



APEX TOWN COUNCIL MEETING

TUESDAY, MAY 17, 2016

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
Eugene J. Schulze, William S. Jensen, Denise C. Wilkie,
and Wesley M. Moyer, Council Members
Drew Havens, Town Manager
Timothy L. Donnelly, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council
scheduled for Tuesday, May 17, 2016, at 7:00
p.m. was held in the Council Chamber of Apex
Town Hall, 73 Hunter Street

In attendance were Mayor Lance Olive, Mayor Pro Tem Nicole L. Dozier, and Council Members Eugene J. Schulze, William S. Jensen, Denise C. Wilkie, and Wesley M. Moyer
Also in attendance were Town Manager Drew Havens, Assistant Town Manager Tim Donnelly, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Olive called the meeting to order, Council Member Wilkie gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

PRESENTATIONS

There were no Presentations to be made

CONSENT AGENDA

- Consent 01 Minutes of the May 3, 2016 Regular Council Meeting
- Consent 02 Apex Tax Report dated 04/08/16
- Consent 03 Fee Schedule for Solicitors, Peddlers, Park Concessioners, Transient Vendors and Mobile Food Vendors
- Consent 04 Street closings in support of the 9th Annual Monarchs in Motion 5K Race on October 15, 2016
- Consent 05 Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Reliance LLC (Harmony Animal Hospital) property containing 2.275 acres located at 2401 Reliance Avenue, Annexation #577 into the Town's corporate limits

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Olive directed Council's attention to the three Public Hearings with notations for continuance.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE CONTINUING PUBLIC HEARING 03 TO JULY 19, 2016. COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE CONTINUING PUBIC HEARINGS 05 AND 06 TO JUNE 7, 2016. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REMAINDER OF THE REGULAR AGENDA. COUNCIL MEMBER MOYER MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC FORUM

Dick Beaver spoke about Phase IV of Trackside North, of which he'd sent Council an email. An appeal has been filed in regards to the wetlands, and he suggested the matter be continued until the appeal is heard. He would like the development plan to save as many perimeter trees as possible, and he wondered if the number of townhomes could be minimized across the street due to traffic and parking. Anything that could be done to make the new development nice would be appreciated.

Patrick Brewer stated an administrative error was made at the Planning Board meeting that did not include correct neighborhood information. The decision by DENR has been appealed, and they will review the property address. He would like a Council decision on this delayed. Mr. Brewer stated he was told by Town staff when he bought his property that the land would not be developed because of the wetlands.

Peter Cnossen, representing the developer for the Villages of Apex, stated the project is in full compliance with zoning, the UDO, and environmental regulations. He named the latter. He stated he would address any concerns when the matter, New Business 03, came up this evening for consideration.

Ann Kane stated people move here because they know there is a Land Use Plan in place to protect their properties. Developers are chipping away at the Plan and asking for changes. This is affecting properties with large trees, the developers putting in rows of houses that are squeezed together. This is not helping the beauty of Apex. Ms. Kane asked Council to look for unique ideas such as plots for gardens. We don't want to be another Cary or Morrisville. She urged Council to help keep the charm and one-of-a-kind feeling of Apex.

PUBLIC HEARINGS

Public Hearing 01 : Michael Clark, Senior Planner

Public Hearing and Rezone #15CZ33, West Village PUD, 163.34 acres located at the Northwest quadrant of the intersection of Kelly Rd and Old US 1 Hwy from Rural Residential, Residential Agricultural, and Office and Institutional to Planned Unit Development Conditional Zoning (PUD-CZ)

Staff oriented Council to the site. The Planning Board held a public hearing and the applicant proposed an additional condition. Staff and the Planning Board recommended approval. Staff clarified buffers stemming from questions by Council as well as the wisdom of the roundabout. Stormwater management is as approved in the UDO.

The applicant, Jason Barron, Morningstar Law Group, named those in attendance with him. He further clarified the buffer asked about by Council. Mr. Barron oriented Council to the site. He believed this request achieves the Town's long range plans and provides an appropriate balance. Mr. Barron answered questions from Council as to when roads would go in. Council asked had conversations been had regarding the impact on wells. Mr. Barron answered 'no' but that he would be happy to do so.

John Myers answered Council's questions regarding waterline extensions. He stated major improvements will be made to get water and sewer to the property, and these will need to be made first. He talked about the improvements which would be made as a result of residential and those as a result of commercial. Mr. Myers explained why 300+ new houses would be beneficial to the residents of Apex even in light of opposing viewpoints. Council stated his desire to see solar use in the houses and asked for a commitment from the applicant before this was voted on this evening. Mr. Barron said he would be happy to require his builder to require marketing solar options. He gave the *anticipated* housing prices. Council asked for a 25 year vs. a 10 year stormwater commitment.

Mayor Olive declared the Public Hearing open.

Twenty three residents spoke with the following concerns, many giving the history of their families on their properties:

- From two video clips: they were not fighting development because that's inevitable, simply want the development to not be detrimental to the quality of their life or to the value of their homes, stated the types of homes which would be acceptable to them.
- It didn't appear any of the Planning Board members looked at the area, how could a decision be made without doing so, didn't appear the Board understood the traffic reports and the traffic issues, mentioned was the Sears property where the commercial is planned.
- Concern that the natural area would no longer be there, wanted development similar to the current neighborhood.
- The developer is going to make a bunch of money off this, appreciated Council's concern for the wells, frustrated about the entrance as it's a safety concern, residents should have been asked how this would impact them.
- 100% of neighbors were in attendance, they were not in agreement with the majority of the Westwinds recommendations, seemed developers didn't want to work with them and they provided were their requests, our one chance to do the right thing.
- This was supported because it's in the best interest of Apex, details can be worked out later.
- Want to see the promised buffers, larger homes, and smart growth.
- Owner of one small piece of land to be developed for commercial stated no retailers in the area except for a beer tavern and three pumps at a bait and tackle shop, in favor of the development which has been in the planning stage for 2 ½ years, objective is to bring quality residential and non-residential which meets the needs of the community, project exceeds requirements.
- Members of the Tunstall family stated many of the wells don't sustain a household resulting in tenants having moved out, the land meets the needs of the location, asked Council to approve the project.
- Property not under contract should not be included in this request; too many unanswered questions.
- Tenant representative talked about what companies want these days in the way of office space and housing for their employees, many don't want yards and want to be in denser locations, this location would be ideal.

Mayor Olive declared the Public Hearing closed.

Mr. Barron stated they will not make Westwinds a place where people don't want to live. He would listen to Council's thoughts before speaking further.

Council spoke about those things heard which were both concerning and heartwarming, thought that there could be a meeting in the middle, the preference to vote on something where people have further discussion, not being comfortable with traffic, wanting to see this go through but not being ready yet to approve, inevitable growth needs to be strategic, wanting to see larger lots for single family homes, would be in support this evening if developer increased the lot sizes, this development may be a bit before its time, there could be a better mix of product.

Mr. Barron requested the opportunity to have the vote deferred so that they could address the feedback heard this evening. He would not mind being deferred to the July 19th meeting.

MAYOR OLIVE CALLED FOR A MOTION TO CONTINUE THIS HEARING TO THE JULY 19TH MEETING. COUNCIL MEMBER DOZIER MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

The Town Attorney would be consulted to determine if the public will be able to speak at the July 19th meeting as well.

THE MOTION CARRIED BY A 5-0 VOTE.

Mayor Olive called for a five minute break.

Public Hearing 02 : Michael Clark, Senior Planner

Public Hearing and Rezoning application #16CZ02 Deer Creek II, containing 2.85 acres located along New Hill Olive Chapel Road approximately 1850 feet south of US 64, to rezone subject parcels from Rural Residential to PUD-CZ

Staff oriented Council to the site, explaining this was part one of two applications. The second part would be heard at a later date. Staff recommended approval with conditions as did the Planning Board.

Glenda Topp, Glenda S. Topp Associates, provided a few more details. She stated no one was opposed to the application at the neighborhood meeting. Council asked for the developer to put in solar to some degree, which Ms. Topp stated they would do.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

Council stated it appreciated Ms. Topp sticking to the 70/30 mix, being glad to see ranch style homes, and the demonstration that 30% or greater can be done.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN
MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 03 : Brendie Vega, Principal Planner

Public Hearing and possible motion regarding Rezoning and 2030 Land Use Map Amendment Application #16CZ09. The applicant, Jeff Roach representing Empire Construction, seeks to rezone approximately 0.92 acres located at Upchurch Street and Harwood Street from High Density Single Family Residential (HDSF) to Neighborhood Business Conditional Zoning (B1-CZ) and to change the 2030 Land Use Map Designation from Medium Density Residential to Office Employment and Commercial Services.

The applicant has requested a continuance to the July 19, 2016 meeting. Continued during the Regular Meeting Agenda.

Public Hearing 04 : Amanda Bunce, Senior Planner

Public Hearing and rezoning application #16CZ12 to rezone 6.82± acres located at 1112, 1114 & 1116 Olive Chapel Road from Residential Agricultural (RA) to Medium Density Residential-Conditional Zoning (MD-CZ)

Staff oriented Council to the site. A neighborhood meeting held. The request was consistent with the Land Use Map. Staff recommended approval as did the Planning Board subject to conditions by the applicant.

Josh Lambert, consultant for the ownership team, stated they have had mutually beneficial conversations with the neighbors and that they wanted all to feel included. The proposed density was a good fit for the property. A flood study done, and there was concern about run off. However, their plan controls the 25 year stormwater event. This was important to them. This is a project of which the Town can be proud. Mort Congleton, owner of project, talked about solar and would like to add a solar array on this site. This would be a unique feature in Apex. Lambert further explained the position of solar and the mailbox kiosk.

Mayor Olive declared the Public Hearing open.

Several residents spoke, offering the following:

- Asked for was clarification of the buffer, which Mr. Lambert provided. He additionally stated the solar would be ground mounted as not everyone wanted roof top mounting.
- The development would decrease property values and would be of no benefit to the Town.
- Asked for was as much of the natural area as possible, Mr. Lambert stating they have removed one lot for the natural area to be a buffer as well as an area for the neighborhood; there was concern about the location of the solar panels.

Mayor Olive declared the Public Hearing closed.

The Town Attorney stated a solar array was not in the staff report, so it was not a condition being offered by the applicant. Mr. Congleton stated they would put it in as one, Council trusting the developer to do what he said he would do.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN
MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 05 : Brendie Vega, Principal Planner

Public Hearing and possible motion regarding amendments to the 2030 Land Use Map to require 30% minimum non-residential in Mixed Use areas of 3 or more Land Use Classifications (stripes)

This agenda item needs to be continued to the June 7, 2016 Town Council meeting in order to be heard at the same meeting with the related UDO amendments. Continued during the Regular Meeting Agenda.

Public Hearing 06 : Brendie Vega, Principal Planner

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance related to amendments to the 2030 Land Use Map to require a minimum percentage of non-residential in Mixed Use areas of 3 or more Land Use Classifications (stripes)

This agenda item needs to be continued to the June 7, 2016 Town Council meeting in order to provide the required published notice to the public. Continued during the Regular Meeting Agenda.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

New Business 01 : Amanda Bunce, Senior Planner

Green Level Estates Master Subdivision Plan for the properties located at 4005 Green Level West Road containing 18.79 acres and 29 single-family lots

Staff oriented Council to the site. The Parks and Rec Commission reviewed this and recommended a fee in lieu. The Planning Board and staff recommended approval.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE
MADE THE MOTION TO APPROVE THE PLAN; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council asked the applicant to work with the builder to consider promoting solar, the applicant agreeing to do so.

THE MOTION CARRIED BY A 5-0 VOTE.

New Business 02 : Amanda Bunce, Senior Planner

Village Green Master Subdivision Plan for the property located at the intersection of Oak Pine Drive and Town Side Drive containing .18 acres and 7 townhome lots

Staff oriented Council to the site. A neighborhood meeting was held, and staff and the Planning Board recommended approval.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE
MADE THE MOTION TO APPROVE THE PLAN; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

New Business 03 : Brendie Vega, Principal Planner

Villages of Apex Phase 4 Master Subdivision Plan - for 3 parcels totaling 3.22 acres that are bounded by the Apex Peakway to the south, Ambergate Station to the east and Branch Line Lane to the west

Staff oriented Council to the site. A neighborhood meeting was held. Staff recommended approval as did the Planning Board.

Council stated he was not crazy about putting townhouses on this site; single family would make more sense. He was worried about future problems with water. Responding to Council, Peter Crossen stated this was a revision to the original approved plan. It has been through the process and the wetlands were talked about being re-buffered. They will try not to damage the trees along the branch line, and they will work with Public Works to meander sidewalks so as not to disturb vegetation.

Crossen stated there was an error in the packet sent to the Planning Board, but this has been corrected with staff. Council was concerned that the Planning Board did not see the comments from neighbors because of this error. He would, therefore, prefer to delay voting on this. The Mayor asked the Planning Board member in attendance if he thought the comments would have been helpful to them. He stated

there was a sense to move ahead; but in wanting to have everything crossed, he would like this to go back to the Planning Board. Mr. Crossen requested this to stay on schedule because of their being scheduled to submit construction drawings. Council talked a bit out train noise and the residents coming before Council about such noise.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO REFER THIS BACK TO THE PLANNING BOARD TO BE HEARD AT THEIR NEXT MEETING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 04 : Councilwoman Denise Wilkie

Grant to the Apex Downtown Business Association (ADBA) in the amount of \$10,000

Council stated that last year there was no liaison to the ADBA, so she was unsure as to whether or not there should have been allocation for them in this year's budget. She was in favor of assisting them because of what they do in the community, and she named several of their events. Several audience members spoke about the great job done by JC Knowles and the amount of work the ADBA puts forth in the community.

Council stated this request was strange coming in at the 11th month. It would have been more appropriate being asked for prior to the current budget year. We spend a lot of money downtown, and Council stated examples of where this money is spent. Therefore, he did not see the need to do this now. Nick Bryant, ADBA Director, stated his understanding was that this was an oversight by the ADBA since it has been on the budget for so long. They have never asked for the money before, so this simply slipped by them.

Discussion ensued about what the \$10,000 would be spent on at this point. Council felt the immediate need would be the Music Festival in September. Staff stated the funds would come from contingency which is in fine shape at this point. The Mayor wanted to honor our continuing to donate at the normal level.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO DONATE \$10,000 OUT OF THE CURRENT 15/16 BUDGET; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council wanted it make clear that he supported the downtown but he also wanted his concerns expressed.

THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

Closed Session 01 : To consult with the Town Attorney to preserve the attorney-client privilege

Closed Session 02 : To consider the Town's negotiating position with respect to a contract to acquire real property

Closed Session 03 : To consider the Town's position with respect to acquiring real property

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION FOR THE PURPOSES STATED ABOVE;
COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO RETURN TO OPEN SESSION; COUNCIL MEMBER JENSEN MADE
THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE BUDGET AMENDMENT NUMBER 26; COUNCIL MEMBER SCHULZE
MADE THE MOTION; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS
FOR THE IMPROVEMENT OF THE APEX WATER SYSTEM. COUNCIL MEMBER MOYER MADE THE MOTION;
COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

WORK SESSION

There were no Work Session items for consideration

ADJOURNMENT

With there being no further business,

MAYOR OLIVE ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor