



TOWN COUNCIL MEETING

TUESDAY, AUGUST 20, 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, August 20, 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, Scott R. Lassiter, William S. Jensen, and Lance Olive. 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 Rowe gave the Invocation, and Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

No presentations were made.

CONSENT AGENDA

Consent 01 Minutes of the August 6, 2013 Regular Council Meeting and the August 6, 2013 Closed Session (*Minutes of Closed Session recorded separately*)

Consent 02 Apex Tax Report dated 07/02/2013

Consent 03 Governor's Highway Safety Program Resolution for funding in the amount of \$58,415.00

Consent 04 Governor's Highway Safety Program Resolution for funding in the amount of \$19,350.00

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 Richer Levert property containing 2.169± acres located at 2908 Evans Road, Annexation #494 into the Town’s corporate limits

Consent 06 Amendment to the contract with Wake County for tax collection

Consent 07 Change in the Colvin Park Subdivision sewer force main alignment, revised Exhibit B, \$15,000 Maintenance Fee, and staff to implement details for maintenance of the proposed sewer force main

Consent 08 Town Manager to sign a Funding Agreement from Wake County for 20% proportionate shared funding of renovations to Station 2

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

REGULAR MEETING AGENDA

There were no changes requested to the Regular Meeting Agenda.

PUBLIC HEARINGS

Public Hearing 01 : June Cowles, Senior Planner

The applicant requested to remove from the Agenda Public Hearing Rezone #13CZ05 0.73 acres located at 2621 and 2629 Schieffelin Road from Residential Agricultural Zoning to Light Industrial Conditional Zoning

Unanimous consensus of Council was to remove this item from the Agenda.

Public Hearing 02 : Dianne Khin, Planning Director

Public Hearing and adoption of an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Yang, Partlow and Johnson properties containing 57.949± acres located off Castleberry and Green Level West Roads, Annexation #491 into the Town’s corporate limits

AND

Public Hearing 03 : Lauren Simmons, Planner II

Public hearing and Rezoning #13CZ17 and 2030 Land Use Map Amendment for 107.68 acres located at Green Level West Road and Castleberry Road from Rural Residential and Wake County-R-80W to Low Density-Conditional Zoning

Staff oriented Council to the site. Conditions were added since the Planning Board meeting which the applicant would explain. The Planning Board vote on this issue was 4/4, with no reasons given for the votes against the request. Protest petitions were submitted. The first petition was deemed invalid by the Town Attorney and the second petition was withdrawn. Staff recommended approval with conditions.

Mayor Weatherly declared the Public Hearing open.

Applicant Tom Beebe, Standard Pacific Homes, oriented Council to the site, confirming its use was consistent with the 2030 Land Use Plan. The additional staff conditions were stated and explained. A group of developers have agreed to build the White Oak Creek pump station at no cost to the Town, and water lines would be extended. The dam would be repaired and reconstructed in order that the lake remain. There have been two meetings with the neighbors, and not all their concerns could be incorporated.

Speaking in favor of the request were Freeman Johnson, Bill Partlow, Randall Gressett, Patty MacNair, Dennis Heck, Patti Gamin, and Henry MacNair. The Town was congratulated for winning Money Magazine's 9th best place to live in North Carolina. Speakers presented reasons why this appropriate rezoning and its impressive development would be good for Apex, this is consistent with applicable Land Use Plans, opposing resident demands were unreasonable, and why it is important to preserve the lake. There was a question as to what would happen if the dam broke and possible resulting health and safety risks. However, this development was still seen as a good product, Council being asked to consider what would be behind "door number two" if this rezoning was denied.

In opposition, Tom Kendig, Kerry MacPherson, Trish MacPherson, Paul Cotruto, Deborah Strickland, Steve Amons, and Michelle VanGundy expressed concerns about lot and housing sizes, the watershed boundary, the effect on their rural community life, inconsistency with land use plans, disturbance of wildlife, degradation of water quality and stormwater runoff, increase of people and its effect on emergency services, and increase in taxes. BJ Lawson additionally distributed a handout showing

development costs, gross margin, construction costs, etc. Council was questioned on how to appeal the protest petition as a whole.

Council asked the applicant for confirmation of lot sizes and minimum house sizes. The Town Attorney stated that if these things are not written conditions, then they should not be relied upon. The applicant stated he would be willing to agree to a condition on size. Staff presented Council the following written condition: "No residential lot shall be smaller than 10,000 square feet". Staff additionally provided information on runoff rules which are currently in the Legislature and related to Jordan Lake. Those rules would effect this development as far as water quality. Taxes were briefly discussed.

Mayor Weatherly declared the Public Hearing closed.

Staff gave its thoughts on amending the newly passed 2030 Land Use Plan, reminding Council that it stated it would decide on these types of issues on a case by case basis which was not consistent with staff recommendations. Council engaged in conversation regarding density and discussed this with the applicant. Council stated that a Parks and Rec fee in lieu would be applied. Staff speculated on the negative impact to the pond if the Jordan Lake rules come into effect.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO APPROVE THE ANNEXATION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO APPROVE THE REZONING WITH THE ADDITIONAL CONDITION PRESENTED BY STAFF AND TO AMEND THE 2030 LAND USE PLAN; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Mayor Weatherly called for a five minute recess.

Public Hearing 04 : June Cowles, Senior Planner

Public Hearing and Rezoning #13CZ07, 15.67 acres located at 0, 1005, 1013, and 1015 North Salem Street from Neighborhood Business Conditional Use Zoning and Residential Agricultural Zoning to Planned Unit Development Conditional Zoning

Staff oriented Council to the site and stated a traffic impact analysis had been completed. Molly Matthewson with Ramey Kemp explained how the traffic model was built and how they came to their recommendations. A Parks and Rec fee in lieu was recommended. The neighborhood meeting raised concerns about traffic and buffers. Townhomes were originally proposed, that being changed to single family homes and a 10-foot Type B buffer. The applicant included a condition to change the PUD Plan density to 4.5 units per acre. Staff recommended approval of the request with conditions. The Planning Board recommended approval with architectural and buffer conditions.

Mayor Weatherly declared the Public Hearing open.

In favor, applicant Stuart Jones, Jones and Clossen Engineering, presented their proposal for the site. They are not in agreement with disrupting an historic home to alter the traffic pattern.

In opposition, Charles Macias, Christy Macias, Roger Hellman, Nick Sennert, and Kent Van Riper expressed concerns about density, a 10-foot buffer being inadequate, the development not benefitting Apex or Haddon Hall, and the impact analysis being inadequate.

Mayor Weatherly declared the Public Hearing closed.

Council discussed buffers, Mr. Jones suggesting a 15-foot Type B buffer as an alternative to a Type A buffer. Mr. Jones discussed widening the traffic lane at the historic home and its negative impact on yard size. The applicant asked for more time to consider road access. Brad Zadell for the residential side of the request was present. Council stated a second way in and out of the development would provide some solution to possible traffic problems. Staff offered several solutions to traffic lanes and how this could be done in phases until the commercial aspect comes in for development.

Mayor Weatherly declared the Public Hearing closed.

After some brief discussion,

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER ROWE MADE THE MOTION TO CONTINUE THIS DISCUSSION TO THE SEPTEMBER 3, 2013 COUNCIL MEETING; COUNCIL MEMBER OLIVE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 05 : Brendie Vega, Principal Planner

Public Hearing for various amendments to the Unified Development Ordinance

Staff oriented Council on the various requested amendments.

Mayor Weatherly declared the Public Hearing open.

In favor, Tom Colhoun stated that allowing Tech Flex could be key to helping Apex.

Mayor Weatherly declared the Public Hearing closed.

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

Public Hearing 06 : Lauren Simmons, Planner II

Public Hearing and Rezoning #13CZ19, 10.75 acres located at 1640 Olive Chapel Road from RR to Tech Flex-Conditional Zoning (TF-CZ) and 2030 Land Use Map Amendment from Medium Density to Office Employment

Staff oriented Council to the site. The Planning Board recommended approval with a condition revised at their meeting. Staff recommended approval with the condition requested by the Planning Board.

Mayor Weatherly declared the Public Hearing open.

Applicant Stuart Jones, Jones and Crossen Engineering, stated the storage unit aspect is not unusual in this area. There would be a low traffic impact, and a positive impact on the tax base.

With a neutral stance, Jim Faulkner expressed concerns about manufacturing-type lighting and noise. There was also concern about folks utilizing the pond and, thereby, his picnic benches. He expressed concern about trash on his property, the applicant stating there would be fencing in the area.

Mayor Weatherly declared the Public Hearing closed.

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

Public Hearing 07 : Dianne Khin, Planning Director

Public Hearing and adoption of an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Standard Pacific of the Carolinas, LLC (portion of Salem Village Subdivision) property containing 34.66± acres located south of S. Salem Street, northwest of the Apex Peakway, Annexation #493 into the Town’s corporate limits

Staff oriented Council to the site.

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

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

Public Hearing 08 : Bruce Radford, Town Manager

Public Hearing and Annexation Agreement with the Town of Holly Springs

Town Manager Radford gave background information on this Agreement, stating that Holy Springs would be discussing and entering into this Agreement on this night also.

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

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE RESOLUTION APPROVING THE ANNEXATION AGREEMENT; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for consideration.

PUBLIC FORUM

Ross Olive stated he was excited to see the renaming of Olive Grove to Edwards Creek on the upcoming New Business 02 . He was additionally excited to see the decrease in rezoning, although even more of a decrease would have been better.

NEW BUSINESS

New Business 01 : Bruce Radford, Town Manager

Motion to extend the lease of the depot space to the Apex Chamber of Commerce

Staff stated this would be an extension of the current lease, and the financial particulars were presented. The Mayor and Council Member Rowe were on the Council Committee deciding on this lease. Staff recommended approval; the Chamber governing body was in agreement with the lease.

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

New Business 02 : Lauren Simmons, Planner II

Motion approving Edwards Creek - Master Subdivision Plan - for the property located at 0 Old Raleigh Road containing 3.97 acres and 9 lots

Staff oriented council to the site. The Parks and Rec Advisory Commission recommended payment of fee in lieu, and this request was in conjunction with the UDO and Transportation Plan. In the neighborhood meeting, there was interest in the rezoning process, uses, and density of the project. The Planning Board unanimously recommended approval.

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

New Business 03 : Lauren Simmons, Planner II

Motion approving Manors at Bella Casa, Phase 7 - Master Subdivision Plan - for the property located at 2717 Evans Road containing 5.40 acres and 11 lots

Staff oriented Council to the site. The request meets UDO requirements, no one attended the neighborhood meeting, recommended was a Parks and Rec payment of fee in lieu, and staff required the condition of a 5-foot wide paved connection from the end of Maroni Drive to Evans Road as per the UDO. The Planning Board recommended approval without this staff condition. If the condition is not added to the Master Subdivision Plan, then the UDO would need to be modified in order for this to be consistent. The applicant did not agree to the condition.

Stuart Jones, Jones and Crossen Engineering on behalf of Joey Iannone stated they could not get a road connection onto Evans Road because of the s-curve. DOT stated this connection could not be

made. Mr. Iannone was concerned about sidewalk connection to Evans Road and its security and safety even though this is in the UDO. Staff stated the sidewalk won't contribute to security problems; studies confirm it may make it safer. Mr. Jones stated they may be able to come up with something else and that this is not a deal killer.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE PLAN WITH STAFF'S REQUIRED CONDITIONS; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

CLOSED SESSION

Closed Session 01 : Closed Session to receive legal advice from the Town Attorney related to a claim by the Town of Apex and to give direction regarding the same

Closed Session 02 : Closed Session to receive legal advice from the Town Attorney regarding potential eminent domain actions and to give directions regarding the same

Closed Session 03 : Closed Session for a personnel matter

MAYOR WEATHERLY CALLED FOR A MOTION TO GO INTO CLOSED SESSION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

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

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO ADOPT A RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS RELATED TO THE NEW HILL MITIGATION WATER AND SEWER PROJECT FOR THE IMPROVEMENT OF THE APEX WATER AND SEWER SYSTEMS; COUNCIL MEMBER JENSEN SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.

COUNCIL MEMBER JENSEN MADE THE MOTION.

THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC

Town Clerk

ATTEST:

Keith H. Weatherly

Mayor