



APEX TOWN COUNCIL MEETING

TUESDAY, FEBRUARY 5, 2013

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant 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, February 5, 2013, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, William S. Jensen, Lance Olive, and Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the Meeting to order. Council Member Lassiter gave the Invocation. Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

1. Approved Minutes of the January 15, 2013 Regular Meeting and the January 15, 2013 Closed Session (*Closed Session Minutes recorded separately*)
2. Approved the Apex Tax Report dated December 2, 2012
3. Approved Findings of Fact and Conclusions of Law for Eagle Rock Concrete Major Site Plan
4. Approved the Statement of the Town Council and Ordinance to Amend the Official Zoning District Map for Rezoning Case #12CZ14, Merion Investment Properties, LLC
5. Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, accepted the Certificate of Sufficiency by the Town Clerk, and adopted a Resolution Setting Date of Public

Hearing on the Question of Annexation – Apex Town Council’s intent to annex Eagle Rock Concrete, property containing 9.6+ acres located at 500 Pristine Water Drive, Annexation #486, into the Town’s corporate limits

6. Approved a resolution entitled, “Resolution to Approve Settlement and Release of All Claims” in connection with the settlement of matters related to Holly Springs’ withdrawal from the Western Wake Regional Wastewater Partnership
7. Approved a budget ordinance amendment for City of Charlotte reimbursement for convention assistance and recreation grants for tennis court improvements

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO ACCEPT THE CONSENT AGENDA; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

There were no changes or additions to the Agenda.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE AGENDA; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner II

Continue Public Hearing and possible motion regarding a Land Use Plan Amendment from Very Low Density Residential to Office Employment and Rezone #12CZ13 from Rural Residential (RR) to Tech Flex-Conditional Zoning (TF-CZ). The subject property is approximately 14.2 acres generally located at 3232 US 64 Highway West and identified on Wake County Tax Maps as a portion of PIN# 0722-36-1604. This Public Hearing is continued from the January 15, 2013 Regular Council Meeting.

Staff detailed the particulars of the location and reason for the rezoning request and 2025 Land Use Plan amendment. Neighbors contacted staff after the last Council Meeting with concerns that were passed along to the applicant. The applicant agreed to some use reductions and a revised condition on the fencing of the property. Staff recommends approval with stated conditions. The Planning Board recommended approval by a 5-2 vote with stated conditions. Staff did not hear reasons for the two votes against the rezoning.

Staff distributed a Use Table to Council. Mayor Pro Tempore Schulze stated he has a small relationship with one of the applicants, but this would not affect his decision nor does he have any financial stake in this issue. Buffer types on Goodwin Road were discussed.

Mayor Weatherly declared the Public Hearing open.

Barbara Hinkle, daughter of the land owners and speaking in favor of the request, gave a history of the land which has been in her family for 100 years. She is excited about those wanting to purchase the property, as she sees it as positive entertainment value for Apex. If the sale does not go through, her parents will need to sell their home.

Carl Helton, applicant and speaking in favor of the request, stated he and several other investors have been working with the developers, the Town Planning Department, Peak Engineering, and an entertainment-specific consulting firm in proposing a family adventure park. Amusement Entertainment Management has conducted a feasibility study, and is under contract to guide the developers through the project. Approximately 50 jobs will be created.

Some allowable uses were initially eliminated; four more were subsequently eliminated. The applicant has agreed to fence the property on the inner portion of the buffer and to leave any athletic fields unlit. The applicant understands there are neighbor concerns, most of which will be dealt with at the site planning review with decisions about US 64 being made with DOT and site plan issues based on the Town's UDO. The applicants are willing to work with the Town to ensure this will be a positive enhancement for the community.

Council questioned why a Type A buffer along Goodwin Road was not in the proposal, as was requested by Planning. The applicant stated that based on the definition of the buffer with fencing, it may qualify as it is but they don't have a problem doing a Type A buffer. Planning clarified that the site plan would require a Type D buffer which can only be required on the ETJ portion of the property.

Resident Mike Oakland stated he likes the idea of a commercial use on Highway 64. It seems appropriate, and he wants to see Apex residents spend their money in Apex. Dud Whitley reiterated that his parents would be forced to sell their home if this did not pass; he feels this would be something positive for the community.

Residents Clint Wagner, Lee Wagner, George Bickel, Leslie Kennedy, Don Fitzgerald, Don Bonnewell, Margaret Proctor, Donna Miller, Raymond Weeks, and Tim Royal spoke against the request with the following types of concerns: depletion of land conservation; inconsistency with the 2025 Land Use Plan; a high potential to cause water source and sewer problems; noise and light pollution; consequences if the use fails; having to drive to the next county to turn around if traveling westward; concerns about traffic; concerns about trespassing; installation of sidewalks along Hwy 64; lowering of the water table; and the desire to see DOT do an impact study.

Responding to Council, staff stated that DOT has looked at access along the entire corridor, specifically where it affects Apex. The long-term recommendation is for a service road. High traffic or any safety issues on Goodwin may cause DOT to limit traffic on 64. Long term means a 20 year range, but that could be accelerated if the road becomes a high priority for any reason. DOT did contact some property owners and conducted a public outreach as part of their study for US 64.

Staff indicated that wells and septic are permitted by Wake County. If the applicant doesn't have enough land to do permitting on the Apex side of the line, Wake County will not approve permitting on the County side. The applicant would then have to wait for Town water and sewer or the applicant would have to pay for bringing water and sewer to the property.

Responding to Council, staff stated that the applicant will be required to provide ample parking on site, which is on the Apex part of the land. If parking reaches 100 spaces, it will then require a quasi-judicial hearing and a traffic study would be triggered.

Mayor Weatherly declared the Public Hearing closed.

The Town Attorney pointed out that a valid protest petition was in place; therefore, approval would require a super majority vote by Council (4 votes in favor).

Council raised concern about the Standard that addresses "impact or protect or cause significant deterioration of water and air resources". The applicant stated a water study has not been done. If the request is not approved, then water and sewer will not be needed. The current resident on the

property has experienced no water problems from their well. Additionally, no irrigation is planned to the soccer fields unless Town water and sewer is obtained.

The Town Attorney reminded Council that expressions of intent by the applicant ought not to be considered if they are not made conditions of the rezoning. **The applicant stated they commit to the condition of not watering any athletic fields from the wells. The applicant also reiterated their commitment to the condition of a 10-foot Type A buffer along all of Goodwin Road except where there are access points into the parking lots.**

Council expressed agreement for the option that tech flex brings. However, thought should be given to roadways and traffic and safety studies. There is reservation that tech flex is feasible in an area where large capacity water is required and not present.

The applicant also agreed to a third condition that the driveway belonging to Mr. Wilkins at 3228 US Highway 64 West which runs through the property would not be interfered with. There will be a 40-foot buffer, or whatever the UDO requires, between the eastern property line and the applicant's fence, planted outside the driveway.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REZONING REQUEST WITH STAFF CONDITIONS AND WITH THE THREE ADDITIONAL CONDITIONS DISCUSSED THIS EVENING [ABOVE IN BOLD]. MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.

Council expressed concern about adversely impacting surrounding water. If not clarified, this request should not be approved. Staff stated that this property is in a basin where the water supply is difficult. Some of the wells in the area have gone dry. One property owner can affect the water of another property owner. This is not an easy issue. The applicant stated that the well on the property is over one thousand feet from the next well.

COUNCIL MEMBERS JENSEN, SCHULZE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS ROWE AND OLIVE VOTED IN THE NEGATIVE. SINCE A SUPER MAJORITY VOTE WAS NEEDED TO CARRY, THE MOTION FAILED BY A 3-2 VOTE.

Mayor Weatherly called for a five-minute recess.

OLD BUSINESS

Old Business 01 : Tim Donnelly, Director of Public Works & Utilities

Review of the White Oak Creek Basin Sewer Facility Plans and the Impact of the Proposed Beckwith Property Pumping Station currently approved for construction by Toll Brothers

Staff stated that prior to the Town knowing where pump stations should be or having the capacity to serve the area, Toll Brothers was approved to build a pump station in the upper portion of the basin, which was never planned to be the solution to sewer.

The US Army Corps of Engineers owns a portion of this area, they don't want sewer lines running through their property, and it is difficult to get permission to do so. The perfect location, therefore, would be a station down lower on the property. Cost would be about \$4 million to include gravity sewer line, force main, and pumping station. For Toll Brothers, they would spend with acreage fees roughly \$1.6 million to finish their project. Therefore, someone would need to make up the difference if the regional station was to be built and there would be a loss of time of about one year.

Meetings were held with the surrounding property owners. Even if the Town offers acreage fees, there would still not be enough money available today to make up the difference between what Toll Brothers would have to spend and to get a solution to serve the whole basin. If Toll Brothers is allowed to build and other pumping stations were also built, it would still cost about \$4 million. The operational cost for taxpayers would be \$50-\$60,000 more per year.

Acreage fees have not been raised in almost 20 years, so there is not much incentive to get people to do a regional solution. Staff will look at recommending a different model or raising acreage fees. Council will need to decide if the area will be mostly residential and how all the pieces will be built.

Staley Smith stated he has met with the landowners, and there is a great interest in the basin. There appears to be about a \$2.5 million gap that he hasn't been able to close. There may be an opportunity based on inquiries within the last 30 days, making this basin a fairly good risk in which to invest.

Mr. Margiotta stated a larger plant at the bottom of the basin is the best opportunity. Toll Brothers came before the Town of Apex years ago, and they have not yet acted on this properly. It is important for the land to be developed properly, which would take the larger station.

Staff stated there is some value of the pumps at Kelly Road by putting them back to work somewhere or sell them as salvage on the open market. There may also be an opportunity to look at this for

other basins. If acreage fees were applied to all areas to be developed, it would represent \$1.8 million. It would be difficult to break even at some point with the current acreage fees. Staff added that Toll Brothers is currently building infrastructure even though there are no guaranteed approvals. There is a pending subdivision that could be sewered now a number of ways. If a decision was made today to build the staff-suggested pump station, the Town would have to pay \$2.5 million and Toll Brothers would need to be willing to do their share.

Old Business 02 : Ann Prince

Request by Ann Prince to allow family-owned property to be sewered by the Town of Cary

Ms. Prince's family owns about 24 acres of property on Green Level West Road and Green Level Church Road. Her brother needs to sell his portion of land; however, he does not have sewer and his land will not perk. In 2007, Cary obtained an easement for a sewer line which covers the entire back of their properties which are completely dissected and surround by Cary sewer. Only about 14-16 acres of their land could be developed. Their request is for Apex to release their land to Cary in order that they be able to hook up to Cary's sewer line. A second option could be for Apex to release the land from Green Level West Road back to White Oak Creek and retain the remaining portion in the Apex ETJ. A third option could be an agreement that would allow them to use the Cary sewer line but they would be billed through Apex. Ms. Prince distributed a map to Council showing the sewer lines.

The Town Manager stated the property is on the Apex side of the jurisdictional boundary. Sewer is a problem here, but Council has taken a philosophical position in the past to not allow folks to be seated to Cary or another municipality. Ms. Prince has been before Council in the past with the same request, and she was told 'no'. We have set some precedent that differs from the long-held philosophy of the Town about how we deal with sewer on the wrong side of the boundary from where it flows. Staff will be happy to engage in conversation with Cary, taking direction from Council on this issue.

Public Works staff stated there is no water on this property until Toll Brothers is built. The easiest and cheapest way to develop the property would be in the Town of Cary with Cary water, although a lot of property owners out there could say the same thing. When Toll Brothers is built, there will be extra capacity in their pumping station; but a lot of people have interest in that extra capacity. Ms. Prince stated she has been given an estimate of approximately \$300,000 to be able to run sewer from Toll Brothers to their land depending where their pump station is to be located.

The Mayor stated Apex will need to consider what precedent granting this request will present. Toll Brothers made this same request in 2012 and other property owners could make the same request. Apex has opened this up once, but only because the land would have been undeveloped and there was a very high cost involved. Apex did not think this situation would arise again, and it does not want to make inconsistent decisions.

Responding to Council, staff stated the sewer line is there because Cary found the lowest point for their pumping station. It was supposed to be jointly owned as the pumping station for the White Oak basin. However, the partners could not agree on the issue because Cary did not want to build that far down in the basin and have it pump north for a long time until the regional plant was built. Apex did not see this as serving enough of its basin to invest in the station, so it went solely to Cary. Council did not see the logic in having both towns having services in the same spot. Staff felt like there could be discussions with Cary to readjust boundaries or to make trades.

Council questioned why this could not be solved for the use of the property owners. We could allow connections and enable cross-billing through Apex to Cary. If this would open the door for a few more properties, that would be preferable to start moving jurisdictional lines which have been set up to service some governing boundary process. Where the sewer goes is geography. If Apex ends up setting up more Interlocal agreements with Cary, then this is what we should do. Council stated if this approach is taken, we should first see how many properties would be involved on both sides of the fence.

Consensus from Council was to have staff look at opportunities for trade discussions with Cary over the next 30 days. Staff reminded Council that the boundary line has been adjusted on two occasions in order to provide water.

Old Business 03 : Brendie Vega, Principal Planner

Old Business item originally heard on November 20, 2012. Applicant, Town Staff, and other basin property owners agreed to work together on a regional pump station proposal prior to returning to Town Council. Possible motion to approve a proposed new 19 lot subdivision adjacent to portions of the subdivisions formerly approved as *the Glen and Beckwith* (Phase 1).

Staff refreshed Council's memory on the details of this request.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE SUBDIVISION; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Old Business 04 : Hank Fordham, Town Attorney

Possible motion to reconsider the vote taken on January 15, 2013 with respect to Public Hearing No. 02 amending the UDO. If the motion to reconsider is approved, possible motion to approve the amending ordinance attached hereto amending the UDO as provided therein.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO RECONSIDER THE JANUARY 15TH VOTE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

The Town Attorney stated this would fill out the board plate in the Ordinance and improve the language in Section 5 on grandfathering.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE MODIFIED VERSION OF THE ORDINANCE; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC FORUM

No one wished to speak during Public Forum.

NEW BUSINESS

New Business 01 : Lee Smiley, Finance Director

Review of 2nd Quarter Financial Summary, Apex EMS revenues and expenditures, and Western Wake Wastewater Treatment Facility costs to date

Staff covered the high points of the financial summary, indicating that property taxes are now being paid beginning in November, and sales taxes are 5% ahead of where we were a year ago. Building permits are exceeding projections. General Fund expenditures: most bond payments come up in May and June, and there is a transfer budgeted to go to the Recreation Fund. Utility Fund: electric sales and power are running about same as last year. Large transfers will be made in the future to the public works project. Water and sewer revenues are coming in very well. EMS revenues and

expenses: Wake County monies for December made a jump due to a provision for merit increases given to EMS employees, which was paid in a lump sum.

WWTP project update: the total for the project will be about \$82 million; at this point a little over \$35 million being spent. Staff reported that most of the \$900,000 settlement money will reimburse Cary for costs they have incurred.

WORK SESSION

There were no Work Session items for discussion.

CLOSED SESSION

There were no Closed Session items for discussion.

ADJOURNMENT

WITH THERE BEING NO FURTHER BUSINESS, MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
MAYOR PRO TEMPORE SHCULZE MADE THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Keith H. Weatherly
Mayor