

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 02, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 02, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.
All Council Members were present.

Mayor:
Keith H. Weatherly



Council Members:
Bryan Gossage
Bill Jensen
Mike Jones
Lance Olive
Gene Schulze

Web site: www.apexnc.org

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Schulze gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATION

Marine Corps League Detachment 733 presented a plaque to Apex Fire Department in recognition of their efforts demonstrated for "Toys for Tots 2009" campaign.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a Member of the Council requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments. **Action:** Council Member Jones made the motion to approve the consent agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes of January 19, 2010 Town Council meeting.
2. Minutes of January 19, 2010 Town Council 1st Closed Session (separate cover).
3. Minutes of January 19, 2010 Town Council 2nd Closed Session (separate cover).
4. Annexation Petition # 448, William H. and Norma M. Keyes, owner/petitioner, petitioning to annex 1.135 acres into the Town's corporate limits and located at 1014 Olive Chapel Road, Apex, and includes public right of way; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for February 16, 2010.
5. Statement of Town Council and Ordinance for Rezone #09CZ12, Stephen and Renata Williams, Petitioner; .77 acres from Medium Density to Mixed Office Residential and Retail-Conditional Zoning and located on 215 Templeton Street behind the Halle Cultural Arts Center.
6. Findings of Fact and Conclusions of Law regarding Special Use Permit #09SUP03, Kelly Road Tower, Statement of Council and Ordinance for Rezone Case #09CZ13, American Tower Corporation, petitioner for property located at 1716 Old US1 Highway; new drive location.
7. Set public hearing for Conditional Zoning #10CZ01, rezone from B1-Neighborhood Business to PC-CZ, Planned Commercial Conditional Zoning, Lowes Food Stores, Inc. applicant; .66 acres located within Olive Chapel Village Shopping Center at Apex Peakway and NC55.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action, and with no amendments the Agenda was set.

PUBLIC HEARINGS

Presenter: Dianne Khin, Director of Planning

Public Hearing # 01 – Continued from January 19, 2010 Council Meeting

Review: Council during their January 19, 2010 meeting voted for continuation of the public hearing regarding Unified Development Ordinance proposed amendment 2: Section 5 *Measurements* to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses to the February 2, 2010 Council meeting; public hearing remained open.

Mayor Weatherly continued the January 19, 2010 public hearing to consider UDO amendment Section 5 Measurements to require minimum lot widths and minimum side setbacks for single family, detached townhouses and attached townhouses. Director of Planning presented the Technical Review Committee's recommended conditions of approval for pending application Villages of Apex Charleston lots should Council choose to grandfather those lots.

PUBLIC WORKS (Sanitary Sewer, Water, Electric)

Sanitary Sewer: For each lot, a new 4-inch sewer clean out must be installed directly to the Town maintained 8-inch sewer main or manhole (Town Standard Specifications and Standard Details - Section 7.01(G)). According to Barry Herzberg with NC Division of Water Quality, current proposed sewer design for two 4-inch services tied together to a single "Town" maintained 4-inch sewer line is not allowed per 15A NCAC 02T .0303(1)(2). By State 2T rules, the minimum size "public sewer" line is 8 inches. The minimum "private sewer" line is 6 inches. **Water:** All individual lots shall have water meters and must be connected to Town water main per Town specifications. Existing water meter connections and meters will not be allowed to cross private property to gain usage. **Electric:** All electric services and reconnections shall be performed or installed to new lots. All costs associated with electric installations shall be paid to the Town prior to receiving plat signatures.

ENGINEERING, PLANNING, POLICE and FIRE

Provide additional marked guest parking spaces in the amount of approximately one space per unit, which could be as low as 0.8 spaces per unit. On street spaces using the existing streets or spaces served by the alleys would not be counted due to the type of streets that were built and the current residential product being proposed.

Options for doing this are: (1) provide a private guest parking lot for each of the four main areas, two on Shoofly Path and two on Branch Line Lane, by removing enough residential lots mid-block; (2) widen the street frontage along Shoofly Path and Branch Line Lane to add marked parallel spaces abutting the existing sidewalk (niche spaces); (3) remove future residential lots across the street from the proposed units mid-block to provide either 90-degree private spaces along the street front or private guest parking lots; and (4) add private parking spaces in the median island on Ambergate Station.

All private parking will need to be HOA-maintained and managed. Combinations of (1) through (4) would be acceptable pending staff review. Parking should be spread out so that it meets the need for safe and convenient guest parking for all proposed units. In the future, parking may be limited to one side of the public street(s) if accessibility issues occur. Staff provided clarity for parking in public right of way and with curbing between public and private maintenance.

PLANNING, ENGINEERING, POLICE, and PUBLIC WORKS

Provide mail kiosks only; no individual mailboxes or grouped mailboxes shall be allowed due to narrow street frontage and on-street parking. Mail kiosks shall not be located within public rights-of-way, but rather shall be placed in easements on private property abutting public streets.

PLANNING

Maintenance of exterior elements will be the responsibility of Home Owners Association (in keeping with current requirement of detached townhomes on 26 feet wide lot and proposed Villages of Apex single family home on 24.5 feet wide lot and staff believes exterior maintenance should be similar conditioned).



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Public Hearing # 01 continued

Mayor Weatherly stated staff did not anticipate lots of this narrow width when preparing the UDO, and now has opportunity to effectively prohibit them; staff gave Council options to consider, not obligated to take any option, conditions thought workable and if Council chose could consider grandfather pending application, Villages of Apex Charleston Lots.

Public hearing was held open from previous meeting and at 7:10 p.m. the following addressed the proposed amendment:

Peter Clossen, Jones and Clossen, Engineer for Apex 1st, asked exemption from proposed conditions stating when the project was brought forth it met all UDO conditions; high, medium and low density single family already have minimum lot widths; PUD/TND differ in zoning allowing development creativity; 24.5 feet lots are not proposed for detached townhomes but single family homes and marketed same as other 50 feet lot single family homes. Requested site plan be allowed to go forward under UDO requirements submitted under and agreed to comply with conditions for required public works sewer, water, electric and mail kiosks.

Laney Caldwell, Experience One Homes, proposes Charleston product and noted: space between houses for proposed is greater than original approved homes in Villages of Apex; approved PUD side set back is 3 feet and proposed has 6 feet between, 6 inches more than existing homes; 50 feet lots typically have front drives with 27 feet for parking in front of home and proposed has 24/25 feet and differ only a couple of feet and couldn't park any more cars at existing homes than proposed; proposed has four parking spaces per home, rear loaded drives, and single family homes have front drives, and require two parking spaces.

Proposed homes meet all existing UDO requirements and hoped would meet approval and not consternation, once seen would be pleased with outcome; PUD talks about creating special districts, maximum density and still meet other requirements and proposed is a viable way to do this. Noted: New Urbanism concept, Country wide, encourages plans for high density and better control of urban sprawl, explaining with expanded city services no one is willing to pay taxes to put streets in prior to development; they are trying to duplicate things seen in the past, older houses a little than a foot apart done in the turn of the century, a concept that has worked well across the country; land is expensive and with more land more services are needed and thinks getting back to density is the original concept of the Downtown Overlay District.

Chief of Police Jack Lewis addressed accessibility for police and emergency personnel, explaining where cars are parked oppose each other vehicles can't get by. Noted areas where drives are blocked, and with drive pull offs allow cars to pass and lost with rear loaded properties. Ex: Narrow Marimonte streets and with additional parking, cars now park on sidewalks, block access and can't get through.

Lot widths do not affect Police, however vehicles coming/going cause issues and believes should not create potential problems; once streets become public anyone has a right to park; issue is adequate parking, where property lots are narrow with one car garage, two cars are stacked then people rotate cars, opposed to parking in the alley or the street, is not a practical and becomes problematic. Police do not enforce HOA covenants and ability for HOA to restrict such does not work; HOA can penalize but Town does not deal with that but is responsible for answering calls and spends lots of time dealing with these problems. He's not opposed to the number of folks being put on the property, but concern is safety, and roads have to be accessible for emergency vehicles and safe passage allowing somewhere for folks to park. Concessions: parking lots and niches allow on street parking, and vehicles can pass safer. In the beginning there's no problem as properties will not be filled and nor when everyone's at work; over time homeowner's change and if landscape doesn't work, problems will occur on weekends, nights and afternoons. Fire and Police agree regarding accessibility, with fire apparatus having more acute issues; the original layout proposed larger lots and there has to be change in parking to accommodate doubling people and vehicles in this defined area. As long as street width is ok and not so many vehicles, there's ability to get emergency vehicles through there; planned communities are designed to have parking on both sides of the street and works, there just has to be enough of it. Ex: Dogwood Ridge restricts no parking due to traffic issues caused by density; he's fine with more people however what works in other places where there's mass transportation and other things, Apex doesn't have and may not work here, however allows people to walk and have other access; generally people like to drive cars and park in front of their door opposed to walking from parking lots or elsewhere. He is responsible to inform Council when he sees problems coming.



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Fire Chief Mark Haraway restated minimum lot widths and minimum side setbacks were agreed upon between Planning and Fire; generally some issue creates the need to recreate policies whether overlooked or didn't figure on and this is one of those, originally looked at one thing and now looking at more density. Previous approvals of some subdivisions do not allow fire apparatus to get through certain streets where folks do not park in their two car driveway, even when told to do so find it more convenient to park in front of the house and then blocks access for ambulance or fire truck, and thus fail to get emergency vehicles as close as they can to get folks into an ambulance or to put fire out; the further out the vehicle from the residence the harder it is to get to them and provide safety and services for the citizens, and thus the reason for proposed conditions. If something is not put into place this problem will continue to exist and should be addressed while there is an opportunity. Has spoken with the Fire Marshal and Traffic Engineer and offer four options, and even if Council opts to grandfather this project, this still needs to be done as it's a more dense development, will have more cars trying to park in the area and fire apparatus and emergency equipment can't get through.

Peter Crossen stated streets were designed in accordance to Town standards, 50 foot wide, right of ways, on grid, and there are plenty of access points to get in and around this part of the subdivision and is not the typical subdivision with cul-de-sac streets; by reducing lot width in this development, they increased density, but does not see this as an issue apart from any other subdivision within town, as it only takes two cars on any street to cause problems and feels they are being singled out because of increased density, and questioned this. Asked Council consider what they are trying to do, with change in housing market they were creative and thinking outside the box, and they are seeing this in business, and feels the development being proposed for Charleston lots will be a good product.

Mike Howington, Villages of Apex, stated this was a good location for increased density, and a downtown project; originally plan approval was for 685 units in the north and are nowhere near that; they are not trying to jam a bunch in there and also voluntarily brought apartments down by 80 units; noted this a small pod in the middle of the whole development and asks for 40 lots; proposed houses are farther apart and more clearance between them than what was originally approved; has models on 40 foot wide lots with 34 foot houses, one car garage with two parking places and is sufficient; proposed homes can have 4 cars on them, granted may shift cars when guests come; lots are 120 foot long and can put as many cars with these houses and same configuration with what's being done on 40 foot lots; houses are farther apart, can park the same, and a smaller pod; as far as access for fire or police, that could go for any town street if you park two cars on both sides; in this project if a street is blocked there are many other ways to get around, and everything done has been to better the project; not only are they working with the market, but are beautiful homes and a perfect place for it. They market these homes as \$200,000 to \$800,000 community and this is the smaller pod that will be \$200,000 to \$250,000, and are protecting the high end houses, and the area builders have invested in. They are not asking to go over 685 units, not even asking close to that even with increased density. He is confused over all of the reservations as this is a single family pod that surrounds a townhome pod, a perfect place for it, and if it were built for anywhere it was built for here in this downtown location and is a beautiful project. The architect has used all architectural requirements, change in product – no one can look the same in six or seven houses and have followed all guidelines of the current UDO. He thinks they need to look at it for what it is, a 40 lot small pod, and another characteristic of a bigger and nicer product.

Khin expanded on staff's concern with a rear loaded product where service vehicles or guests will not go to the back and believe should be front marked guest parking spaces, same as detached townhomes on 26 foot wide lots are required to be alley loaded, with one guest parking space per unit in front, and can be on the street. Villages of Apex does not want to consider the proposed detached townhomes but single family homes, and don't feel they are mitigating additional impacts by having narrow lots. Staff explained detached townhomes have set criteria to mitigate impacts, where single family homes were never envisioned to have less than 40 feet wide lots and the way all staff had thought the proposed were when the plan was turned in; didn't catch that the lots were more narrow and wasn't in the original rezone, and to limit to 40 foot lot width for single family. Because the UDO gives flexibility, Khin stated there should have been a minimum lot width in the rezoning document, so all knew what they were getting; their plan showed 40 and 50 foot wide lots on this section and was what they thought was what they were getting and turned out legally should have been in the rezoning and were reviewing at the same time, but didn't catch that.



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Question arose if the site plan and zoning request were turned in at same time and zoning didn't call for 40 foot lots, and site plan did, was it an applied agreement they would do the same thing. Attorney Fordham advised it was not an applied agreement; you do not have an agreement with zoning but might be considered part of the project, depending on the time it was put in and expectations it created; with the Town, the transportation impact analysis was based on the assumption it would be for the approved subdivision plan submitted, and answering the question as it might be related to vested rights. Khin continued the requirement for detached townhomes is one marked guest parking space per unit and proposed has street parking, but no requirement marked or designated guest parking or pull out of the right of way to provide more parking; noted the median could be carved out for parking spaces; thinks it comes down to the fact the roads have been built and doesn't want to tear up roads to put in parking to bring in the curb line; felt they would not be having this discussion if this were proposed originally, comments would be included,

Discussion evolved around standard 27 feet curb to curb road widths, front loaded drives, and parking on both sides; staff proposes marked spaces, noting proposed not marked but could niche in the strip of grass and bring curb line up to and against sidewalk and one would get out of their car on the sidewalk and not in grass; you get an extra six feet added on to 27 feet and if you do it on both sides of the street, you get an extra twelve feet for parking (in this case utilities are in alley and only utilities are for street lights) . Staff noted 27 feet is standard with front loaded drives and expect people to park in street; noted cars parked side by side makes streets impassable. Ex: Scotts Green 40 lots, 27 feet wide streets, rear loaded, and park two cars on the street; with 24.5 feet width lot, in front of each house could only park one car, and should the house across the street have a guest and there's no way to stagger the parked cars. Laney Caldwell noted Kits Creek homes are similar to the proposed, narrow product with similar density, alley loaded, 27 feet streets, with restricted parking on one side of street in some areas, and has not experienced problems; he's not opposed to limiting parking on one side of the street if it would alleviate concerns.

Mayor Weatherly closed the hearing at 7:50 p.m., however opened it for Mike Howington who stated parking was important and would have to take up curb for water and sewer laterals, and could do this, would widen streets in front of these lots, if they can do it the way that has been said. Caldwell added if they take the lot depth away they can't put houses in place. Staff noted it is in the right of way in front of the lots and will work with them on parking, which was their preference from the beginning and one of the options offered, or any or a combination of those staff would be fine with it. Khin noted this hearing was for the UDO amendment and the subdivision plan will be coming to Council at the next meeting.

Discussion evolved around changes in lot widths and side yard setbacks; with question, should the ordinance be amended, would it be applicable to future plans or those pending; were these issues that should be discussed in subdivision review. Attorney Fordham advised if they were considering whether to grandfather with certain conditions, it was appropriate to consider the specific plan and what conditions might be necessary, hearing 1) not to grandfather 2) to grandfather without conditions, or 3) to grandfather with conditions that are related to any issues arising from the change. Khin stated they could wait until next meeting when making this decision. Attorney Fordham advised Council may want to move into Closed Session to receive legal advice prior to deliberation. **Action:** Council Member Jensen made the motion to move into Closed Session at 7:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move into Regular session at 8:05 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly stated the public hearing was continued to consider a UDO amendment; options were: 1) approve UDO amendment as is to apply to all projects, pending or otherwise, 2) approve UDO amendment with grandfathering anybody without conditions, or 3) to approve UDO amendment grandfathering pending projects in with the conditions as so stated, and wanting to assure these conditions were clearly enunciated so the petitioner knows what they are and asked Director of Planning to restate the conditions with representatives responding with their willingness to accept the conditions that the majority of Council would approve, otherwise the motion would be not to grandfather.

With the public hearing open, Khin proceeded to restate the conditions and with Mike Howington, Mark Gramling, Pete Clossen, and Laney Caldwell answering to recommended conditions of approval for pending application Villages of Apex Charleston lots should Council choose to grandfather those lots:



PUBLIC WORKS: Sanitary Sewer, Water and Electric: Howington responded yes he was in agreement with the conditions proposed for these. **ENGINEERING, PLANNING, POLICE and FIRE:** Parking: Gramling couldn't respond to parking without looking at drainage, however agreed to work with staff to come up with something that works to get to the 0.8 spaces per unit. **HOA maintenance:** Gramling responded nay to HOA exterior maintenance; stated single family homeowners would like to take care of their own units, avoiding HOA dues; noted covenants require penalty if not maintained; noted the importance of calling the homes single family vs. detached. Staff had wanted consistent maintenance due to density. Gramling was willing to address this with his attorney; also addressing language regarding cross access easements to provide efficient access for maintenance. Caldwell called this uncharacteristic to require individual maintenance on a group of single family homes; stated if covenants and restrictions are severe enough the HOA would take care of the maintenance and send the homeowner a bill; to micro-manage 80 out of 1300 homes was out of character.

Mayor Weatherly closed the public hearing at 8:20 p.m. and referred the matter to Council. Council discussed their concerns regarding maintenance, and all agreed for the need to have the cross access easement.

Action: Council Member Jones made the motion to adopt the UDO amendment, and to grandfather subdivision Villages of Apex, the application applied for and pending, with the conditions stated and agreed to, minus HOA maintenance of the home, but with the cross access for maintenance of the exterior of the homes to be worked out satisfactorily with all. Motion carried unanimously.

End of Public Hearing # 01

OLD BUSINESS

Presenter: Mayor Keith Weatherly
Old Business # 01 – Chamber Building Lease

Mayor Weatherly and Council Member Jones met with Chamber representatives to discuss building lease agreement for use of the Depot building on Salem Street; Chamber had continually rendered services to the community and Town had given contributions towards those services. Chamber Board of Directors voted on a firm offer of \$1,000 per month with a 5 year lease; thought it was in the best interest of the town to continue care for the property, building and grounds. Council Member Schulze was disgruntled with the sale of the property on Upchurch Street to the Town (\$274,000). Discussion evolved around the sale, current terms of the lease agreement, counter offer and fair market value for buildings in the condition of the depot and their locations, annual maintenance costs (\$600), reduction of annual subsidy for other things, and release of economic development position to the Town.

Action: Council Member Jones made the motion to accept the Chamber's offer for \$1000 month with a five year lease that would amend their current lease terms. Council Member Jensen made the second to the motion, however, felt the lease should be for three years, with Council Member Jones agreed, and restating the motion to accept the Chamber's offer and amend the lease for \$1000 for three years. Discussion followed regarding building renovations made by the Chamber, action taken by Council on the previous land sale, continued Chamber services to the businesses, recognition of fair market value, preference for Town upkeep of the property, and preference on whether to give more time or accept the offer. Motion carried with a vote of 4 in favor and 1 opposed, with Council Member Schulze voting no.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.

NO ONE SPOKE DURING PUBLIC FORUM



NEW BUSINESS

Presenter: Lee Smiley, Director of Finance

New Business # 01- Finance Summary

Director of Finance gave a review of the 2 nd. Quarter FY09-10 Financial Summary with significant variances noted. He also gave a semi-annual report of Deposits and Investments that the Town is required to file with the Local Government Commission. Report was well received.

End of New Business

CLOSED SESSION

There were no closed session items to be discussed.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:55 p.m.

Action: Council Member Gossage made the motion to adjourn. Council Member Jensen made the second. Motion carried unanimously.

The minutes of the February 02, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval at the February 16, 2010 meeting.

Georgia A. Evangelist, MMC
Town Clerk, Apex, North Carolina

Keith H. Weatherly
Mayor