



Apex Town Council Meeting

Tuesday, May 15, 2018

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
William S. Jensen, Wesley M. Moyer, Audra M. Killingsworth, and
Brett D. Gantt, Council Members
Drew Havens, Town Manager
David Hughes, Assistant Town Manager
Shawn Purvis, Assistant Town Manager
Donna B. Hosch, MMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 15, 2018, 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 William S. Jensen, Wesley M. Moyer, Audra M. Killingsworth, and Brett D. Gantt

Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Kiersten Place, Ms. NC Junior Teen, gaveled the meeting to order. Mayor Olive called the meeting to order and stated that Ms. Place was job shadowing him. Mayor Olive gave the Invocation and led the Pledge of Allegiance. Ms. Place assisted the Mayor in explaining the timer, sign in sheets, and applause preference.

PRESENTATIONS

Presentation 01 : Mayor Lance Olive

National Police Week Proclamation to the Apex Police Department

Mayor Olive read the Proclamation and presented it to Chief John Letteney who was accompanied by approximately 20 members of his police force team.

CONSENT AGENDA

Consent 01 Minutes of the May 1, 2018 Regular Town Council Meeting

Consent 02 Resolution approving the Local Water Supply Plan (LWSP) required by the State of North Carolina by General Statute 143-355(l)

- Consent 03 Closing of the Chamber of Commerce Parking Lot on specific dates for entertainment associated with "Finally Friday"
- Consent 04 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 the Robert & Linda Annunziata (Grey's Landing) property containing 5.227 acres located at 7124 Apex Barbecue Road, Annexation #632, into the Town's corporate limits
- 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 Charles W. Chewning (Pointe at Lake Castleberry) property containing 36.74 acres located at 4213 Green Level West Road, Annexation #624, into the Town's corporate limits
- Consent 06 Budget ordinance amendment to appropriate insurance proceeds for the replacement of a Chevy Tahoe which was totaled in an accident.
- Consent 07 Budget ordinance amendment for the Police Donations Funds so that donations previously received during the current fiscal year may be used for community activities
- Consent 08 Reconveyance of Lot 204, Plots B and E in the Apex Cemetery back to the Town of Apex
- Consent 09 Transfer of Apex Cemetery Lot 211, Plot G to Laura L. Walters
- Consent 10 Position reclassification of one of the Senior Zoning Compliance Officer positions, Grade 24 to Senior Zoning Compliance Enforcement Officer - Landscaping, Grade 25, effective May 21, 2018

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

REGULAR MEETING AGENDA

The Mayor stated that there was a request to move Public Hearing 07 to be heard first since it would be fairly quick to address. There was also a request to add a Closed Session to receive advice from the Town Attorney.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA WITH THE STATED MODIFICATIONS.
COUNCIL MEMBER GANTT MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC FORUM

Lisa Glover asked Council not to adopt the resolution proposing the sale of the parcel identified as PIN #0742602371 (New Business 02). The land does not meet lot size standards, and Ms. Glover asked

Council to consider keeping the land as open space. The property is very small, and it would be egregious to sell it with the intent of putting up a house without mitigating the parking situation. Ms. Glover felt this would bring a lot of impervious service, it would not benefit the area environmentally, and that it would bring down a notch what has become "Apex living".

PUBLIC HEARINGS

Public Hearing 07 : Sarah Rayfield, Senior Planner

Public Hearing and rezoning application #18CZ09. The applicant, Tony M. Tate Landscape Architecture, PA, sought to rezone approximately ±34.63 acres located at 8209 and 8233 Green Level Church Road from Rural Residential (RR) to Low Density Residential – Conditional Zoning (LD-CZ)

Mayor Olive stated that staff recommended this Hearing be continued to the June 19, 2018 Council meeting due to it being continued at the Planning Board meeting.

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

Public Hearing 01 : Lauren Staudenmaier, Planner I

Rezoning application #18RZ08 (Apex Cemetery) to rezone 0.0184± acres located at 0 West Williams Road from High Density Single-Family Residential (HDSF); Small Town Character Overlay District to Conservation Buffer (CB); Small Town Character Overlay District

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

Staff answered Council questions related to housing types, density, and zoning.

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

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

Public Hearing 02 : Shelly Mayo, Planner II

2030 Land Use Map Amendment and rezoning application #18CZ11. The petitioners, Discovery Child Development Center, wished to amend the 2030 Land Use Map for +/- 3.2 acres located at 3005 Evans Road from Medium Density Residential to Office Employment. They also wished to rezone this property from Rural Residential (RR) to Office & Institutional-Conditional Zoning (O&I-CZ).

Staff oriented Council to the site. The Planning Board unanimously recommended denial of the request; staff recommended approval of the request.

Staff spoke about traffic concerns related to a traffic signal which is now operational. The day care driveway was analyzed, and staff presented its results and recommendations. Staff answered Council questions related to road realignment and cost concerns. Also answered were questions related to start times of the day care center.

Mayor Olive declared the Public Hearing open.

The applicant, Michael Dlott, gave background on this family business. He spoke about the uniqueness of the school and its programs. The site is a natural fit for what they are looking. There are limited childcare options in the area, and his speaking to neighbors confirmed this. Mr. Dlott understood that traffic was a concern and presented statistics which showed there was no impact on the local roads. The benefits of their curriculum was explained, and they have staggered their start times to accommodate neighbor traffic concerns.

Mike McQuillen, engineer and planner for the project, spoke about past revisions to the land use plan. He stated reasons why they disagree that there would be a better place for this establishment elsewhere. Mr. McQuillen stated Mr. Dlott was looking for a safe location for the children who would attend the daycare, and this was a perfect location. He also viewed the site at different times during the day, noting that he witnessed no traffic problems on the road at all.

Andrew Brunn, resident, stated he received a petition from an HOA and a few neighbors. He addressed three items – Evans Road, potential use of the property, and building height.

Ali Carrier, resident, stated she has benefitted from this day care and the excellent curriculum, particularly to her special needs children. They didn't want to leave the center when it was time, so they made use of the center's camps. Ms. Carrier stated it was good to keep private education dollars in the town.

Mark Steele, president of the HOA of Madison at Evans Creek, spoke on behalf of a group of residents. Neighbors have come forward with a second petition of which the residents asked him to represent them. They wished the Planning Board's recommendation of denial held up. Mr. Steele stated the land use map needs to be able to be counted on and should not be spot amended. He talked about what they would like to see in the area and pointed to a better location for the day care center. He talked about why we

should follow the current plan. Mr. Steele spoke to reasons why they moved to Apex and why they want to support Council's agenda of smart growth.

Mayor Olive declared the Public Hearing closed.

Mr. Dlott stated we are a community that supports families, and he wanted to support being able to provide a need for our children. He talked about how many kids are going to benefit from the day care.

Mayor Olive declared the Public Hearing closed.

Council stated she was very concerned about traffic and gave examples of how she felt traffic would be impacted. She did not feel this the right place for this business.

Council stated she was concerned about traffic, the realignment of the road, and more walkers in the area. She could not support this lovely business at this time. The drop off times did not seem realistic.

Council stated his concerns about traffic configuration and hoped the applicant could find another spot for the business. He was not supportive of the request.

Council stated this was a great concept for which he as in favor, expanding on his reasons why.

Council stated his concerns about traffic if this area was to become residential. He felt this a valuable business for the area and recognized that the land use map was evolving. Overall, it would be a benefit for the area, and he felt he could vote for the request with some reservations.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO DENY THE REQUEST;
COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.

There was further discussion regarding other listed uses for the area. Staff reminded Council of the Planning Boards' reasons for denial.

COUNCIL MEMBERS DOZIER, KILLINGSWORTH, AND GANTT VOTED IN THE AFFIRMATIVE;
COUNCIL MEMBERS JENSEN AND MOYER VOTED IN THE NEGATIVE.
THE MOTION FOR DENIAL CARRIED BY A 3-2 VOTE.

Public Hearing 03 : Liz Loftin, Planner II

Ordinance on the Question of Annexation – Apex Town Council's intent to annex Phyllis N. Womble (Jordan Oaks) property containing 31.753 acres located at Estates Edge Drive, east of Horton Ridge Boulevard, Annexation #629 into the Town's corporate limits

and

Public Hearing 04 : Liz Loftin, Planner II

2030 Land Use Map Amendment and rezoning case #18CZ05 (Jordan Oaks PUD) for approximately ± 31.75 acres located at 0 Horton Road. The applicant, Milestone Developments, LLC, proposed to amend the 2030 Land Use Map from Rural Density Residential to Low Density Residential and to rezone the property from Wake County R-80W to Planned Unit Development-Conditional Zoning (PUD-CZ).

Staff oriented Council to the site. A neighborhood meeting was held. The Parks and Recreation Commission recommended a fee in lieu. The PUD would be developed in two phases. Staff recommended approval of the request as did the Planning Board.

Staff answered Council questions on density, buffers, and lot sizes.

Mayor Olive declared the Public Hearing open.

The applicant, Bill Daniel, stated this piece of land was left out of the original rezoning. He clarified Council's question about densities. He spoke about road connections, infrastructure, driveways, and buffers. Mr. Daniel requested that a condition be added related to solar. He would leave out the educational aspect of the condition, as it would not be enforceable.

Emily Webb asked for clarification on some of the plans for buffers.

Dana Stephens, speaking on behalf of a group of neighbors, spoke about why they all moved to New Hill. They were told that this land was too geographically complex to be developed. She spoke about developers cutting down trees. They were asking for buffers between neighborhoods which would help maintain Apex character. They were concerned about private agreements between their HOA and the developer regarding amenities. She expressed their dire wish for a buffer which would provide them privacy.

Staff answered Council questions regarding neighborhood connectivity, buffers, lot premium charges, and open space. Staff explained why this parcel was left out of the original rezoning. Council stated he is now satisfied with the current request.

Mr. Daniel clarified Council questions related to buffers, common areas, slopes being graded away, and amenities.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE LAND USE MAP AMENDMENT, ANNEXATION, AND REZONING WITH CONDITIONS; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION. COUNCIL MEMBERS JENSEN, KILLINGSWORTH, GANTT, AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 4-1 VOTE.

Mayor Olive called for a seven minute recess.

Public Hearing 05 : Liz Loftin, Planner II

Rezoning case #18CZ10 for approximately ± 3.34 acres located at 1490 & 1506 N. Salem Street. The applicant, William G. Daniel & Associates, P.A., proposed to rezone the properties from Residential Agricultural (RA) to Planned Commercial-Conditional Zoning (PC-CZ).

Staff oriented Council to the site. A neighborhood meeting was held. Staff proposed an additional condition. Staff recommended approval as did the Planning Board. Staff stated there was an additional condition which involved wording which the applicant would explain.

Staff answered Council questions related to parking.

Mr. Daniel, applicant, explained their goals for the area. He spoke about drives and stated, by request, the uses which would not be allowed. He stated developers would be encouraged to save some of the existing trees. He wished for the solar conditions to be a part of the Minutes [*refer to documentation located in the Planning Department*].

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

Mr. Daniel answered Council questions related to microbreweries. Council stated that as chair of the Environmental Committee, she had a problem if solar was a condition and there was no condition to save some of the large existing trees, which are specimen trees by UDO definition. Mr. Daniel stated he would not be able to dictate this to future developers. There was further discussion about Mr. Daniel's commitment to the neighbors about microbreweries.

Council proposed the removal of several of the approved uses. Council stated he would like to see microbreweries as an additional use. The Town Attorney clarified the process of requesting the addition of a use. There was discussion regarding the various ways that adding a use could move forward. Mr. Daniel stated he wished to keep his commitment to remove microbreweries as a use.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REQUEST WITH THE ADDITIONAL OF THE REMOVAL OF THE THREE STATED USES, NO ADDITIONAL USE OF MICROBREWERIES, AND THE USE STATED BY STAFF; COUNCIL MEMBER GANTT SECONDED THE MOTION.

Council stated he wanted to see special attention to the trees as discussed earlier. He was disappointed by the removal of microbreweries as a use.

THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 06 : Sarah Rayfield, Senior Planner

2030 Land Use Map amendment and rezoning application #18CZ06. The applicant, Milestone Developments, LLC, sought to amend the 2030 Land Use Map classification of approximately 6.98± acres located at 1113 and 1115 Davis Drive from Medium Density Residential to Office Employment and to rezone the properties from Rural Residential (RR) to Office and Institutional – Conditional Zoning (O&I-CZ).

Staff made note of the corrections which were passed out to Council on this evening. Staff oriented Council to the site. A neighborhood meeting was held.

Staff spoke to why the request was being made and stated the proposed conditional zoning conditions to which staff was agreeable. Staff recommended approval with the additional conditions. The Planning Board recommended approval with the proposed conditions. Questions from Council were answered related to draining the existing pond. Staff provided answers to Council regarding public and private streets and stubs.

Mayor Olive declared the Public Hearing open.

Mr. Daniel, applicant, stated the requested change is far better for office than medium density residential because of the nature of the roadway. He gave reasons why the pond is a problem and why the dams would need to be reconstructed. They have designed a drainage plan for the pond. Mr. Daniel stated he wished to add an additional condition related to solar and LED lighting.

John Brewer, Towerview Office Suites, provided the vision for the project. He gave statistics on their client base and reasons why their business is growing. They hoped this project would be the first of many in Apex.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE REQUEST WITH ALL ADDED CONDITIONS INCLUDING SOLAR; COUNCIL MEMBER MOYER SECONDED THE MOTION.

Council thanked the applicant for their work on this project.

THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 08 : Amanda Bunce, Planning Manager
Various amendments to the Unified Development Ordinance

Staff oriented Council to the amendments and answered questions from Council on meandering walkways.

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

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

Public Hearing 09 : Dianne Khin, Planning Director
Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Jennifer A. Quick (South Walk) property containing 8.19 acres located at 800 S. Salem Street, Annexation #619 into the Town’s corporate limits

Staff oriented Council to the site. Staff recommended approval.

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

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE REQUEST; COUNCIL MEMBER GANTT SECONDED THE MOTION.
COUNCIL MEMBERS JENSEN, GANTT, MOYER, AND KILLINGSWORTH VOTED IN THE
AFFIRMATIVE; COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 4-1 VOTE.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

Unfinished Business 01 : Drew Havens, Town Manager

Contracts with GreenPower NC for the lease/purchase of a solar photovoltaic electric generation system to be installed on Public Safety Station 4 and the Public Works Administration Building and authorize the Town Manager and Town Attorney to make any additional minor modifications to and execute the contract.

Staff stated panels were to be installed on the Public Works Operations building. At the same time, proposals were in to install panels on Public Safety Station 5. The latter was been delayed because staff is not comfortable with this because of the ongoing work at the building. Instead, staff requested the use of the appropriated funds to put panels on Station 4. This required approval of Council was due to a the need for a new contract.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE REQUEST; COUNCIL MEMBER GANTT SECONDED THE MOTION.

Staff stated the system which is currently on the Public Works Building is operating very well and performing as promised by the vendor.

THE MOTION CARRIED BY A 5-0 VOTE.

NEW BUSINESS

New Business 01 : Sarah Rayfield, Senior Planner

Toad Hollow Master Subdivision Plan for the property located at 1928 Kelly Road containing 3.79 acres and 11 single-family lots

Staff oriented Council to the site. The Planning Board and staff recommended approval.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE THE MOTION TO APPROVE
THE PLAN; COUNCIL MEMBER GANTT SECONDED THE MOTION.
COUNCIL MEMBERS MOYER, GANTT, JENSEN, AND KILLINGSWORTH VOTED IN THE
AFFIRMATIVE; COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE.

THE MOTION CARRIED BY A 4-1 VOTE.

New Business 02 : Drew Havens, Town Manager

Resolution proposing the sale of one parcel identified as PIN #0742602371 and consisting of approximately .17 acres of land for \$20,000.00 subject to the upset bid procedure

Staff stated this request reflected a slight change in wording in the Resolution to state that bids would need to come before Council for approval. After Council would approve the highest bid, then that would start the upset bid process.

Council questioned there being a conflict in lot size for the small town character district, which staff clarified. Council stated there have been concerns about parking and a vehicle from a neighboring town being parked on the property illegally. Staff stated parking regulations would fairly and equitably be looked into for enforcement in this situation.

Staff, responding to Council, stated applicable sections of the UDO. Until plans are submitted, it could not be determined how a house would/would not sit on the property. She confirmed that this is a lot of record.

Council spoke about his previous conversation to put a community garden on this property and requested staff to look into this. Staff spoke about how this concept worked in a city in which he previously worked. However, our lot is not big enough to achieve what was done there.

Staff spoke about police deploying resources to crashes in the area, Council stating he's been to the area and not seen a lot of activity. Council stated she felt the area being used for open/green space was more beneficial. Staff spoke about and answered questions from Council related to liability, and the upset bid process was explained. The Mayor stated that if we keep the property, we should define the public use for the property.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE THE MOTION TO ADOPT
THE RESOLUTION; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
COUNCIL MEMBERS MOYER AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS
DOZIER, KILLINGSWORTH, AND GANTT VOTED IN THE NEGATIVE.
THE MOTION FAILED BY A 2-3 VOTE.

Council and the Mayor further expressed their views regarding purposes for this property and our fiduciary responsibility of the land to the taxpayers. Staff stated they would look at crash data and parking violations. The Mayor reminded Council that staff could not come up with a feasible Town use for the lot.

Staff stated there were no concerns about utilities. Right now the property is being maintained by the immediately adjacent neighbor. We could take that over and, for example, put a bench on it. Council stated she wished for more neighbors to be heard and then she would make a decision. Council did not understand how parking issues related to this lot.

CLOSED SESSION

ADDED Closed Session 01 : Laurie Hohe, Town Attorney

To receive advice from the Town Attorney

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED 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 RETURN TO OPEN SESSION WITH NO OBJECTION FROM COUNCIL.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business and with no objection from Council, Mayor Olive declared the meeting adjourned.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor