
Apex Town Council Meeting

Wednesday, November 06, 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
Shawn Purvis, Assistant Town Manager
Marty Stone, 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 Wednesday, November 06, 2019,
at 7:00 PM 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, Brett D. Gantt, and Audra M. Killingsworth
Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis,
Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe
Absent was Council Member Wesley M. Moyer

COMMENCEMENT

Mayor Olive called the meeting to order, Pastor Matt Mitchell gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

Mayor Olive recognized the Scouts and Webelos from Boy Scout Troop 201 who were in attendance and assisted in leading the Pledge of Allegiance.

PRESENTATIONS

[Add-on Item] Mayor Olive read a Proclamation recognizing Food Insecurity Awareness Month before presenting it to Beth Bordeaux, Western Wake Crisis Ministry. Ms. Bordeaux spoke about the November 20th Food Conversation which will be held at Town Hall. There will also be a book study on the American way of eating on November 25th. Both events are open to the public. Ms. Bordeaux spoke about an

individual who visited Western Wake who was in immediate need of food. She thanked Council for being attentive to this cause, not just in Apex but across our region as well.

CONSENT AGENDA

CN1 Donna Hosch, Town Clerk

Minutes of the October 1, 2019 Council Workshop, the October 1, 2019 Regular Council Meeting, and the October 15, 2019 Regular Council Meeting

CN2 Shelly Mayo, Planner II

Statement of the Town Council and the Ordinance for Rezoning Case #19CZ15 Mt. Zion Church Road PUD. The petitioners are Lector Atwater, Jerome Kenneth Atwater Heirs, Vaughn King, and Jeff Road, Peak Engineering & Design, PLLC. for the properties located at 2504, 2508, 2512, 2516, and 2600 Mt. Zion Church Road.

CN3 Amanda Bunce, Current Planning Manager

Set Public Hearing for the November 19, 2019 Town Council meeting regarding various amendments to the Unified Development Ordinance

CN4 Amanda Bunce, Current Planning Manager

Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of October 15, 2019

CN5 Liz Loftin, Senior Planner

Set Public Hearing for the November 19, 2019 Town Council Meeting regarding Rezoning Application #19CZ18 (113 West Street). The applicant, Maureen Hughes, seeks to rezone approximately 0.19 acres located at 113 West Street (PIN 0741295052) from Office and Institutional (O&I) to Medium Density-Conditional Zoning (MD-CZ).

CN6 Amanda Bunce, Current Planning Manager

Set Public Hearing for the November 19, 2019 Town Council Meeting regarding Rezoning Application #19CZ19 3605 & 3700 Old US 1 Hwy. The applicants, Michael Pfeifer & Jennifer Crank, seek to rezone approximately 4.33 acres located at 3605 & 3700 Old US 1 Hwy from Wake County Residential-40W (R-40W) & Highway Commercial (HC) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).

- CN7 Amanda Bunce, Current Planning Manager
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 David L. Heidinger and New Hill Baptist Church & Cemetery Trustees property containing 3.992 acres located at 3605 and 3700 Old US 1 Highway, Annexation #674 into the Town’s corporate limits
- CN8 Dianne Khin, Planning Director
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 William and Marilyn Shenton (single-family) property containing 2.859 acres located at 2013 Ramblewood Drive, Annexation #678 into the Town’s corporate limits
- CN9 Sarah Rayfield, Senior Planner
Set Public Hearing for the November 19, 2019 Town Council Meeting regarding Rezoning Application #19CZ02 Morris Acres PUD. The applicant, Kaplan Residential, seeks to rezone approximately 17.4376 acres located at 0, 7208, & 7208B Morris Acres Road, from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ).
- CN10 Adam Stephenson, Engineering Supervisor
Capital Project Ordinance Amendment 2020-05 appropriating additional funds for the Laura Duncan Multi-use Path project
- CN11 Keith McGee, Fire Chief
Authorization for the Town Manager to sign a reciprocal automatic aid agreement between the Town of Apex (Apex Fire Department), the Town of Cary (Cary Fire Department), and the Town of Morrisville (Morrisville Fire Department)
- CN12 David Wood, Cultural Arts Center Manager
Closing of Templeton Street on November 25th from 8am – 6pm for aerial lift access to second floor of Halle Cultural Arts Center
- CN13 Lance Olive, Mayor
Travel expenses estimated at \$350 for Lance Olive to attend a follow up session to the training he took last year in Houston, Texas

CN14 David Wood, Halle Cultural Arts Center Manager

Adjusted dates for the Apex Farmers Market – Winter Market (2019/20) to: December 14; December 28; January 11; January 25; February 8; February 22; March 14; and March 28 to be held in the Depot Parking Lot from 7:00 am to 1:30 pm. The Special Event Permit was originally approved by Council on April 2nd, 2019.

CN15 Shawn Purvis, Assistant Town Manager

Sub-recipient Agreement with Wake County for Community Development Block Grant (CDBG) funds and authorization for the Town Manager to sign the Agreement and all related documents and make minor modifications or amendments as necessary to accomplish the purpose and intent of the Agreement

CN16 Vance Holloman, Finance Director

Resolution establishing the Local Government Other Post-Employment Benefit Trust (OPEB Trust), adopting the Trust Agreement that establishes the OPEB Trust as an irrevocable trust fund, appointing trustees and officials of the OPEB Trust and authorizing participation in the Ancillary Governmental Participants Investment Program (AGIP) established by the North Carolina Department of State Treasurer (NCDST)

CN17 Dennis Brown

Approval of and authorization for the Town Manager to execute contract with Construction Manager at Risk, Barnhill Contracting Company, in amount of \$117,817.00 (for the pre-construction fee only) for the new Apex Senior Center. Guaranteed Maximum Price (GMP) will be developed and added to this contract by an amendment after subcontractor bidding is completed.

CN18 Eric Neumann, PE, Electric Director

Viatec as a sole source provider for Electric PTO (Power Take Off) boom operators and Budget Amendment 5 to account for grant revenues and the purchase and installation of battery operated aerial devices for 3 electric utility boom operated vehicles

Mayor Olive called for a motion to approve the Consent Agenda. Council Member Killingsworth made the motion; Council Member Dozier seconded the motion.

The motion carried by a 4-0 vote.

REGULAR MEETING AGENDA

Mayor Olive called for a motion to approve the Regular Meeting Agenda. Council Member Dozier made the motion; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

PUBLIC FORUM

Dr. Ann Nyland, Sarthak Raina, Joseph Malfeo, Jennifer Rose, Amy Foster, Jonathan Benton, and Kimberly Pierson all spoke about the upcoming Public Works Operations facility with the following thoughts:

- The facility will be beside Bella Casa which is a beautiful subdivision with strict Covenants; why would the building go in a residential area and not an industrial park?
- The facility will compromise public safety; there will be an increase in vehicular traffic, especially bucket trucks; expensive materials will be stored there inviting theft in the area; there is no knowledge of what the gravel pad will be used for; consideration should be given to moving the facility.
- Town expansion is understood; however, the Town had a fiduciary responsibility to speak with the community about the facility; proper notice was not presented.
- There was a moral and ethical responsibility to reevaluate and reassess the location of this facility out of a residential neighborhood; the needs of the neighborhoods should be heard; there is not another such facility in Apex in a neighborhood.
- Truck traffic in the area will affect the safety of neighborhood children; this will affect the perception of the neighborhood.
- Council Members had been asked to pause the project until this meeting with community and Town could be held, but this was not done; the project was hard to find in Town records.
- The facility should be rethought; there has not been a traffic study done; what will the Town do to ensure the safety of individuals; things have been done that should not have been done without public input.

Thomas Jablonske spoke about job automation and the loss of jobs that will occur with this automation. He stated there are routes that can be taken in order to help individuals keep their jobs, and there should be dialog related to this.

Lindsey Logan asked Council to review and modify Ordinance 14-28 which addresses playing on streets and sidewalks. Yards are not justified for bike riding. Police have been called when children are riding

bikes in the street. Scotts Mill is full of children who sometimes play in the street. She has tracked the number of vehicles going through her neighborhood and she counted maybe two.

Steve Swamp thanked those Council Members leaving this year for their service and their assistance to him personally for the West Village project. He outlined how projects have been successful over the years because of Council and their dedication to responsible growth.

PUBLIC HEARINGS

PH1 Dianne Khin, Planning Director

Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Don F. and Callie Sorrell (single-family) property containing 22.418 acres located at 1221 Salem Church Road, Annexation #654 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 adopt the Ordinance; Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

PH2 Dianne Khin, Planning Director

Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Treva Weaver (single-family) property containing 0.959 acres located at 1608 Salem Church Road, Annexation #665 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 Gantt made the motion to adopt the Ordinance; Council Member Dozier seconded the motion.

The motion carried by a 4-0 vote.

PH3 Sarah Rayfield, Senior Planner

Quasi-Judicial. Revised Major Site Plan for The Reserve at Mills Farm, 11.23 acres located at 2010 & 2030 Laura Duncan Road. The subject property is identified on Wake County Tax Maps as PINs 0752084185 & 0752081005.

Mayor Olive read the prepared statement provided by the Legal Department.

Mayor Olive declared the Public Hearing open.

All those wishing to speak were sworn in by the Town Clerk.

Nil Gosh, Morningstar Law Group, representing the applicant, was recognized. There was no one in attendance who opposed the request.

All Council Members stated they had not had any communications with applicant, there were no financial conflicts, and all stated they could judge the request fairly. No Council Member had viewed the site.

OPENING STATEMENT BY STAFF: Sarah Rayfield stated her credentials and Town work experience. She stated this was due to a revised site plan, and she oriented Council to the site and revisions. A neighborhood meeting was held. This was coming back to Council because of a unit count difference. The correct count was 153, and there were no other changes whatsoever.

CROSS EXAMINATION OF STAFF BY COUNCIL: Staff clarified the site layout was not changing.

CROSS EXAMINATION OF STAFF BY APPLICANT: None.

OPENING STATEMENT BY APPLICANT: Nil Gosh stated staff did a wonderful job explaining the issue. He presented clarifying information to the question asked of staff by Council.

CROSS EXAMINATION OF APPLICANT BY COUNCIL: Mr. Gosh answered Council question related to parking spaces.

CROSS EXAMINATION OF APPLICANT BY STAFF: None.

Mr. Gosh clarified the completion date of the project. There were no additional statements by staff.

CLOSING ARGUMENTS BY STAFF: None.

CLOSING ARGUMENTS BY APPLICANT: The applicant respectfully requested approval of the request.

Mayor Olive declared the Public Hearing closed.

Mayor Olive called for a motion. Council Member Killingsworth made the motion to approve the request; Council Member Dozier seconded the motion.

The motion carried by a 4-0 vote.

PH4 Amanda Bunce, Current Planning Manager

Rezoning Application #19CZ16 Horton Park PUD Amendment & TF-CZ. The applicant, MFW Investments, LLC, seeks to rezone approximately 146.9 acres located at 5100, 5101, & 5220 Jessie Drive; 0 Dezola Street; and 8140 (portion of), 8252, 8306 & 8308 Smith Road from Planned Unit Development-Conditional Zoning (PUD-CZ #18CZ04) to Planned Unit Development-Conditional Zoning (PUD-CZ) and Tech/Flex-Conditional Zoning (TF-CZ).

Staff oriented Council to the site. The changes submitted by the applicant were presented. Staff reviewed the history of the project. Staff outlined its significant concerns about the impact to the roadways. A TIA was submitted and questions from staff were not all answered. Staff recommended denial of the request and stated its reasons.

Staff answered Council questions related to traffic lights and the revised TIA, which was not complete.

Jeff Roach, Peak Engineering Design, representing the applicant, clarified Council question related to the TIA. Mr. Roach spoke about the improvements they wish to address which will all be done up front. They asked for the previous delay because of Planning Board concerns. Mr. Roach explained their proposal for added access points. All Apex Plans were being followed.

Ronald Stevenson, Raney Kemp and Associates, stated what they were asking for and the impact the asks would have on traffic, specifically as they related to Ten Ten Road. He answered Council questions related to traffic signals.

Mayor Olive declared the Public Hearing open.

Mike Whitehead spoke about how he thought this project was good to go. He reviewed what they have done for the project related to infrastructure and a pump station. He stated they have done everything for which the Town has asked except for changes to Ten Ten which they cannot make.

Steven Rhodes stated his neighborhood concerns related to Ten Ten Road and Jessie Drive. He had concerns about Town staff not being in favor of the request. He asked Council to support safe development.

Hunter Muse stated he appreciated everyone working with their concerns. He showed two videos showing the road conditions on his street. If Colby Chase were opened up, it would increase traffic which is already difficult.

John Bouchard stated this is a county subdivision. If Colby Change is opened, it would be a safety concern to the children in the area. He asked to hold off opening until other roads are opened.

Molly Capps was very much concerned with the sunset issue and keeping her neighborhood safe. She wanted to keep Colby Chase closed until other roads are opened. Ms. Capps was concerned with the condition of the roads and how difficult it is to get them fixed. They have problems with water lines; they have a lot of infrastructure concerns.

Mayor Olive declared the Public Hearing closed.

Jeff Roach made a final statement: they have spoken with the neighbors and have agreed to everything that they asked for. He talked about the road issues are for DOT and the County to address.

Council stated he had a hard time going against staff recommendation. He trusted staff's opinion that it would be too much for the roads to handle.

Council stated he also did not want to go against staff. This could go back to the Planning Board for their input since they denied the request. The Mayor stated this was a valid request.

Council stated she was not willing to go along with the proposed changes, particularly since the State budget does not have funding for projects like Ten Ten. She was not able to support the request at this time.

Council echoed the comments from staff and Council Members. She agreed Ten Ten could not handle any more traffic.

Mayor Olive called for a motion. Council Member Dozier made the motion to deny the request; Council Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

Mayor Olive called for a five minute recess.

OLD BUSINESS

OB1 Marty Stone, Assistant Town Manager

Discussion of concerns shared by residents who live near the site of the new Electric Operation Center and possible changes to the site to help mitigate those concerns

Staff stated a meeting was held with Council and staff and Bella Casa. A number of concerns were discussed, and staff stated how they might be mitigated. Staff presented its five concerns, asking for guidance on what needs to be researched and brought back to Council.

The pole barn would need to go back to the designer to address neighbor concerns, the dumpster could probably be moved, the fence appearance was an aesthetic issue, and we could place more plantings in the buffers. As for light pollution, the lights on site are dimmable. Maybe we could remove one light. Council asked about a sound wall, berms, and types of buffers. Staff stated a substantial amount of plantings have been scheduled for site. Council asked could a decrease in light be made and is there anything planned for cell tower, to which staff replied 'no'.

Council asked about a written plan if an emergency happened at the facility, and what theft measures would be in place.

Council asked if the easement was no longer needed on the property, could it be closed and planted. Staff stated it was not our easement, it's on HOA land. Council asked the use of the pad, staff replying it would be used as a storage area.

Staff explained the possible traffic by employees in and out of the facility. Herbicides will follow protocols as to how they're stored, Council asking if only a small quantity could be kept at the facility.

Staff stated it was in the works to develop better signage alerting citizens as to what's going on. Council asked for a policy statement to be developed addressing trucks cutting through neighborhoods.

Council consensus was to have staff investigate the identified items and bring back mitigation measures with costs.

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

There were no New Business items.

CLOSED SESSION

Laurie Hohe, Town Attorney

To (1) consult with the Town Attorney to protect attorney-client privilege; (2) to discuss the handling of the matter of Upright Builders v. TOA; and (3) to discuss the handling of the matter of Rubin v. TOA et al. (GS 143-318.11(a)(3)); and (4) discuss a personnel matter (GS 143-318.11(a)(6)).

Mayor Olive called for a motion to go into Closed Session. Council Member Killingsworth made the motion; Council Member Dozier seconded the motion.

The motion carried by a 4-0 vote.

Mayor Olive called for a return to Open Session with no objections from Council

Mayor Olive called for a motion to adopt a Resolution Authorizing Eminent Domain Proceedings Related to the Roberts Road Off-site Water Line Project for the Improvement of the Apex Sewer System.

Council Member Killingsworth made the motion; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

WORK SESSION

There were no Work Session items.

ADJOURNMENT

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

Donna B. Hosch, MMC, NCCMC

Town Clerk

ATTEST:

Lance Olive

Mayor