



## Apex Town Council Meeting

Tuesday, August 6, 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, August 6, 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 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  
Absent was Mayor Pro Tem Nicole L. Dozier

### **COMMENCEMENT**

Mayor Olive called the meeting to order. He recognized all those including law enforcement who fight for our freedom and sacrifice their time. He asked for remembrance of the victims of the recent tragedies in Dayton and El Paso and Mississippi and that the families left behind would be able to deal with their tragic losses. Mayor Olive asked for a moment of silent reflection leading to the Pledge of Allegiance.

### **PRESENTATIONS**

Presentation 01 : Mayor Lance Olive

Presentation of Human Trafficking Awareness Week Proclamation to Nicole Bernard of Shield North Carolina

Mayor Olive stated this was our third time presenting a Proclamation acknowledging Human Trafficking Awareness Week. He read the Proclamation before presenting it to Ms. Bernard, Nikki Miller standing with her. The Mayor thanked the Police Department for participating in this the past three years and explained their involvement.

Ms. Bernard thanked everyone for the platform for educating citizens of Apex on human trafficking. She also thanked the Police Department for their involvement in making our town safe.

## **CONSENT AGENDA**

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- Consent 01 Minutes of the Regular Town Council Meeting of July 16, 2019
- Consent 02 NCDOT Reimbursement Agreement No. 8841 to be eligible for 80% reimbursement of \$1,316,102 in project construction costs (up to \$1,052,881 reimbursement) associated with the Beaver Creek Greenway connection between Kelly Road Park and the Apex Nature Park (TIP No. EB-6021) and authorize Town Manager to execute same.
- Consent 03 Resolution authorizing *Interlocal Agreement No. 3 for Provision of Sewer Services for Colvin Park Pump Station Service Area* to include additional flow.
- Consent 04 Personnel grant from the Governor's Highway Safety Program for a traffic officer to include the addition of one (1) full-time equivalent position authorization to be used solely for the purpose of the grant.
- Consent 05 NCDOT Reimbursement Agreement 8832 to be eligible for 70% reimbursement of project construction costs up to \$387,800, requiring \$166,200 in matching Town of Apex funds for a total of \$554,000, to construct Laura Duncan Road Pedestrian Improvement Project TIP No. EB-6019, and to authorize Town Manager to execute same.
- Consent 06 Set Public Hearing for the August 20, 2019 Town Council Meeting regarding Rezoning Application #19CZ09 (Linden Lot 22 PUD). The applicant, Dan Ryan Builders, seeks to rezone approximately 4.52 acres located at 2236 Olive Chapel Road (PIN 0722602549) from Rural Residential to Planned Unit Development-Conditional Zoning (PUD-CZ).
- Consent 07 Set Public Hearing for the August 20, 2019 Town Council Meeting regarding Rezoning Application #19STC14 (320 & 322 North Mason Street). The applicant, Town of Apex, seeks to rezone approximately 1.74 acres located at 320 & 322 North Mason Street (PINs 0742518584 & 0742610531) from Neighborhood Business (B1) to Neighborhood Business (B1) & Small Town Character Overlay District. The Town of Apex proposes to add the subject properties into the Small Town Character Overlay District and apply the non-residential standards in Section 6.3 of the Unified Development Ordinance to any site development.
- Consent 08 Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation - Apex Town Council's intent to annex Hwy 64

Holdings, LLC (Security Self Storage) property containing 19.22 acres located at 7300, 7301 and 7325 Vanclaybon Drive, Annexation #660 into the Town’s corporate limits.

- Consent 09 Set Public Hearing for the August 20, 2019 Town Council meeting regarding various amendments to the Unified Development Ordinance.
- Consent 10 Statement of the Town Council for Rezoning Case #19CZ08, Mark Maletta, petitioner for the property located on 3112 New Hill Holleman Road.
- Consent 11 Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of July 16, 2019.
- Consent 12 Set Public Hearing for the August 20, 2019 Town Council Meeting regarding Rezoning Application #19CZ13 (2213 East Williams Street). The applicant, Olive Chapel West Associates, LLC, seeks to rezone approximately 3.11 acres located at 2213 East Williams Street (PIN 0740944591) from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ).
- Consent 13 Special Event Permits for Apex Friendship HS Senior Parade on August 26, 2019; Apex Friendship High School Homecoming Parade on October 11, 2019, Apex HS Homecoming Parade on September 27, 2019 and the Chanukah Festival Celebration in Depot courtyard December 22, 2019
- Consent 14 Appoint the following individuals to the Public Art Committee: Anissa Ortiz, 1045 Torrence Drive, from August 7, 2019 until June 30, 2022 and to appoint Bethany Bryant as Vice-Chair from August 7, 2019 until June 30, 2020
- Consent 15 Position reclassification requests, as recommended from the Personnel Committee.
- Consent 16 Amendment of the Town’s Personnel Policies, Article VII Section 17, regarding Family Medical Leave to expand the definition of “family member” and remove the age limit for children.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

## **REGULAR MEETING AGENDA**

Mayor Olive stated that Public Hearing 04 was requested to be continued and would be heard first.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA WITH THE CONTINUANCE OF PUBLIC HEARING 04. COUNCIL MEMBER MOYER MADE THE MOTION;  
COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

## **PUBLIC FORUM**

Crickett Thornton of Raleigh spoke in support of the 5K run requested by the Church of Latter Day Saints of Jesus Christ. The run was meant to be a literal and spiritual journey back to the Temple. There are only 168 Temples in the world, and they were proud to be in Apex. The Temple has been closed for almost two years and this run would take place three weeks before reopening to remind members to come back and rededicate their hearts to the Lord. Ms. Thornton gave figures of anticipated attendance and the number of Temple members. She spoke about some of their events. The runs are done across the country and are not competitive. They did not need to close any streets or greenways. Ms. Thornton explained the greenway would be safest route and be least inconvenient. She invited Council to the open house in September, nothing that invitation to view the Temple has happened only one other time.

## **PUBLIC HEARINGS**

Public Hearing 04 – Quasi-Judicial : Amanda Bunce, Current Planning Manager

Quasi-Judicial Public Hearing and possible motion regarding a Major Site Plan for Sweetwater Ph. 9A2 & 9B (Mixed Use) located at 0, 3115 US 64 Hwy & 2700 Core Banks Street. The subject properties are identified on Wake County Tax Maps as PINs 0722550034 (portion of), 0722544768 (portion of), and 722554159. The applicant requested this item be continued to the September 3, 2019 regular Town Council meeting.

Staff stated this request was due to a change in engineers and the requestor not being ready to go with a change in the lighting plan.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE CONTINUANCE AS REQUESTED; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 01 : Dianne Khin, Planning Director

Ordinance on the Question of Annexation – Apex Town Council's intent to annex Nelson Nai-Cheng Liu, Barbara S. Anderson Revocable Family Trust and Barbara S. Anderson Charitable Remainder Unit Trust

(Ellsworth) property containing 33.584 acres located at 8209 & 8233 Green Level Church Road, Annexation #634 into the Town's corporate limits.

Staff oriented Council to the site, stating it recommended approval. Staff answered Council questions related to 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 ORDINANCE; COUNCIL MEMBER MOYER SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 02 : Dianne Khin, Planning Director

Ordinance on the Question of Annexation – Apex Town Council's intent to annex Anil K. and Megha Singh, Kondapa Tammineni, Thanuja Puchakayala, and ST Investments (Ellsworth) property containing 3.556 acres located at 8201 & 8217 Green Level Church Road, Annexation #670 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 GANTT MADE THE MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 03 : Dianne Khin, Planning Director

Ordinance on the Question of Annexation – Apex Town Council's intent to annex Fahey Family Farm, LLC (portion of West Village) property containing .0014 acres located at 2525 Kelly Road, Annexation #668 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 KILLINGSWORTH MADE THE MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER GANTT SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

## **OLD BUSINESS**

There were no Old Business items for consideration.

## **UNFINISHED BUSINESS**

Unfinished Business 01 : Drew Havens, Town Manager

Creating an Environmental Advisory Board

Staff stated Council instructed staff to look at the creation of this Board to advise on environmental issues. Other municipalities were looked at. Staff met several times to ensure this would not create legal problems. The recommendation of staff was now before Council.

Staff explained how the process would work and what would be presented to Council. Council questions were answered related to what was being done in other municipalities and what we would want to see done here. Council stated it was previously discussed that this this new Board would replace the current Council's Environmental Committee and he hoped this would be revisited.

Council stated he thought this was a good idea, but he didn't want to see this Board replace the Environmental Committee. He thought the developers would value direction early on, it would be great to have someone taking in-depth looks, and that early citizen input would be valuable.

COUNCIL CONSENSUS WAS TO CONTINUE ON THIS PATH TO A FORMAL DOCUMENT.

## **NEW BUSINESS**

New Business 01 : David Wood, Halle Cultural Arts Center Manager

Non-approval of a Special Event Permit for Raleigh NC Temple Run 5K on September 2, 2019

Staff oriented Council to the aspects of the run. The request had been through internal departmental review for the greenway and a neighborhood road course options. Staff did not recommend either

option and presented its reasons for this recommendation. A run during this time of a holiday may pose challenges. Department policy does not allow these runs except for town-run 5K events such as the Turkey Trot.

Staff answered Council questions related to the option preference of the requestor. The greenway would not be closed, but there would be user conflicts because of the holiday. The race would run from 9-11 a.m. Staff did not see a problem with the purpose of the run being a return to the Temple, but he didn't want to set a precedent.

Council asked for clarification of town policy which staff provided. Staff stated we receive 4-5 requests per month for use of the greenways. We get constant complaints because of user conflicts. Staff explained the process which requests go through where several departments are involved in the recommendation.

Council asked was there a consideration of a date other than labor day weekend as was requested. Council was concerned about parking and inquired about a staggered start. Crickett Thornton, requestor, stated that parking would not be an issue as they had permission for parking at the elementary school. There will also be parking at the Temple, and there will be shuttles running. Therefore, there should not be a lot of congestion. Ms. Thornton was not opposed to a staggered start. They could bump up the start to an hour sooner, but the times nicely coincided with the holiday for others to explore the Temple. She stated that perhaps people would sleep in and not do their regular runs on a holiday.

Council asked about public safety, and staff explained how an officer would need to be posted for roads and how the runners would be directed. Council stated that if we were going to break precedent for this one-time race, it would be a learning opportunity for us.

Council stated she didn't want to set a precedent for any and every 5K race to be approved or considered. But this was a one-time thing. Her preference would be for the race to start earlier, as in from 8-10 a.m.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE THE MOTION TO APPROVE THE REQUEST WITH ALL CONDITIONS INCLUDING TAKING NOTES AND IT BEING CLEAR THAT THIS WOULD NOT SET A PRECEDENT AS THIS WOULD BE A LEARNING EXPERIENCE.

Mayor Olive stated he liked an earlier starting time, but earlier exercisers needed to be thought about. He thought 8-10 a.m. would be least impactful. The Mayor liked the opportunity to learn from the event and possibly have someone take notes for what did and did not go well, this person also monitoring complaints.

Council stated he felt it would be beneficial to get everyone back together to determine everything that was going to happen. There should be more talk about possible restrictions.

Council was concerned about the precedent and the date. He liked the idea about studying the event. He asked if staff would have a change of opinion if adjustments were made. Staff explained that a new policy would need to be quickly drawn in order to control incoming requests. Responding to the Mayor, Council stated a Committee meeting could be called quickly. Council felt bringing the Temple into focus could have been done another way, i.e., a food drive.

COUNCIL MEMBERS MOYER AND GANTT VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS  
KILLINGSWORTH AND JENSEN VOTED IN THE NEGATIVE.

The Mayor talked about the impact of 5k runs. He stated he would vote for this one but with caveats in place. He loved the idea of pilot programs like the parklet downtown. He asked staff to work with the applicant, stating that he wanted to see a post-race report and how this impacted the citizens of Apex.

THE MOTION CARRIED BY A 3-2 VOTE, WITH MAYOR OLIVE CASTING THE TIE-BREAKING VOTE.

New Business 02 : Dennis Brown, Construction Project Manager

Further direction upon presentation of information requested by Council concerning the Pleasant Park project and the Senior Center project

Staff detailed the five Pleasant Park deviations. Council asked for clarification of the courts, specifically related to the one volleyball court. How programming needs are identified was explained. There was some discussion about tennis courts being striped for dual duty for volleyball, even though it was unknown if there was a demand for hard court volleyball. Staff stated other locations have been looked at for the sand volleyball court.

Jason Bertoncino, Vice President of Land Development with WithersRavenel, spoke about the RCA exceeding what was in the previous plan, parking areas, grading, and added maintenance capacity.



MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE PLEASANT PARK SECTION. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER KILLINGSWORTH SECONDED THE MOTION.  
THE MOTION CARRIED BY A 4-0 VOTE.

Staff detailed the four senior center deviations. Council asked how we handle other developers who request deviations. Staff explained how the UDO allows for creativity to save existing trees. These four deviations have already been exempted by the Planning Director according to the UDO.

Staff stated that in relation to the property line from Jordan Oil, Council had been informed in the past that the senior center could not be put on this property if this deviation was not allowed. Some conversation ensued about what would go between our property and Jordan Oil's. Jordan Oil needs their space, and they expressed wanting something in that area to curb foot traffic. Robert Carmac, Principal with smithsinnett ARCHITECTURE, stated they have made this road as tight as possible and he detailed the challenges. The road has been discussed with Jordan Oil. Staff stated bollards may be the best solution.

The Mayor stated he liked the idea of bollards and having the sidewalk on the other side, thereby eliminating the need for a fence. He was fine with the deviations because they would move the project forward. He felt closing a portion of Hughes Street was a mistake and may be revisited at a later time.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE SENIOR CENTER. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER GANTT SECONDED THE MOTION. COUNCIL MEMBERS JENSEN, GANTT, AND KILLINGSWORTH VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER MOYER VOTED IN THE NEGATIVE.  
THE MOTION CARRIED BY A 3-1 VOTE.

Town Manager Drew Havens stated this would be David Hughes' last night sitting as Assistant Town Manager as he would be retiring in September. This was Hughes' second stint with the Town, and his history with Apex was stated. Havens stated Hughes was dedicated to the citizens, we have relied on his counsel, and he is a unique engineer. Marty Stone will assume Hughes' position. Havens thanked Hughes, stating that the citizens owe him a debt of gratitude. Hughes stated that this is a great place to work and he has enjoyed every minute.

**CLOSED SESSION**

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Laurie Hohe, Town Attorney : To consult with the Town Attorney concerning the handling of the Trinity, et. al. v. Town of Apex matter

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER KILLINGSWORTH MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION. THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO 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 without objection from Counsel, Mayor Olive adjourned the meeting.

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Donna B. Hosch, MMC, NCCMC  
Town Clerk

ATTEST:

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Lance Olive, Mayor