



APEX TOWN COUNCIL MEETING

TUESDAY, AUGUST 18, 2015

William M. Sutton, Mayor
Eugene J. Schulze, Mayor Pro Tempore
William S. Jensen, Scott R. Lassiter, Nicole L. Dozier,
and Denise C. Wilkie, Council Members
Bruce A. Radford, Town Manager
Drew Havens, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 18, 2015, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor William M. Sutton, Mayor Pro Tem Eugene J. Schulze, and Council Members Bill Jensen, Denise C. Wilkie, and Nicole L. Dozier. Absent was Council Member Scott R. Lassiter. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager Drew Havens, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Sutton called the meeting to order, Council Member Lassiter gave the Invocation, and Mayor Sutton led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations to be made.

CONSENT AGENDA

- Consent 01 Minutes of the August 4, 2015 Regular Council Meeting
- Consent 02 Encroachment Agreement between the Town of Apex and Andoria Enterprises, LLC (Primrose School), and authorization for the Town Manager to execute said Agreement
- Consent 03 CSC Recording Solutions Agreement between Corporation Service Company ("CSC") and the Town of Apex and authorization for the Town Attorney to execute same
- Consent 04 Ordinance amending Sections 15-6 and 15-10 of the Apex Town Code pertaining to the hours of operation of the Rogers Family Skate Plaza and permitting the use of inline skates and non-motorized scooters
- Consent 05 Amendment to Section 14-14 of the Apex Code of Ordinances authorizing possession and consumption of malt beverages and unfortified wine purchased at the Jazz Fest to be consumed on the closed portion of Salem Street to coincide with the hours of Jazz Fest, September 19, 2015

- Consent 06 **ITEM PULLED FOR DISCUSSION AS NEW BUSINESS** - Sewer Easement Abandonment for the Kelly Road force main located at the northwest corner of the intersection of S. Salem Street and Apex Barbecue Road
- Consent 07 Declaration of a reduced school speed ordinance along Apex Barbecue Road for Scotts Ridge Elementary School Zone
- Consent 08 Sale of cemetery Lot 214 Plot H located in the Apex Town Cemetery
- Consent 09 Automobile Insurance Release from Liability document
- Consent 10 Apex Tax Report dated 07/06/2015

Council Member Jensen asked that Consent 06 be pulled for a brief discussion for understanding. Mayor Sutton stated it would then be New Business 04.

MAYOR SUTTON CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. MAYOR PRO TEM SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

Town Manager Radford requested the addition of New Business 05 to consider budget funding for a Town celebration. Mayor Sutton requested Closed Sessions to consult with the Town Attorney on two issues and for a personnel matter. Council was in agreement with these requests.

PUBLIC FORUM

Paige Williams stated she started the petition regarding development at Pleasant Park. They are seeking this to be a mixed use facility with a YMCA natatorium. There are 850 signatures on the petition and more are coming. She provided figures on the number of children involved in swimming, but there is nowhere to train in town. The children have to travel to other municipalities. Ms. Williams provided figures on how much revenue comes in from year round swim competitions. A Y would meet the needs of the community and serve the high risk, low income children. Responding to Council, Ms. Williams stated she has not contacted the school system for collaboration. She felt there would be none since it wouldn't generate revenue for them.

Seth Mazlowski, a student and member of YODA, explained how swimming is a character and confidence builder. He grew as a person, became a leader, and began impacting the lives of others. He is now going to college because of swimming; he talked about his journey to becoming a lead athlete. The YMCA is special and a special place for all children.

Ms. Williams stated this is an amazing community and a YMCA would be the cherry on top because it supports all in the community. She presented her petition to the Clerk.

Amy Riley, representing parents of students at Apex Friendship High School, asked for proper side- and cross walks at the new school as soon as possible. There is a lot of construction around the school which is supposed to be ongoing for quite a while. Many parents have contacted Council about this issue and have received positive feedback from several Council members. She thanked Council for being proactive. Responding to Council, staff stated this project is being bid now, a budget amendment will be in front of Council in two weeks, and construction of the cross walk would start almost immediately afterwards. There will be a police officer on site to help with traffic. The developer will put in the Blazing Trail sidewalk and the Town will pay for the cross walk.

Tony Sanatoro spoke about the petition for the YMCA. He's talked to several Council Members about Pleasant Park. There is a private, secluded neighborhood with one way in and one way out. They were assured the Park would have minimal impact on their 38 homes. But they can count on lights and yelling and screaming until 10:00 every night as well as on the weekends. Mr. Sanatoro asked Council to honor its commitment to keep the impact on them to a minimum.

PUBLIC HEARINGS

Public Hearing 01 : Shelly Mayo, Planner

Public Hearing and rezoning petition #15CZ19 (Evans & Walden Road) to rezone 7.09± acres from Rural Residential (RR) to Medium Density Residential Conditional Zoning (MD-CZ) for the property located at 2919 Evans Road, 0, 2813 and 2817 Walden Road

Staff oriented Council to the site. A neighborhood meeting was held, the use is consistent with the 2030 Land Use Map, and the applicant proposed a limitation on uses. Staff and the Planning Board recommended approval.

Mayor Sutton declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering, stated this is adjacent to the existing development and the intent is to add the four parcels into Bella Casa, the conditions and uses being the same.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE
THE REZONING; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
COUNCIL MEMBERS SCHULZE, WILKIE, JENSEN, AND LASSITER VOTED IN THE AFFIRMATIVE;
COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 4-1 VOTE.

Public Hearing 02 : Amanda Bunce, Planner II

Public Hearing and rezoning petition #15CZ20 (Cash Property) to rezone 2.33± acres from Planned Unit Development Conditional Use (PUD-CU-#02CU07) to Neighborhood Business Conditional Zoning (B1-CZ) for the property located at the southeast corner of the intersection of E. Williams Street and NC55 Bypass

Staff oriented Council to the site. A neighborhood meeting was conducted, and 30 uses were proposed. The Planning Board and staff recommended approval.

Mayor Sutton declared the Public Hearing open.

Don Myzel, representing Ravenel, presented possible uses for the property. They invited individuals outside of the required announcement area to the neighborhood meeting, and they were glad they did. Doing so brought about several useful conditions. Mr. Myzel explained where the access points would be.

Charlotte LeClair stated she was out of town when this originally came up. She talked about the flow of traffic, which is very busy. A church will be a few feet from the convenience store, and it will have a day care which will house more than 200 children plus employees. There will be traffic from this also. Then there will be after school activities. Ms. LeClair talked about several other activities which will be going on in the area. A traffic study was done, and she felt Council should be curious about the numbers. A lot of people are moving out because of the traffic. Ms. LeClair talked briefly about widening the road, and the environmental impact of a gas station. She wondered why another gas station is needed when there are already two in the area.

Council asked since there was not a certainty that a gas station would go in if the property were rezoned, would they just be deciding on the many types of businesses that could go in at this point. Staff answered that was correct.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE REZONING; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council briefly discussed how retail would, in actuality, make a minimal impact.

THE MOTION CARRIED BY A 5-0 VOTE

Public Hearing 03 : Brendie Vega, Principal Planner

Public Hearing and various amendments two the Unified Development Ordinance

Staff oriented Council to the amendments which were referred to the Planning Board for recommendation. Council asked would this allow for densities to increase. Staff responded it would and the program would be voluntary on the part of the developer. Council stated this would be the way to present solar to new subdivisions. This would be looked at as a pilot program and Council could shut down the program if it so desired.

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

Council stated this idea was suggested by a development company. He explained how in the future we could possibly raise the kilowatts.

Council expressed appreciation for the way this was brought in without costing the Town money. However, he would rather see RCA areas which would be affected by this idea.

Council stated he doesn't like the Town trying to incentivize people to act a certain way. If this is a worthy cause, then developers will do it on their own.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE AMENDMENTS; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Council explained why she would be voting against this along with another Council member. One Council member stated he was struggling with the idea. Council stated this is a method of getting people to understand the process. Why can't we let this run for a few years and see how it works. He explained how government is already incentivizing.

Council stated she supported this because it's touted as a good idea by the developer and attorney. She wants to do what's good for the environment. Council stated we need to look beyond the borders of Apex to see what we can do to make the world a better place.

COUNCIL MEMBERS JENSEN AND DOZIER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS
WILKIE, SCHULZE, AND LASSITER VOTED IN THE NEGATIVE.
THE MOTION FAILED BY A 3-2 VOTE.

Public Hearing 04 : Vance Holleman, Finance Director

Public hearing and selection of a financial institution to provide funding, making findings and determinations regarding the need to finance Public Safety Station No. 5 and authorization for staff to file an application with the Local Government Commission to approve an installment financing agreement for the project

Staff stated that following the Public Hearing, Council would consider the two resolutions. Staff detailed the requested amounts, Council encouraging staff not to go beyond the stated amount to be transferred from Fund Balance. Council stated it did not want to see rainy day funding spent on a park.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the public hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE
REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

OLD BUSINESS

There were no Old Business items for consideration.

NEW BUSINESS

New Business 01 : Shelly Mayo, Planner

Reserve at Beaver Creek Master Subdivision Plan for the property located at 1201, 1309, 1313, 1325 and 1333 Kelly Road containing 31.81 acres and 32 single-family lots and 150 townhomes

Staff oriented Council to the site. A neighborhood meeting was held, which was the same meeting as for the PUD. The plan met the UDO requirements, a parks and recreation fee was proposed, the plan was consistent with the Transportation Plan, and a multi-use path will be constructed and connected to existing sidewalk. Staff recommended approval. Discussed was the disagreement over RCA and densities.

Alan Maness, BBM Associates, stated a traffic report was submitted. Access as shown was approved by the Town. A traffic signal will be studied at 80% of the CO's of the community, which was the

recommendation of the Town. Mr. Maness felt a signal would be warranted at that time if not before, explaining how the DOT justifies a signal. He also talked about densities, in and out accesses, and lot sizes.

Kevin McElroy, representing the HOA, stated traffic is a concern seeing as it's already an issue. A light is warranted whether a study has been done or not. Council asked the Town Manager if staff could ask DOT to put in the light now.

Carla Tiller, talked about how hard it is to get in and out of the area. Without a light, there will certainly be accidents.

Council asked the Town Attorney if we could approve the request upon the condition of a light being put in now. The Attorney stated that the developer could not comply with this because the light is a DOT decision. Staff stated that in the past we have told the DOT a developer would pay for a light, but the DOT said no because it did not meet their criteria. Mr. Maness stated they told the DOT they would pay, but the answer was no. He explained that the pork chop will come out. Council did not believe it would make things any safer, but staff requested it be gone. Mr. Maness thought a signal light would be the best solution.

The Town Attorney explained that if all the approvals were met, then there was not a lot of discretion on the part of Council. Staff stated they met the PUD and UDO standards.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE A MOTION TO APPROVE THE REQUEST;
COUNCIL MEMBER LASSITER SECONDED THE MOTION.
COUNCIL MEMBERS WILKIE, LASSITER, AND SCHULZE VOTED IN THE AFFIRMATIVE; COUNCIL
MEMBERS JENSEN AND DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

Council asked the Town Attorney what recourse there would have been had the motion been denied. Theoretically, stated the attorney, the applicant would have gone to the courthouse and argued that they met the Town's standards and complied with all requirements of the Town. They would have then requested the judge to overturn Council's decision.

New Business 02 : Stacie Galloway, Communications Manager

Discussion and consideration of using website graphic for broader purposes

Staff spoke to the new graphic designed by a committee with the assistance of the website vendor. It has become the graphic representation, not as formal as the seal. Several departments want to use the graphic for different purposes, one being the water tower which is up for repainting this year. Another

purpose would be the replacement of a few signs like the signs showing our Money designation as Number 1.

Council stated he did not like our having different letterheads. And the new graphic looks cartoonish. He would like to see some options for the graphic since this would be a long-term decision. The Mayor stated we could open this up to the public or to the high school to submit graphics and have a secret committee to narrow down the entries and send the final ones to Council for approval. It could be a community contest. Council asked could the water tower be painted without the logo and have that put on later, to which staff replied 'yes'.

New Business 03 : Council Member Bill Jensen

Discussion regarding how Apex will manage the expected growth in housing

Council stated he has seen a lot of residential proposals in the past but not a lot of business applications, and he talked about the business to residential tax base. If we just get housing, that only helps the landowners, developers, and some business people. It doesn't help the vast majority of people who live here. Cary is trying to manage some of their development based on the capacity of schools. He just wanted to begin a process here in Apex. We can start by looking at not annexing pure residential properties, placing a limit on building permits on new developments, or the UDO could be looked at for densities. We need to look at what is going to take place in the next five years.

Responding, Council stated we should look at this based on studies. One has been done by Michael Walden. Some population growth is necessary. Apex has a plan to manage growth – the 2030 Land Use Map. Stated was how the town used to be closed up shops and folks going elsewhere to shop. We can't partition ourselves off but we can look at things which will guarantee the value of the town. Tonight we should be celebrating our accomplishments instead of seeking to change a plan. Council and staff will know when to pump the brakes.

Responding, Council stated growth is good and Council and staff have shown they can handle growth admirably. Council wants to reach out and see what other towns have done who are similar. There was concern about roads and schools. Council wanted options to look at. We should figure out how to work with other levels of government for our citizens. We need to stay balanced. Council touched on the percentage of growth and wanted to know how many people are getting jobs.

Council stated the Land Use Plan doesn't manage the total rate of growth. He talked about the 4% growth rate and growing over that percentage. Extremely fast growth is not good for residents. If we

become a bedroom community, we will end up paying much higher taxes. Council wanted to hear from residents and what they want to do via an old fashioned town hall meeting.

COUNCIL MEMBER JENSEN MADE A MOTION TO HOLD AN OLD TOWN HALL MEETING; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Responding, Council stated his phone number and email are open and citizens can stop by his house. Council stated while a town meeting is not necessary because of the meetings we have here, he would not stand in the way of this type of forum. We can always benefit from information. Council stated we have public forum every other week. We don't have a place for such a large number of people. Council stated she does this state-wide and we can structure this the way we want. It's a great way of hearing from people and some are more comfortable speaking this way. Council wanted to first have options on what we would be allowed to do.

COUNCIL MEMBER JENSEN WITHDREW HIS ORIGINAL MOTION IN ORDER TO FIND OUT WHAT CARY AND OTHER AREAS COMPARABLE TO APEX ARE DOING. COUNCIL MEMBER DOZIER SECONDED THE WITHDRAWAL MOTION. ALL COUNCIL MEMBERS WERE IN AGREEMENT.

Added New Business 04 : Council Member Bill Jensen

Pulled Consent Agenda Item 06, Sewer Easement Abandonment for the Kelly Road force main located at the northwest corner of the intersection of S. Salem Street and Apex Barbecue Road

Council asked if we want to recoup our money on abandoning easements. Staff stated the line was built in the DOT right of way. DOT rerouted the road, but we did not reroute the sewer force main. The property owner sued us trying to make us move the line and we declined. We have always said that if it was no longer needed, we would go back and try to make it valuable land.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE ABANDONMENT; COUNCIL MEMBER DOZIER SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

Added New Business 05 : Bruce Radford, Town Manager

Discussion to consider budget funding for a Town celebration

Staff stated that a few years ago, we threw a celebration for the community for the Money magazine #9 best place to live designation. Staff has discussed another celebration for the #1 designation and would like Council to approve the celebration for October 11th, to be held on campus, from 1-5:00 p.m., for \$20,000. Most of this amount will come back to us via sponsorships.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE REQUESTS;
COUNCIL MEMBER LASSITER SECONDED THE MOTION.

Council stated he did not feel this was a good use of taxpayer money. It would be fine to get sponsorships. Because we're number one, that doesn't benefit most people here. Council noted our support of other festivals.

THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

Added Closed Sessions (1) to consult with the Town Attorney privately to preserve the attorney-client privilege, (2) to consult with the Town Attorney related to the City of Fayetteville and the Public Works Commission of the City of Fayetteville v. NC Environmental Management Commission, NC Department of Environment and Natural Resources and the Town of Cary and Town of Apex, Intervenor, and (3) for a personnel issue

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER DOZIER MADE
THE MOTION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER JENSEN MADE
THE MOTION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR SUTTON CALLED FOR A MOTION TO ADJOURN.
COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Donna B. Hosch, CMC, NCCMC, Town Clerk

ATTEST:

William M. Sutton, Mayor