



TOWN COUNCIL MEETING

TUESDAY, MAY 20, 2014

William M. Sutton, Mayor
Eugene J. Schulze, Mayor Pro Tempore
William S. Jensen, Scott R. Lassiter, Nicole L. Dozier,
and Denise C. Wilkie, Council Members
Bruce A. Radford, Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 20, 2014, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

COMMENCEMENT

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

PRESENTATIONS

Presentation 01 : Mayor Bill Sutton

Proclamation for National Emergency Medical Services Week

Mayor Sutton read and presented this Proclamation to EMS Chief Randall Heath.

Presentation 02 : Apex Downtown Business Association

Request regarding open consumption of alcohol at Jazz Fest

Ed Majkowski, member of the Board of Directors of the Apex Downtown Business Association, gave a brief history of the Jazz Fest. He cited safety reasons as to why they're asking for the closing of Salem Street this year. This would also allow seating in front of establishments for alcohol consumption; a one-time permit will be obtained for the beer garden. Alcohol consumption procedures were outlined.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE
A MOTION TO APPROVE THE STREET CLOSING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

CONSENT AGENDA

Consent 01 Apex Tax Report dated 04/03/2014

Consent 02 Street closures for 2014 Peak City Pig Fest

- Consent 03 Selling of Lot 218 Plot F in the Apex Town Cemetery
- Consent 04 Purchasing of Lot 58 Plot (S) G & H in the Apex Town Cemetery
- 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 Benjamin H. Whitley property containing 23.19 acres located at 3232 US 64 Hwy, Annexation #511 into the Town’s corporate limits
- Consent 06 Public Hearing for the June 3, 2014 Town Council Meeting regarding Rezone #14CZ06, 5.42 acres located at the southwest corner of Green Level West Road and Green Level Church Road from Rural Residential (RR) to Neighborhood Business Conditional Zoning (B1-CZ)
- Consent 07 Public hearing on June 3, 2014 for rezone #14CZ09 from Rural Residential (RR) and Residential-80W (R-80W) to Tech Flex- Conditional Zoning (TF-CZ). The subject property is approximately 23.19 acres generally located at 3232 US 64 Highway West
- Consent 08 Memorandum of Understanding (Contract) between Lenoir Community College and the Town related to the Town’s EMS Department participating in the College’s clinical training program for Paramedic students
- Consent 09 Findings of Fact, Conclusions of Law, and Decision approving the 540 Flex & Business Park Major Site Plan
- Consent 10 Statement of the Apex Town Council for Rezoning Case #14CZ03, Peak Engineering & Design, petitioners for the property located at 1508 Kelly Road and 1813 Olive Chapel Road
- Consent 11 Ordinance for Rezoning Case #14CZ03, Peak Engineering & Design, petitioners for the property located at 1508 Kelly Road and 1813 Olive Chapel Road
- Consent 12 Statement of the Apex Town Council for Rezoning Case #14CZ02, Town of Apex, petitioner for the properties located at the southeastern intersection of NC-55 and US 64 Hwy
- Consent 13 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 19th Hole Group and Staley Smith property containing 10.9677 acres located at the Apex Peakway and North Salem Street, Annexation #507 into the Town’s corporate limits
- Consent 14 Public Hearing for proposed installment financing for water plant improvements and to refinance police and fire facilities
- Consent 15 Budget ordinance amendment for Wake County contribution to Fire Station 2 improvements
- Consent 16 Resolution to approve a revision to the 2012 Apex Local Water Supply Plan as required by NCGS 143-355 (I)
- Consent 17 Resolution to give authorization to the Purchasing Manager to sign the MVR63 Power of Attorney Form for disposal of vehicles declared a total loss

Consent 18 Resolution to the NC Legislature regarding tree regulations and standards

Council Member Lassiter asked to be recused from voting on the Consent Agenda based on a conflict with a cemetery plot. The Town Attorney stated it best to vote on that conflict separately.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO APPROVE THE COSENT AGENDA MINUS ITEMS 3 AND 4; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO RECUSE COUNCIL MEMBER LASSITER FROM VOTING ON ITEMS 3 AND 4; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO APPROVE COSENT AGENDA ITEMS 3 AND 4; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Lassiter returned to Council.

REGULAR MEETING AGENDA

COUNCIL MEMBER JENSEN MADE A MOTION TO WITHDRAW THE PUBLIC HEARING ON THE 2030 LAND USE PLAN.

Council Member Jensen explained he felt the workshop meeting presented reason to go ahead with the Public Hearing; but after reviewing the outpouring of concern from citizens, he saw the need to withdraw the item. Stated was the purpose of the item – a live/work/bike community. Council Member Jensen hoped that in the future the community will recognize that Apex should not be carpeted with subdivision after subdivision without places to work.

COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner II

Public hearing on rezoning application #14CZ07, amending Rezoning #05CU10 to eliminate the condominium building from Phase II and replacing it with single family detached lots; and a rezoning ordinance

Staff oriented Council to the site, stating the request's consistency with the Land Use and Transportation Plans and the UDO. A neighborhood meeting was held. The Planning Board unanimously recommended approval along with staff.

Mayor Sutton declared the Public Hearing open.

Stuart Jones, Jones and Clossen Engineering representing the developer, stated this was planned years ago but the neighborhood has been redesigned.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE WILKIE MADE A MOTION TO APPROVE THE REZONING AND THE ORDINANCE; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 02 : Lauren Simmons, Planner II

Public Hearing on Rezone #14CZ08, 3.6 acres for the property located between the end of Germaine Street and Herbert Street from Medium Density (MD) to Planned Unit Development Conditional Zoning (PUD-CZ) district classification

Staff oriented Council to the site, stating consistency with the 2030 Land Use Map, the Transportation Plan, and the UDO. A neighborhood meeting was held. The Planning Board and staff recommend approval.

Mayor Sutton declared the Public Hearing open.

Jeff Roach, Peak Engineering and Design representing the property owner, further detailed the site. Ronald Taylor, citizen, stated his concern over stormwater and runoff once the lot is cleared. He cited a similar case in Cary. Roach explained the BMP which will be put on the site to prevent such. This issue would be reviewed further at the site plan level. Roach committed to the following added condition in response to questions by Council: the stormwater BMP shall be designed to regulate the 25-, 50-, and 100-year post development runoff to avoid overtopping of the dam and impoundment.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE REZONING; MAYOR PRO TEM SCHUZLE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

An audio recording of the following three Quasi-Judicial Public Hearings made by the Town Clerk are incorporated into these Minutes by reference. The audio recording or transcript of the Hearings should be used as the verbatim record of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearings.

Public Hearing 03 : Brendie Vega, Principal Planner

Quasi-Judicial Public Hearing regarding Special Use Permit SUP#14SUP01 and a Major Site Plan for Kelly Park Tower to be located at 1701 Kelly Road

The Town Attorney read a brief statement explaining the purpose of the request and giving instructions to Council for their deliberations. All Council members stated they had no relationships or financial connections to this issue which would cause them to not be able to make impartial decisions.

Mayor Sutton declared the Public Hearing open.

Staff oriented Council to the site and the tower. The request is consistent with the Transportation Plan and the UDO on this Town-owned property for which a lease has been approved by Council. No Council member stated they had visited the site.

CROSS OF STAFF: An Ashley Downs resident questioned the health risk of radiation and cancer of such a tower, speaking from information he'd found online and in magazines/journals. The Town Attorney stated he was not a health expert or an expert in cell tower safety. Mayor Sutton called him out of order.

SPEAKING IN SUPPORT: Jason Baron, attorney for the applicant, presented Matthew Danielson of Raleigh Towers and his credentials. Danielson gave a brief history of his company which finds locations for cell towers and explained why they came to this site – the need for bandwidth. The tower meets all guidelines and will be built according to all rules and regulations. Baron asked to have entered into evidence all information submitted and the staff report supporting this.

SPEAKING IN OPPOSITION: the same Ashley Downs citizen stated the tower would be too close to a school, and this would not be safe.

Mayor Sutton declared the Public Hearing closed.

The Town Attorney stated no issue was raised as to any particular Standard.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE SPECIAL USE PERMIT AND SITE PLAN; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 04 : Dianne Khin, Planning Director

Public Hearing on an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Jerry B Lewter property containing 7.06 acres located at 1615 Salem Church road, Annexation #510 into the Town’s corporate limits
Staff oriented Council to the site, stating that it recommended approval.

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 05 : Dianne Khin, Planning Director

Public Hearing on an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Vans Road Development, LLC, Mary Harris Harbor and Hilda Grace Best property containing 14.59 acres located off Evans Road, Annexation #506, into the Town’s corporate limits
Staff oriented Council to the site, stating it recommended approval.

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE ORDINANCE; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 06 : Dianne Khin, Planning Director

Public hearing on an Ordinance regarding various amendments to the Unified Development Ordinance
Staff detailed the request related to several discretionary Standards.

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE A MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER WILKIE SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for consideration.

PUBLIC FORUM

Chris Hayami spoke on the CSX railroad, stating that at one point trains would sit on the track close to her house with no uncoupling of cars. Six or eight weeks ago this changed, causing a lot of loud noise between 1:00 and 4:00 a.m. In addition, this rattles houses, calling for a concern for structural integrity and affecting the resale of homes. Hayami asked that this process be shifted as to time and location. There is an area proposed for storage which would be a better alternative.

Town Attorney Fordham encouraged the residents to consult with a private attorney immediately; they would have some rights that the Town doesn't have. Town Manager Radford stated this may be an uphill battle, but the residents may have some small victories along the way. Radford has spoken with John Dillard in CSX Governmental Affairs about a similar problem. The residents will be included in a meeting with Dillard in order to express their concerns.

Vincent Simorelli stated he has similar concerns, adding that the noise is affecting his work and job because he hadn't at that point been able to sleep in the last 10 days. What are residents to do if there is not money for a private attorney? Simorelli also asked why, contrary to the Statute, trains are allowed to remain still on the tracks for more than five minutes. Radford stated PD wrote a ticket for this in the past and it was thrown out of court, citing we were trying to refrain free trade and the railroad had greater authority over the tracks than we did. Also discussed was how long the horn could be blown. Fordham stated that in the past people have used a lawyer on contingency, again urging the residents to see an attorney.

Steve Wilkins spoke about a property next to him being annexed. The 2030 Plan calls for tech flex all around him but not his property. Staff explained why he was not originally included and stated the process to correct this would begin at the next Planning Board meeting.

NEW BUSINESS

New Business 01 : Lauren Simmons, Planner II

Olive Chapel Park, Phase II - Master Subdivision Plan - containing 2.77 acres and 12 lots

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

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE A MOTION TO APPROVE THE PLAN; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 02 : Lauren Simmons, Planner II

Jordan Pointe - Master Subdivision Plan - for the properties located at Old US Highway 1 and Horton Road containing 295.383 acres and 440 lots

Staff oriented Council to the site. A neighborhood meeting was held. The Parks and Recreation Commission recommended partnership to coordinate a regional park facility or a fee in lieu. The Planning Board and staff unanimously recommended approval of the request.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE A MOTION TO APPROVE THE PLAN; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR SUTTON CALLED FOR A MOTION TO ADJOURN. COUNCIL MEMBER JENSEN MADE
THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton, Mayor