 Board of Commissioners Meeting.
2. Annexation Petition # 331, William C. (Jr.) & Mettie J. Mills, Hunter H. & Edith S. Morris, and Raeford C. & Gwendolyn Morris, and William V. McPherson, Jr., Trustee, owner(s)/petitioners; petitioning to annex 70.443 acres, located off Green Level Church Road (SR1600) Wake County, intersection of US64, Apex; 1) Resolution directing Clerk to Investigate Annexation Petition # 331, and 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for January 7, 2003.
3. Annexation Petition # 332, Sedroc, LLC., owner(s)/petitioners; petitioning to annex .008 acres, located off Vision Drive, north and east of US64/NC55 Intersection; 1) Resolution directing Clerk to Investigate Annexation Petition # 332), and 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for January 7, 2003.



Consent Agenda Continued

4. Site Plan – Apex Autoworks, 1700B North Salem Street.
5. Subdivision Plan Amendment - Kelly West, Phase 3B.
6. Site Plan – Kelly Road Retail, Phase 2, located at the northwest intersection of Kelly Road and Olive Chapel Road.
7. Landscape Agreement between NCDOT and Town regarding landscape along US64.
8. Wake county Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford asked to add appointment of FEMA Agent to represent Town of Apex.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to add this as a New Business item. Motion carried. The Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 1 – (Senior Planner Dianne Khin)

Public Hearing regarding Conditional Use Rezoning #02CU07A, Stephens Property Group, LLC. petitioner, seeking to rezone 54.76 acres located on NC55 between US1 and future I-540, from R-30 (Wake County designation) to Planned Unit Development; possible motion regarding same.

The Town Clerk administered oaths to those who would be addressing the Board during this hearing. Senior Planner Khin having been sworn in by the Town Clerk, noted this hearing was to consider rezoning land as and an addendum to the 295 acre tract recently rezoned for the Apex Town Square (PUD) which was approved on November 19, 2002. Khin reviewed background information regarding the proposed rezoning to include adjacent land uses, proposed use of the property, restrictions/conditions as outlined in the attached staff report and incorporated as a part of the minutes. Staff recommends the rezoning with the conditions as approved in the previous rezoning and made of a part of this rezoning. Planning Board recommended approval unanimously.

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

Phil Stephens, Real Estate Developer from Atlanta, having been sworn in by the Town Clerk, stated he and John Wilson of Kimberly-Horne were present to answer any questions, and during the previous public hearing had detailed all the information which applied to this rezoning as well, and did not see it necessary to repeat it, and had no further information to add from the previous meeting.

With no one else speaking in favor or in opposition to the rezoning, Mayor Weatherly closed the public hearing at 7:12 p.m. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Grimes to approve the conditional use rezoning #02CU07A, as presented. Motion carried.

End of Public Hearing



OLD BUSINESS

There were no Old Business Items to consider.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board concerning any item. Mayor Weatherly will recognize those who would like to speak at the appropriate time. Individuals having made requests to address the Board will be recognized first.

Please limit your comments to 3 minutes to allow others opportunity to speak.

No one spoke during public comment.

NEW BUSINESS

New Business Item # 1 – Designation of FEMA Agent

Manager Radford asked the Board to consider adoption of a Resolution to Designate a FEMA Agent to represent the Town, with the Primary Agent being Finance Director Lee Smiley and the Secondary Agent being Town Manager Bruce Radford. He expressed appreciation to those who assisted during the recent ice storm and expressed pride in all staff of the Town. He further expressed appreciation to the Fire Belles for feeding 340+ their meals during the outages. He noted damage to the electric system and extensive tree debris. Seven crews are assisting with chipping and dumping in the park and further since the park has been filled, the debris will be moved to C&D Landfill on NC55. Mulch will be loaded and given away at public works, and prefers pickup with gravel fork into trucks to dump and haul away. The Town has been chipping which allows more debris to be load into trucks. FEMA's method is different and to be reimbursed requires it be done their way - the Manager is working out details with FEMA over the next few days regarding this issue.

Discussion continued regarding mutual aid agreement to assist CP&L in subdivisions located in Apex (Beckett Crossing, Avalon Peaks, Sunset Hills and Reunion Park). Commissioner Jensen agrees with the aid agreement. Commissioner Meckes commented on the public remarks regarding CP&L and Duke Power and the extensive time it took them to restore power to their customers and agrees with the aid agreement. Mayor Weatherly commented on past remarks concerning Electricities but noted dedicated staff had the Town's electric power back on in our community way ahead of other neighboring utility communities, and noted this to the Town's advantage. Commissioner Jensen asked the Manager if he planned to coordinate these efforts with other towns, and felt staff had done an outstanding job. Manager Radford added staff had worked around the clock to restore the power. Commissioner Jones commented, even with outages, the annual Christmas festivities still were held.

Action: Motion by Commissioner Jones and Jensen to adopt the resolution for the FEMA designations as recommended by the Manager. Motion carried.

End of New Business



CLOSED SESSION

There were no Closed Session items to discuss.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Schulze and second by Commissioner Grimes to adjourn at 7:24 p.m. Motion carried.

The above minutes were approved on the 7th day of January 2003.

Georgia A. Evangelist

Town Clerk

Keith D. Wetherby

Mayor