

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for March 2, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 2, 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.
Council Members Jensen, Jones, Olive and Schulze were present.
Council Member Gossage was absent.

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. Invocation was given by Council Member Jones. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

RECOGNITIONS AND PRESENTATIONS

Recognition: Fire Chief Mark Haraway

Recognition # 01 – Apex Fire Personnel

Recognition of Captain Rebecca Fisher for receiving the local 2010 Veterans of Foreign Wars Firefighter of the Year Award and First Runner Up at the State level.

Recognition: Captain Jacques Gilbert

Recognition # 02 - Apex Police Personnel

Recognition of Police Officer Chris Myers for receiving the 2009 Veterans of Foreign Wars Law Enforcement Officer of the Year Award for the State of North Carolina.

Recognition and Presentation: Fire Chief Mark Haraway

Recognition # 03 - Apex Fire Explorer Post

Recognition of Apex Explorer Post 263 for their efforts at Winterfest 2010 February 6 in Gatlinburg Tennessee.

End of Recognitions and Presentations

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 to the Consent Agenda: **Action:** Council Member Jones made the motion to approve the consent agenda as presented. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes of February 16, 2010 Town Council meeting.
2. Minutes of February 16, 2010 Town Council Closed Session (separate cover).
3. Minutes of February 16, 2010 Town Council Worksession.
4. Set Public Hearing March 16, 2010 for Rezone Case #10CZ02 Aquiline Apex LLC; to rezone from Planned Unit Development to Planned Commercial Conditional Zoning, 48.062 acres located at 1528 E. Williams Street.
5. Set Public Hearing March 16, 2010 for Rezone Case #10CZ04 Lowes Food Stores, Inc.; to rezone from Neighborhood Business Conditional Use to Planned Commercial Conditional Zoning, .656 acres, located at 5400 Apex Peakway.
6. Set Public Hearing March 16, 2010 for various amendments to the Unified Development Ordinance.
7. Adopt **Resolution No. 2010-0302-_05_** Declaring Surplus Property to be Awarded to Retiring Police Personnel and authorize Town Manager to proceed with procedures as defined in the General Statute.
8. Budget Ordinance Amendment No. 5 for NC League of Municipalities grant and economic development incentives for downtown.
9. Street Closures for 2010 Peak Fest Street Festival, Saturday, May 1, 2010 and Old Fashioned 4th of July Celebration, Saturday, July 3, 2010.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the Regular Meeting Agenda. The Regular Meeting Agenda was set as presented.

PUBLIC HEARINGS

Presenter: Town Manager Bruce Radford

Public Hearing # 01 – Internet Cafés

Public hearing for the purpose of considering whether to enact a temporary moratorium on the establishment or expansion of internet sweepstakes cafes or cyber gaming cafes; possible motion regarding same.

Manager Radford introduced the item for public hearing with the Town having received a request to place an internet sweepstakes café in town. B1 zoning allows for such activity, however, the area of interest is not zoned for this type activity and staff requests Council consider an ordinance providing for a sixty day moratorium on the establishment of internet cafes or other terminology of such establishments, to allow a study of the issue and make recommendations regarding such establishments.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Rick Earnhardt, applicant, stated he has stores in Raleigh and would like to open a store in Apex and felt it a good business for the town; stores may be known under different names in other towns - his business is Business Center; the store would sell prepaid internet time and includes playing online games where one could get paid cash money for their winnings, assuring Council this activity was not gambling and was not illegal; users must be 18 years or older; he expanded on how one could access the computers for various needs and services and provided to folks who do not have access to computers elsewhere, or may allow ability to access internet documents from other sources, services other than just connecting to online games. He noted the company also participates and helps in community projects. He answered various



questions associated with the store operations: prepackaged food and sodas, business hours depending on traffic, parking, and noted no alcohol is allowed. Mayor Weatherly expressed he would like opportunity to talk with Cary and other municipalities that have such establishments to see how it's working and wanting to protect the town and local businesses. Council also would like to see where such establishments if allowed should be located and more about such establishments, prior to making a decision; it was noted there are dial up locations with internet access in other places and what this type establishment would have more attractive over others. Discussion followed regarding buying time to reveal cash winnings.

Public hearing was closed at 7:35 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to adopt the Ordinance providing for a sixty day moratorium on the establishment of internet cafes and other terminology that may be known, and to determine if it should be adopted as part of the Unified Development Ordinance, to allow or disallow. Manager Radford asked Council amend paragraph three to include "Business Center for cyber sweepstakes," as other terminology for internet cafés. Council Member Jones added to his motion, the adoption as stated, with the amendment to paragraph three "Business Center for cyber sweepstakes." Council Member Schulze made the second to the motion. Motion carried unanimously with a 4 and 0 vote; Council Member Gossage was absent.

End of Public Hearings

OLD BUSINESS

Presenter: Bruce Radford, Town Manager

Old Business # 01 – Budget Ordinance Amendment and Capital Projects Ordinance Amendment

Possible motion to approve Budget Ordinance Amendment and Capital Projects Ordinance Amendment for construction contract for Apex Peakway and bridge.

Manager Bruce Radford presented the Budget Ordinance Amendment and Capital Projects Ordinance Amendment that transfers general fund balance money to Transportation Reserve Fund to finance construction costs of the Apex Peakway and bridge in excess of bond money available, as well as amending the street project fund for this construction project, with some appropriation of payments in lieu moneys; recommended adoption of Budget Ordinance Amendment No. 6 and Capital Projects Ordinance Amendment as presented.

Action: Council Member Schulze made the motion to approve the Budget Ordinance Amendment and Capital Projects Ordinance Amendment as presented. Council Member Jensen made the second to the motion. Motion carried unanimously with a 4 and 0 vote; Council Member Gossage was absent.

End of Old Business # 01

Presenter: Kent Jackson, Director of Construction Management

Old Business # 02 - Apex Peakway North Project

Award Construction Contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road.

Kent Jackson, Director of Construction Management recommended award of construction contract for the Apex Peakway North Project from North Salem Street to New Dover Road to Barnhill Contracting Company, lowest responsible bidder, for a total bid of \$4,096,577.03, and under Wilbur Smith Associates, Inc. Engineer's estimate of \$5,365,043.; 15 bids were submitted and opened February 11, 2010; all environmental permits have been approved; plan is to open segment within a 15 month period. Council Member Olive asked to give consideration to opening the segment from New Dover over to Laura Duncan prior to other segment completion over to North Salem to allow better flow over to school. Jackson will discuss this with contractor. Council Member Jensen made a request to hold the Town to the same stormwater control management standards as Apex 1st Development had committed to noting the Williams Creek impaired stream issues and asked staff to investigate use of Vineyard Station retention pond to off-set flow of stormwater for the Peak Way, reducing flow into Shepherds Vineyard.



Jackson noted the design was complete having met state and permitting agency standards; noted challenges with timing and possible permitting for re-design, with the contractor ready to proceed; he is aware of the impaired creek; noted elevation of the Peak Way for structures is lower than the existing pond. Further design would increase structure costs by an estimated \$10,000. Jackson noted buffers would require re-submittals and was a tight area to expand and time was the factor. Council Member Jones was not in favor of the re-design as far as erosion control, noting more problematic with temporary vs. permanent structures, having to resubmit if there were size changes of the devices, and additional design costs; could add as change-order with contingency available cover costs. Tom Haynie, Shepherds Vineyard HOA offered Town may want to consider acquiring .38 acres from the HOA, or possibly could be given to the Town in exchange for stormwater management for the community, with the HOA having spent \$40,000 to rebuild stream banks; Town's engineer has data on the stormwater situations. Jackson noted Council could award the contract and could begin work on the sections, while staff looks into the request; noted Laura Duncan to North Salem more complex and delay could impact the entire project, not allowing for an earlier segment opening. Mayor referred the matter to Council.

Action: Council Member Jones made the motion to award the construction contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road and allow staff to consider proposed design changes and costs.

Council Member Jensen wanted to bring the town's standards up and was willing to consider an alternative to mitigate the impact in another area that would produce the same quality control measures and if not would not vote for this. It was noted: land, capability, and topography would have to be considered to make this work and if the .38 acres would make a difference. Jackson will bring his findings back to Council April 20, 2010; noted UDO exempts town from certain standards and will continue to work with planning to clarify stormwater standards for town projects.

Council Member Jones restated his motion:

Action: Recommend award of construction contract to Barnhill Contracting Company for a total bid of \$4,096,577.03 for Apex Peakway North Project, from North Salem Street to New Dover Road and direct staff to bring information to April 20, 2010 meeting to discuss alternatives for providing for increased stormwater, temporary and permanent alternatives for mitigation elsewhere. Council Member Jensen made the second to the motion. Motion carried unanimously. Vote on the motion was 4 and 0 with Council Member Gossage absent.

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.
Your comments must be limited to 3 minutes to allow others opportunity to speak.
There were no public comments.

NEW BUSINESS

Presenter: Town Manager Bruce Radford

New Business # 01 – 2010 Legislative Agenda

Consideration of the Legislative Agenda for the Town of Apex for the short session of the North Carolina General Assembly.



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New Business # 01 continued

Manager Radford noted prior to legislative session, Council, in past, has formulated a legislative agenda for lawmakers to consider. He stated the 2009 legislative goals, with enactment only on the third item.

1. The Apex Town Council will seek local legislation that would change the manner in which Wake County Board of Education members are elected. The Council supports a membership structure where a majority or all of the BOE members would be elected on an at-large basis to staggered terms in November of even-numbered years.
2. The Apex Town Council supports legislation that would eliminate or increase the present cap on the number of Charter Schools authorized for the State of North Carolina.
3. The Town of Apex requests to be added to Session Law 1993, Chapter 291 enabling the use of wheel locks on illegally parked motor vehicles.

Mayor Weatherly wished to have the first two remain on the 2010 legislative agenda, with discussion regarding the board of education membership and their election process, and cap on Charter Schools. Wake County Mayors have considered supporting each of the other Wake County town agendas in hopes to get passage. One item of interest by Cary was a change in law regarding public record's request; Cary had a request to provide data base, and citizens were upset over their email address disclosures. Attorney Fordham commented on the public record disclosures noting town has data bases with strong similarities and Council may want to consider this to protect customer information. Consensus of Council was to place exclusion of email distribution lists or email data base from being disclosed as a public record third on the list. Council Member Jensen wished to consider a tax incentive program where companies would pay people to live closer to work noting various reasons for the incentive; gave example Veridea. Possible tax penalties were discussed if adequate housing could not be purchased, however the item did not receive consensus of Council to be placed on the list. Council Member Olive supports a combined local municipality agenda that may be more affective if all towns are signed on to it.

Action: Council Member Schulze made the motion to retain the first two on the list as stated, and add the third item exclusion of email distribution lists or email data base from being disclosed as a public record. Council Member Jones made the second to the motion. Mayor stated there's still time to consider other goals prior to submittal for the legislative session. Motion carried with a 3-1 vote; Council Member Jensen voted no; Council Member Gossage was absent.

End of New Business

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

No Work Session was scheduled.

ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 8:20 p.m. **Action:** Council Member Jensen made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 2, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the March 16, 2010 meeting.

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

Keith H. Weatherly
Mayor