



# Apex Town Council Meeting

## Tuesday, June 18, 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, June 18, 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 Shawn Purvis, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

### **COMMENCEMENT**

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Mayor Olive called the meeting to order, recited a reflection he'd written concerning governance, asked for a moment of silence, and led the Pledge of Allegiance.

### **PRESENTATIONS**

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There were no Presentations to be made.

### **CONSENT AGENDA**

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- Consent 01 Minutes of the Special Town Council Meeting of May 28, 2019 and the Regular Town Council Meeting of June 4, 2019
- Consent 02 Ordinance amending Section 20-164 with the addition of subsection (34) to enforce a No Parking restriction along a portion of Rapp Lane in the Carriage Downs subdivision.
- Consent 03 Amendment to Traffic Schedule I and Traffic Schedule II of the Town of Apex Code of Ordinances in accordance with the provisions of Sections 20-60.1 and 20-68

- Consent 04 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 05 Budget Ordinance Amendment No. 18 to the FY18-19 budget to allocate funds for the potential purchase of real property
- Consent 06 Budget Ordinance Amendment No. 16 to the FY18-19 budget to appropriate funds for a community program conducted by the Police Department
- Consent 07 Budget Ordinance Amendment No. 17 to appropriate funds to pay the settlement for the matter of Upright Builders, LLC. v. TOA
- Consent 08 Capital Project Ordinance Amendment No. 2019-17 to provide additional funding for the Regional Waste Water Treatment Plant constructed in partnership with the Town of Cary
- Consent 09 Construction contract and authorization for the Town Manager to execute same for 2019 Road Rehabilitation (R-19-3)
- Consent 10 Facility Encroachment Acceptance Agreement No. CSX884583 between the Town of Apex and CSX Transportation, Inc. and to authorize the Town Manager to execute the Agreement
- Consent 11 Set the Public Hearing for the July 16, 2019 Town Council Meeting regarding an amendment to the 2045 Land Use Map and Rezoning Case #19CZ02 Morris Acres PUD. The applicant, Kaplan Residential, sought to amend the 2045 Land Use Map from Medium Density Residential to High Density Residential and rezone approximately ±16.95 acres, for the properties located at 0, 7208, & 7208B Morris Acres Road, from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ).
- Consent 12 Set Public Hearing for the July 16, 2019 Town Council Meeting regarding Rezoning Application #19CZ08 (3112 New Hill Holleman Road). The applicant, Mark Maletta, sought to rezone approximately 2.413 acres located at 3112 New Hill Holleman Road (PIN 0629090376) from Wake County Residential-30 (R-30) to Neighborhood Business-Conditional Zoning (B1-CZ).
- 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 Mark Maletta (3112 New Hill Holleman Road) property containing 2.474 acres located at 3112 New Hill Holleman Road, Annexation #658 into the Town's corporate limits
- Consent 14 Set Public Hearing for the July 16, 2019 Town Council meeting regarding various amendments to the Unified Development Ordinance
- Consent 15 Apex Tax Report dated 05/06/2019
- Consent 16 Capital Project Ordinance Amendments 2019-15 & 2019-16 which will transfer funds from the FY 2018-2019 operating budget to corresponding Capital Project Funds
- Consent 17 Contract for Community Branding Study
- Consent 18 Revisions to the Town Standard Details
- Consent 19 Closed Session Minutes of February 5 and February 19, 2019; April 2, 2019; May 28, 2019; and June 04, 2019 (*Closed Session Minutes Recorded Separately*)

The Mayor stated staff requested an add-on item to approve Budget Ordinance Amendment No. 19 to the FY18-19 budget to allocate funds for refunding of overpayment for subdivision recreation fees.

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

## **REGULAR MEETING AGENDA**

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

## **PUBLIC FORUM**

Tina Sherman stated she was excited to see the expanded family leave policy. She was hoping for gender equity, however, and the proposed policy only affects women. Ms. Sherman expanded on the role men play in assisting women pre and post pregnancy. In addition, it was inappropriate for Council to set policy which would establish the number of children it would affect. Ms. Sherman wanted to see the addition of two weeks for moms and dads and paid family leave for all employees for family member care.

Anna Lineback spoke about the Pride Resoution. She talked about the difficulties she experienced growing up by choosing to be herself. She was thankful that Apex rejects the stigmas and that the Town sees value in her and others like her.

Carla Zegerman also spoke about Pride Month. She has been witness to challenges to the gay community. She spoke about those things troubling to her as these people struggle for safety and support. The Town would benefit from a community free from discrimination.

## **PUBLIC HEARINGS**

Public Hearing 01 : Sarah Rayfield, Senior Planner

Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Benjamin and Emily Brooks property containing 0.958 acres located at 3512 Old US1 Hwy, Annexation #647 into the Town’s corporate limits

and

Public Hearing 02 : Sarah Rayfield, Senior Planner

Rezoning Case #19CZ06, Benjamin T. Brooks, petitioner for the property located at 3512 Old US 1 HWY, from Wake County Highway Commercial (HC) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ)

Staff oriented Council to the proposed annexation site. Neighborhood meetings were conducted. Changes were made to the original conditions, and staff directed Council's attention to the handouts with the corrected information. Planning Board and staff recommended approval.

Ben Brooks, property owner, stated a house would remain on the property in which his daughter would live. He was in the process of restoration. He would consider solar but pointed out the home is older and may not be suitable for such.

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 AND APPROVE THE REZONING; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 03 : Amanda Bunce, Current Planning Manager

Rezoning application #19CZ11 Olive Chapel Professional Park. The applicant, Olive Chapel Professional Park, LLC, sought to rezone approximately ±8.52 acres located at 0, 1400, & 1480 Chapel Ridge Road from Office & Institutional-Conditional Zoning (#16CZ11) to Office & Institutional-Conditional Zoning (O&I-CZ) in order to add the use "Barber and beauty shop".

Staff oriented Council to the site and stated the applicant's intention for the property. A neighborhood meeting was held. Lighting levels have been brought into compliance. The beauty and barber shop use was originally removed, but the applicant now wished for this use to be reconsidered. Staff stated the use was appropriate. Planning staff recommended approval as did the Planning Board with an additional condition.

Staff answered Council questions related to traffic, lighting concerns, site condition being in compliance with the UDO, and buffers.

Representing the applicant, Patrick Kiernan, Jones and Crossen Engineering, explained his firm's understanding as to why the proposed use was initially eliminated – there was a fundamental misunderstanding with the engineer and developer. The history of the use was stated. He agreed his firm dropped the ball and made a mistake. Mr. Kiernan emphatically stated that they were not trying to pull

a 'fast one' asking for the use to be reincorporated. He stated the salon owners were in attendance, their being an innocent couple caught up in the middle of this situation. Staff had confirmed to his firm that there would not be increased traffic.

Mayor Olive declared the Public Hearing open.

Anne Cain stated that this was presented as an upscale professional park, Council feeling this kind of development was needed. The developer presented its uses, and commercial uses were discussed between the neighbors and the developer. Beauty shop was not an oversight; it was removed as a result of requests from the neighborhood meeting. This proposed use is different than what is at the professional park. If approved, this could be viewed as a precedent.

Rita Boykin stated the original citizen concerns are still viable today. She felt they would continue to come back with rezonings in order to fill office space. Ms. Boykin spoke about the condition of the property at the site where the neighborhood sign was originally placed, potholes, grass, erosion failure, lighting, survey flags, and more. They have attempted to contact the developers but to no avail.

Douglas and Tiffany Weaver [proposed salon owners] stated they have been in the hair industry for 20 years. They wished to launch a great upscale business where they would pay their employees well. They picked the park because of the appearance. They were willing to curb their hours to accommodate resident concerns. There is a problem, but they are not part of it. Mrs. Weaver, chocked up, spoke about this being a dream of hers. She hoped they would not be casualties of someone else's problem.

John Gasinowski, developer, stated he wished they could do 100% medical and legal, but this was limited by the Town because of parking. He felt the beauty salon was a perfect fit. There are other shops around, but not elite ones like this one for women. He admitted fault on the part of the developer, but he had no idea a beauty shop could not be put there. Council received positive emails about the Weavers and the prospective salon.

Dianne Hinson stated this was a simple request; but if approved, would chip away at the desirability and value of their homes because of the type of traffic it would bring in. She felt like this was a 'fast one' being pulled even though it might not be. She asked for their homes to be preserved.

Mayor Olive declared the Public Hearing closed.

Council asked for history of the neighborhood sign from Mr. Kiernan; he did not know the history. He stated the salon operating hours would fit into the other business hours of operation. Council asked if rezoning could be setup for only one salon, staff answering in the affirmative if it was offered by the developer. Gasinowski stated this salon would be exclusive to the entire park.

Responding to Council question about the sign, Kenneth Dickenson, representing the general contractor, stated it had to be removed in order to comply with Town ordinance. Council asked Mr. Gasinowski about holes in the buffer, his stating he would be willing to install additional plantings. Answering Council questions, Mr. Gasinowski stated the condition of the site is per the UDO, and he felt all citizen concerns had been addressed. Council stated she would like to see better communication with neighbors. Staff stated she was not aware of any violations on the site. Council stated she wanted to see the developer being more of a good neighbor by taking care of issues before the Town needs to get involved. She was concerned about how this has all gone down.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE THE MOTION TO APPROVE THE REZONING WITH THE THREE CONDITIONS AGREED TO IN THIS MEETING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.

Council stated he saw the impact as very minimal. This was a good developer and everything asked by the Town had been done. Council stated she did not originally want this project. She was disappointed that there were questions with no answers. There was evidence that uses were pulled out in good faith, so this would set up an expectation for people. She was concerned what would happen if the use was put back in. Council stated he thought the developer would bend over backwards to accommodate the neighbors. Council stated he was disappointed since this has been talked about before.

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

Mayor Olive called for a five minute recess.

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

**Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Sylvia E. Martin (Lake Pine Animal Hospital) property containing 1.5143 acres located at 1204 Old Raleigh Road, Annexation #663 into the Town’s corporate limits**

Staff oriented Council to the site, stating Planning 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 GANTT MADE THE MOTION TO ADOPT THE ORDINANCE; COUNCIL MEMBER KILLINGSWORTH 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 Rich & Richere Levert and Richer & Richere V. Levert (Cool Pools) property containing 3.4215 acres located at 2309 Old US 1 Hwy, Annexation #667 into the Town’s corporate limits**

Staff oriented Council to the site. Planning recommended approval. Staff answered Council questions related to roads.

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 : Amanda Bunce, Current Planning Manager**

**Various amendments to the Unified Development Ordinance**

Staff oriented Council to the two proposed amendments. Planning Board and 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 KILLINGSWORTH MADE THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## **OLD BUSINESS**

There were no Old Business items for consideration.

## **UNFINISHED BUSINESS**

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**Unfinished Business 01 : Council Member Bill Jensen**  
**Environmental Stewardship Award Program**

Council stated staff had taken a look at this, doing exactly as was asked. He felt the program would work fine. Questions were answered related to the meaning of “clubs” and types of awards.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE THE PROGRAM WITH STATED WORDSMITHING AND STAFF TO DETERMINE THE APPEARANCE OF THE AWARD; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

## **NEW BUSINESS**

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**New Business 01 : Council Member Bill Jensen**

**Amendment to the Town’s benefits policy to provide expectant mothers two weeks of maternity leave per birth cycle in addition to the existing six weeks of paid parental leave. There will be a lifetime benefit limit of four weeks of maternity leave.**

Council stated he wished to pull the request this evening and directed staff to study IBM’s policy and the Governor’s policy and discover why they can do as he proposed but we can’t.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO PROCEED AS STATED ABOVE, TO RESEARCH HOW CURRENT POLICY IS WORKING, TO RESEARCH FUTURE CAREGIVER-STYLE LEAVE PLANS, TO RESEARCH WHO’S USING ADDITIONAL TIME, AND FOR THIS TO GO TO PERSONNEL COMMITTEE AFTER THE RESEARCH; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.

**New Business 02 : Mayor Lance Olive**  
**Creation of a “Bee City USA” Committee**

The Mayor stated we have had discussion in the past about honey bees and other pollinators. We were awarded being a tree city, and we wanted to receive the same type of designation for bees. He gave examples of what we could do to comply with this. The Mayor wanted to form a committee to help move toward being certified and to determine placement for an educational beehive on Town property. After some further discussion,

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE A STANDALONE COMMITTEE WITH THE STATED INTENT; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 5-0 VOTE.



**New Business 03 : Council Members Audra Killingsworth and Nicole Dozier**

**Resolution recognizing Pride Month**

Council stated statistics for the number of LGBTQIA individuals in the county and state. This population should be recognized. Council Members Killingsworth and Dozier read the Resolution.

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

Council asked staff if any LGBTQIA individual had been mistreated by staff and if orientation could be asked about upon employment. We need to stay focused on what is relevant to Apex and this was not relevant.

Mayor Olive stated he wanted to have a future process for resolutions going on the agenda. Conversation ensued about a policy for this. Council stated there are events during Pride Month which are educational. Maybe next year we should have events by the Town. Conversation ensued about recognizing Black History Month, Women’s History Month, etc. There were comments made by Council related to Juneteenth. Council stated the town as a whole needed to be more compassionate of other people.

COUNCIL MEMBERS KILLINGSWORTH, DOZIER, JENSEN, AND GANTT VOTED IN THE AFFIRMATIVE;  
COUNCIL MEMBER MOYER VOTED IN THE NEGATIVE.  
THE MOTION CARRIED BY A 4-1 VOTE.

## **CLOSED SESSION**

Laurie Hohe, Town Attorney : Pursuant to GS 143-318.11(a)(3) to preserve attorney-client privilege

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER KILLINGSWORTH 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 OBJECTIONS FROM COUNCIL.

Mayor Olive stated that ‘snarky’ comments had been made from one Council Member to another [during New Business 03], but that he heard the comments differently than the receiving Council Member. The Mayor read his thoughts on resolutions. He perceived there could be too many ineffective resolutions

presented during the year. He asked Council to leave partisan thoughts outside and concentrate on efforts that had already been identified.

## **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.

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Donna B. Hosch, MMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive, Mayor