



## Apex Town Council Meeting Tuesday, May 21, 2019

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 21, 2019, 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  
David Hughes, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

### **COMMENCEMENT**

Mayor Olive called the meeting to order, asked for a moment of silent reflection, and led the Pledge of Allegiance.

### **PRESENTATIONS**

There were no Presentations to be made.

### **CONSENT AGENDA**

- Consent 01 Minutes of the Regular Town Council Meetings of April 16, 2019 and May 7, 2019
- Consent 02 Apex Tax Report dated 04/08/2019
- Consent 03 Standard Services Contract, valid through June 30, 2022, with Buckhorn Vegetation Control, LLC, and authorization for the Town Manager to execute same for weed control services
- 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 SM Raleigh, LLC, Tony & Judy Sears and Fahey Family Farm, LLC (West Village) property containing 109.1320 acres

located at a portion of 0 and 2508 Kelly Road, 2420 and 2517 Kelly Road and 0 Old US 1 Hwy, Annexation #641 into the Town's corporate limits

- Consent 05 Standard Services Contract, valid through June 30, 2022, with FCX Performance, Inc., dba Instrumentation Services, Inc., and authorization for the Town Manager to execute same for field engineering to calibrate three rotameters on the water meter test bench
- Consent 06 Master Services Agreement, valid through June 30, 2022, with Leaf & Limb, LLC. and authorization for the Town Manager to execute same for tree trimming/removal and stump grinding services on an as needed basis
- Consent 07 *Pulled for further discussion as New Business 01: Appointment to the Planning Board: Member (current Bedotto seat): Tommy Pate, 813 Wickham Ridge Road | 05/22/2019 - 12/31/2019*
- Consent 08 Resolution establishing the Local Government Other Post-Employment Benefit Trust (OPEB Trust), Trust Agreement that establishes the OPEB Trust as an irrevocable trust fund, appointment of trustees and officials of the OPEB Trust and participation in the Ancillary Governmental Participants Investment Program established by the North Carolina State Treasurer
- Consent 09 Amendment to the Swift Creek Land Management Plan between and among the Town of Apex, Town of Cary, Town of Garner, City of Raleigh and Wake County
- Consent 10 Easement to the Town of Cary and to authorize the Town Manager to execute the same for public waterline easements on Town of Apex owned property

Council Member Killingsworth requested that Consent 07 be pulled for discussion. Mayor Olive stated it would become New Business 01.

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

## **REGULAR MEETING AGENDA**

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE WITH THE ADDITION OF THE NEW BUSINESS ITEM;  
COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## **PUBLIC FORUM**

No one wished to speak during Public Forum.

## **PUBLIC HEARINGS**

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**Public Hearing 01 : Lauren Staudenmaier, Planner I**

**Rezoning Application #19CZ05 (Jainix Green). The applicant, Vipresh Bobby Jain, sought to rezone approximately 6.50 acres located at 0 Jenks Road from Rural Residential (RR) to Medium Density-Conditional Zoning (MD-CZ).**

Staff oriented Council to the site. A neighborhood meeting was held. The Planning Board recommended approval. Staff recommended approval with conditions proposed by the applicant.

The applicant, Vipresh Bobby Jain, clarified Council's question related to zero access. He spoke about being able to do more with less, especially with rising costs in home ownership. Mr. Jain outlined his plans for the property and the building of duplex homes. He stated the additional conditions to which he agreed. Mr. Jain stated he went door to door speaking with the neighbors in addition to holding the neighborhood meeting. He explained that the lower floors would not only be for the elderly.

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

Council stated he did not feel this plan fit with the existing density of the area. Council stated he felt this was a unique product that fit fine. Council stated the suggestions she made to the applicant were not put into the plan even though she liked the duplex option. Council stated he felt the applicant was doing what he could reasonably do. Council stated she liked the lower price point; the plan was different.

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

**Public Hearing 02 : Liz Loftin, Senior Planner**

**Rezoning Application #19CZ07, Town of Apex Fire Administration Office. The applicant, Town of Apex, sought to rezone approximately ±.39 acres located at 315 West Williams from High Density Single Family (HDSF) to Office & Institutional-Conditional Zoning (O&I-CZ).**

Staff oriented Council to the site, stating DOT plans to widen the roadway impact the structures in the area. A neighborhood meeting was held. The Planning Board recommended approval as did staff. Staff answered Council questions related to the dome building and parking.

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 APPLICATION; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 03 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Caryco, Inc. and Rogers Road 3415 LLC (Green Level Market Lot 2) property containing 6.09 acres located at 3651 and 3675 Green Level West Road, Annexation #656 into the Town's corporate limits**

Staff oriented Council to the site, stating it recommended approval. Staff answered Council questions related to Town services.

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 MOYER MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 04 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Shree Girirajgoverdham Properties, LLC and Sameer Dave (Freedom Square) property containing 5.35 acres located at 8375 Green Level Church Road, Annexation #657 into the Town's corporate limits**

Staff oriented Council to the site, stating it 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 ADOPT THE ORDINANCE; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 05 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council's intent to annex Kelly and Tina Labunski (future single-family home) property containing 0.230 acres located on the south side of the end of Lynch Street, Annexation #659 into the Town's corporate limits**

Staff oriented Council to the site. Staff recommended approval and answered Council questions related to property use.

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 DOZIER MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 06 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Town of Apex (portion of future Jenks Road right-of-way) property containing 0.0041 acres located at the southwest quadrant of the intersection of Jenks Road and Wimberly Road, Annexation #661 into the Town’s corporate limits**

Staff oriented Council to the site, stating that this was a clean-up item.

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 KILLINGSWORTH MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**Public Hearing 07 : Dianne Khin, Planning Director**

**Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Town of Apex (portion of Walden Road right-of-way) property containing 0.0198 acres located at the southeast quadrant of the intersection of Termini Drive and Walden Road, Annexation #662 into the Town’s corporate limits**

Staff oriented Council to the site, stating that this was also a clean-up item.

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 ADOPT THE ORDINANCE; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## **OLD BUSINESS**

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There were no Old Business items for consideration.

## **UNFINISHED BUSINESS**

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Unfinished Business 01 : Drew Havens, Town Manager

Ordinance amendment to Apex Town Code to establish an Appointments Committee and to approve a policy regarding the appointment process

Staff stated the policy had been drafted as requested by Council and was being presented along with the Ordinance.

The Mayor stated he thought this unnecessary and did not know why this was brought up; it could have been talked about and solved without an Ordinance. Council was in agreement with the Mayor. Council stated she felt like it was always good to have extra eyes on committee appointments regardless as to who was the sitting Mayor. She appreciated the policy.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION TO ADOPT THE POLICY AND ORDINANCE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Council stated that by pulling the item for discussion, the process used currently was being followed. Council stated he wanted to see the Mayor provide Council with information on the applicants. Possibly there could be a procedure to follow where the information is sent to Council, thus eliminating the need for a committee. The Mayor stated that at the start of his term, he requested applications be submitted via a form on the website. This information is kept by the Town Clerk. He spoke about his opposition to changing the process as he has made this a transparent process.

Council stated she would rehash this issue since the Mayor was taking the suggestion personally. She explained she was asking that transparency be open now and in the future. The Town Attorney will determine if the submitted applications are public record.

Conversation ensued on the selection process. Council expressed his desire to see a list of applicants prior to the Council meeting where the nomination would be presented to Council. Council was in agreement.

Conversation ensued as to whether or not the two Council Members should meet with the Mayor to hash out the policy. While there was agreement by the involved Members, Council stated he was not agreeable and thought this should be discussed openly. There was conversation as to who should write the policy.

COUNCIL MEMBER KILLINGSWORTH WITHDREW HER MOTION.

The Mayor talked about his desire to see people seated who really care about Apex. Council spoke about her desire for the process and a request for a little more transparency. Council talked about all Members receiving the applications and then being able to interact with the Mayor. Council spoke about her wanting to see a solid process that would safeguard the process in the future. She did not want to see the process changed by future mayors.

**Unfinished Business 02 : Council Member Nicole Dozier and Council Member Audra Killingsworth**

**Adding a second School Resource Officer assigned to rotate among the five elementary schools in Apex, and Council direction to staff regarding this position. Discussion and staff direction regarding an alternative program for future years**

Council overviewed the background on bringing on the SROs. She talked about a conversation process that took place. She learned that Cary has removed SROs from their elementary schools, and that other programs are available.

CONSENSUS WAS THERE WAS NO NEED TO EXPAND THE PROGRAM, AND THAT WE SHOULD LOOK AT  
INNOVATIVE WAYS TO DO THINGS TO SUPPORT THE CURRENT SROS AND SCHOOLS.

Conversation ensued about the Peace Builders program, officers promoting team building, and other needs in the Police Department. Wake County stated they did not need nor would they support another SRO.

Staff answered Council questions related to how the proposed SRO staffing was determined. He outlined what the SRO roles are in the schools. Council talked about the need for SROs in elementary schools. Council clarified that this request was not staff driven; she explained how the group who discussed this was formed. Council read an email from a parent opposed to this, the Mayor stating he didn't want such readings to be a precedent.

Staff detailed the training levels of the officers, especially as it pertains to young adults and those with special needs. He talked about positions that might be wanted if the Police Department didn't get the

SRO. Council stated he wanted it part of record that staff is, in fact, was asking for an SRO and not a partnership with Wake County schools. The Mayor talked about the value of SROs.

COUNCIL MEMBER KILLINGSWORTH MADE A MOTION FOR THE STAFFING AND PROGRAM TO REMAIN AS  
THEY ARE AT PRESENT; COUNCIL MEMBER JENSEN SECONDED THE MOTION.  
COUNCIL MEMBERS KILLINGSWORTH, JENSEN, DOZIER, AND GANTT VOTED IN THE AFFIRMATIVE.  
COUNCIL MEMBER MOYER VOTED IN THE NEGATIVE.  
THE MOTION CARRIED BY A 4-1 VOTE.

Council stated she wished for staff to investigate the Peace Builders program to see if it would work including the funding. Since this is a partner program, we would need to partner with Wake County. There was discussion was to whether or not we should undertake this and not leave it with the County.

**Unfinished Business 03 : Drew Havens, Town Manager**

**Live streaming of Town Council meetings and Council direction to staff regarding same**

Staff stated a policy had been drafted, there was a zero cost option, but this was not what was being recommended. Staff recommended a one time \$2,500 cost for a second camera. The current camera would record and the second one would live stream. Staff will do an evaluation as to how many people are watching, which will help future investments, if applicable.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO ADOPT AND IMPLEMENT THE POLICY,  
AND TO DIRECT STAFF TO PURCHASE THE \$2,500 CAMERA, AND TO BEGIN LIVE  
STREAMING; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

Mayor Olive called for a five minute recess.

## **NEW BUSINESS**

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**Pulled for further discussion as New Business 01: Council Member Killingsworth**

**Appointment to the Planning Board: Member (current Bedotto seat): Tommy Pate, 813 Wickham Ridge Road | 05/22/2019 – 12/31/2019**

Council explained that she was not aware of the Planning Board opening and did not know to whom this applicant we being compared. Trying to look up this person was an interesting task. It did not seem that the applicant submitted using his correct name, making it difficult to find other information.



The Mayor stated that Mr. Pate attended a Planning Board meeting where he was introduced to several members. The Mayor did not understand why Council was looking up Mr. Pate; he would have been happy to meet with her if she had of called him. The Mayor explained why Mr. Pate was on his radar.

The Mayor again stated that he felt he was being attacked while he was only doing his job. He explained why he moved in earnest to fill this position – a quorum at the Planning Board meetings was needed. After a bit more conversation, Council stated this was the type of conversation she was seeking to have; the ability to talk about prospective board members prior to Council taking a vote.

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

## **CLOSED SESSION**

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Closed Session : Laurie Hohe, Town Attorney

Pursuant to GS § 143-318.11(a)(3) to discuss the handling of the matters of Allgrove v. the Town of Apex and Upright Builders v. the Town of Apex

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER DOZIER MADE THE MOTION; COUNCIL MEMBER GANTT 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**

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There were no Work Session items for consideration.

## **ADJOURNMENT**

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

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Donna B. Hosch, MMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive, Mayor

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