

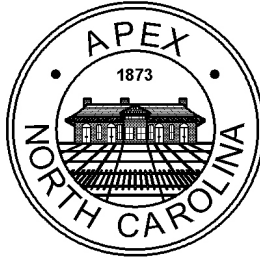
# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for March 16, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 16, 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.

Mayor:  
Keith H. Weatherly



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

Web site: [www.apexnc.org](http://www.apexnc.org)

## COMMENCEMENT

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

## 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. Council Member Schulze asked to consider # 7 separately. Mayor Weatherly asked to allow Shelia Morrison to address Council after the consent agenda approval vs. waiting for public forum. **Action:** Council Member Jones made the motion to amend the consent agenda and approve the request to consider # 7 separately, and to allow Ms. Morrison to speak afterwards. Council Member Gossage made the second to the motion. Motion carried unanimously.

1. Minutes of March 2, 2010 Town Council meeting.
2. Minutes of February 26, 2010 Town Council Retreat.
3. Minutes of Adaptive Reuse Advisory Committee meetings: January 26, February 9 and 23, 2010.
4. Approve minor changes to existing rental and use policies related to Apex Community Center and Halle Cultural Arts Center.
5. Authorize Manager to execute General Release Agreement for stormwater maintenance Bond No. 5022190 Portrait Homes, Old Mill Village, LLC. South Wake Bond.
6. Approve Apex Personnel Policy language: Section 7 Acceptance or Granting of Gifts and Favors.
7. Award Contract: Economic Development web design to Liaison Design Group: \$8,000.00 (separate consideration).
8. Award construction contract for Beaver Creek Greenway Phase 1C to Raleigh Paving and Grading for a price not to exceed \$ 104,011.49; bid opening March 11, 2010.
9. Wake County Board of Commissioners tax report for Town of Apex approved and accepted in their regular session March 1, 2010.



**Consent Item # 7 - Award contract for Economic Development web design to Liaison Design Group in the amount of \$8,000.00.** Council Member Schulze asked for assurance, the web design would match the town's web design and would use the same web technology. Manager Radford gave his assurance. Council Member Olive asked for more clarity to the design and expected to see more prior to approval of the contract award; had viewed the proposal and thought it open ended and could adjust content as they go, staying within the price. Manager Radford noted detailed discussion by the economic development committee during their last meeting with the recommendation regarding same, and their discussion of certified sites at their next meeting. Council Member Jensen, Chair of the Economic Development Committee voiced there was detailed discussion regarding the web design and Jeff Denny, Liaison Design Group came highly recommended by Electricities and Wake County. Council Member Jones felt another workshop to look at the web design would be of value. Manager Radford assured staff would be involved with any website design and its maintenance. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to award the contract for Economic Development web design to Liaison Design Group in the amount of \$8,000.00. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Consent Agenda**

**Public Forum: (moved ahead of the public hearings)**

Shelia Morrison, New Hill resident spoke in support of the selection and permitting of Site 14 for construction of the Waste Water Treatment Facility, encouraging Council to move forward without hesitation. She represented residents on the church road closest to the proposed site; noted family members own significant amounts of land adjacent to this and in the area; noted need for sewer to these residents, currently using sand filter and drip systems. History of the area detailed: generations of family land; past history of minority business owners that once thrived and are now gone. Noted water/sewer needs of an existing rest home; would not only allow the African-American community to survive but thrive, allowing properties to be self serving and benefit for the entire community; noted sites in this area do not meet the perk test and does not allow for new construction. Council Member Jensen offered alternative Site 30 and other named sites that had been looked at. Ms. Morrison noted the land perks at Site 30 location and water/sewer would not benefit those that live near that site. Noted town owns Site 14; noted Site 30 property is owned by Progress Energy and has no access and would have to either be purchased or condemned to get the property; and to choose another site, would start the process again. She gave clarity: the community had been noted as "a poor black community" and noted this was not so, expanding on the background of the community and its residents, She and others who live there have no problem with the benefit of water/sewer; there has been community involvement in the entire process, having met at her residence, and they remain in support of Site 14 as water/sewer would allow New Hill to survive and without it would not exist

**End of Public Forum**



## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

Presenter: Brendie Vega, Principal Planner

### **Public Hearing # 01 – Conditional Zoning Case #10CZ02**

Review: Planning Board met March 8, 2010 and unanimously recommends approval with conditions offered by applicant and recommended by staff; staff recommends approval with conditions noted by applicant.

Public Hearing and possible motion for Conditional Zoning 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.

Staff presented the planning report which is incorporated as a part of the minutes. Applicant is currently under Trinity PUD which requires shared infrastructure for entire PUD. When Veridea was assembled for rezone request, this parcel was left out and not developable under the Trinity PUD if the remainder properties of the Trinity PUD are rezoned. Permitted uses were noted. Restrictions and Conditions are proposed by the applicant. Rezone request is consistent with the Town's UDO and 2025 Land Use Plan. Planning Board met recommends approval; staff recommends approval with conditions offered by applicant.

Public hearing was opened at 7:32 p.m.

Jason Bertoncino, Withers and Ravenel representing Aquiline spoke in support of the rezone request, as they are unable to develop under current regulations as it reverted back to Planned Commercial zoning with added conditions placed on the property.

No one spoke in opposition. Public hearing was closed at 7:35 p.m. Matter referred to Council.

**Action:** Council Member Schulze made the motion to approve conditional zoning #10CZ02 with conditions offered by applicant. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Presenter: Brendie Vega, Principal Planner

### **Public Hearing # 02 – Conditional Zoning Case #10CZ04**

Review: Planning Board met March 8 and recommended denial of the proposed rezone with a vote of 4-3; denial related to poor access and circulation that would negatively impact adjacent properties; staff recommends approval with conditions noted by applicant.

Public Hearing and possible motion for Conditional Zoning Case #10CZ04 Lowes Food Stores, Inc.; to rezone from Neighborhood Business to Planned Commercial Conditional Zoning, .656 acres, located at 5400 Apex Peakway within the Olive Chapel Village Shopping Center.

Staff presented the planning report which is incorporated as a part of the minutes. Applicant requests rezone of a portion of Olive Chapel Village shopping center to accommodate a subdivision for a fuel center for Lowes Foods. Proposed permitted use: Gas and Fuel, Retail (proposed fuel center with multiple fuel dispensers, underground storage tanks and kiosk building). Architecture will be compatible with shopping center. Rezone is consistent with 2025 Land Use Plan. Staff recommends approval with conditions.



Planning Board first denied the proposed as it didn't meet the UDO; new request was submitted. Planning Board voted 4-3 for denial based on legislative considerations 7, 8 & 9, page 3 of the planning report; poor access and circulation would not be safe and would negatively impact adjacent properties. A new layout of the conceptual site plan was shown however not considered with the rezone request. Staff recommends approval with conditions noted by applicant. Discussion evolved around: access from Peakway which is not allowed; loss of shopping center parking spaces; utilization of existing access points with no new access points proposed; circulation within shopping center. Legal opinion offered relative to the site layout was that if it were not a part of the zoning request, should give consideration to specific use of the property, or all potential uses if it meets legislative criteria. Staff advised it was specific gas only.

Public hearing was opened at 7:45 p.m.

Lowes Foods representative from Winston Salem spoke in support of the request for the new fuel center at the selected site; careful not to damage customer relations, while offering single shop experiences. Fuel center is not a convenient store but kiosk. Community meetings were held with no opposition; all tenants in the shopping center support the proposed plan; truck path navigation plan shows trucks will have adequate circulation for fueling; fuel center will also have vapor recycling; hours of operation 6 a.m. to 12 midnight with fuel delivery any time requested. Questions evolved around reconfiguration of parking sites for safety (noted traffic patterns safe); loss of parking spots; potential to move employee parking further out for safety.

Lowes Foods store manager of Apex spoke in support of the request; had not heard any negative comments; customers like the idea of one stop shopping; noted semi-trucks use the entrance behind the stores exiting to the front and onto the Peakway seven days a week. Fuel center would benefit customers, and offer fuel savings.

Tom Wallace, Property Manager, reported all shopping center tenants are in favor of the fuel center as it would help with stability, brings new customers on site; there will be interior design signage; he is a resident of Gastonia and uses Lowes fuel center; fuel center offers competitive prices. Noted drive easements have been acquired by outer parcels and must remain open.

Council Member Jensen asked if there were plans to have hybrid plug-ins at this location. Lowes representative responded if market demands; do envision alternative fuels.

No one spoke in opposition; public hearing closed at 8:00 p.m.; matter was referred to Council.

**Action:** Council Member Gossage made the motion to approve conditional zoning #10CZ04 with conditions noted by applicant. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02



**Note: Public Hearings # 03-A, # 03-B and # 03-C are proposed amendments to the Unified Development Ordinance separate consideration will be given to each section.**

Presenter: Lauren Simmons, Planner

**Public Hearing # 03-A – UDO Amendments: Adaptive Reuse**

Review: Adaptive Reuse Advisory Committee during various meetings formulated a recommendation to amend various sections of the UDO regarding Adaptive Reuse; Planning Board met March 8, 2010 and unanimously recommend approval of the proposed amendments as presented; staff recommends approval; certified public notice attached.

Public Hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance, Adaptive Reuse and recommended by the Adaptive Reuse Advisory Committee.

Staff reported the Adaptive Reuse Committee had met to discuss the Town's adaptive reuse ordinance and recommends application of the proposed amendments to residential structures being converted to businesses in the Apex National Register Historic District. Staff reviewed the proposed and noted landscape, lighting, and signage requirements were discussed. Committee further discussed whether or not noncontributing structures within the National Register District should be included since some of them might be contributing if a revision of the survey was done today; however determined standards should only apply to contributing structures; recommends funds be budgeted for expansion/resurvey of the Apex National Register Historic District because the area was first surveyed 15 or more years ago and many of the noncontributing structures would now be potential contributing structures if surveyed today under the 50 year rule that the NC State Historic Preservation Office uses to classify most historic structures. Estimate: \$8000. Planning Board unanimously recommends approval of the amendments. Staff recommends approval. Questions were asked and clarity given to interior renovations conforming to the Secretary of Interior Standards for rehabilitation and the NC Rehabilitation Code with staff noting major renovations are discouraged and minor renovations are encouraged; does allow for some flexibility to accommodate interior needs. Staff noted Capital Area Preservation is third party when considering renovations.

Public hearing was opened at 8:15 p.m.

Don Grimes, Committee Member, expressed appreciation to all involved and spoke in support of the proposed. Noted Planning Board were unanimous in their decision for approval; only applies to homes contributing in the historic district; only applies if a residence changes to business; greatest potential render ineligible to be on the national register; standards applied are practical and reasonable, economically and financially. Urge Council to take the next measure to protect existing structures in the historic district, protecting neighbors that have not converted their properties to commercial uses; recommended approval.

No one spoke in opposition; public hearing was closed at 8:20 p.m. Council Member Jensen was pleased with the process and looks forward to the first use of the proposed and made the following motion.

**Action:** Council Member Jensen recommended approval of the proposed amendments and the funds to resurvey. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 03-A**



Presenter: Michael Deaton, Environmental Programs

**Public Hearing # 03-B – UDO Amendments: Watershed Protection Overlay Districts**

Review: Public Works Environmental Programs recommends amendments to the UDO regarding Watershed Protection Overlay Districts; Planning Board met March 8, 2010 and unanimously recommends approval; staff recommends approval; certified public notice attached.

Public Hearing for various amendments to the Unified Development Ordinance recommended by the Environmental Programs and related to Watershed Protection Overlay Districts.

Staff presented proposed amendments to the Watershed Protection Overlay Districts to allow for compliance with State and Local legislation governing watersheds (Jordan Lake buffer rules); Town has been delegated authority to oversee the rules; clarity was given to the mechanisms for variances; alternative variance procedure was added for development outside state jurisdiction; and design flexibility was included that will result in no net loss of water quality benefit from buffer impacts. Model ordinance will be presented to the state for review. Planning Board and staff recommends approval of proposed UDO amendments. Questions were answered regarding the grandfather provisions; changes of use and applied buffer rules. Staff recommends additional language in Section 6.1.6.A General. Low Density Development Option: Technical Review Committee or Town Council, with legal offering, additional language: as applicable.

Public hearing opened at 8:30 p.m. No one spoke to the amendments. Public hearing was closed and matter referred to Council.

**Action:** Council Member Jensen recommended approval of the proposed amendments with the additional language as stated. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 03-B**

Presenter: Brendie Vega, Principal Planner

**Public Hearing # 03-C – UDO Amendments**

Review: Planning Board met March 8, 2010 and unanimously recommends approval; staff recommends various amendments to the UDO; certified public notice attached.

Public Hearing for various amendments to the Unified Development Ordinance recommended by the Planning Department.

Staff presented amendments: Section 7.5 Required improvements to amend phasing of required non-residential improvements; Section 4.4.4(C) Supplemental standards, entertainment outdoor to accommodate standards for athletic fields. Planning Board recommends approval; staff recommends approval.

Public hearing was opened at 8:40 p.m. No one addressed the proposed amendments. Public hearing was closed and matter referred to Council.

**Action:** Council Member Gossage made the motion to approve the proposed amendments. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearing #03-C**

**End of Public Hearings**



## OLD BUSINESS

**Presenter: Mayor Keith Weatherly**  
**Old Business # 01 – 2010 Legislative Agenda**

**Review:** Council at their March 2, 2010 meeting began preparation of a list of Legislative Agenda items to be considered by the NC General Assembly during their short session; additional items will be considered by Council to add to the list.

Consideration of the Town of Apex Legislative Agenda for the short session of the North Carolina General Assembly; possible motion to add additional item(s).

Manager Radford offered for Council's consideration an additional item for the proposed legislative agenda that would oppose the transfer of state roads from state maintenance to municipal maintenance; noted the NC League of Municipalities efforts and the Mayor's Coalition in last session that had blocked these efforts by the State.

Mayor Weatherly presented a collective legislative agenda from the Wake County Mayor's urging support from all towns. After a brief review and short discussion of those items, Council choose to leave the legislative agenda open to discuss any further potential legislation they would desire the General Assembly to consider during their short session.

**End of Old Business #01**

**Presenter: Town Manager Bruce Radford**  
**Old Business # 02 – Set Date for Council Work Session**

Possible motion to set date for a Council Work Session to discuss the proposed Veridea project.

**Action:** Council Member Schulze made the motion to set a Worksession of the Council to discuss Veridea project, Wednesday, April 7, 6:30 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

**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.*

*Public Forum was opened earlier in the meeting.*

*No one else addressed Council.*

## NEW BUSINESS

There were no New Business items to be considered.

## WORK SESSION

No Work Session of the Council was scheduled.



### CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 9:00 p.m. to discuss eminent domain matters and receive legal advice on them. **Action:** Council Member Jones made the motion to move into Closed Session. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Schulze made the motion to move from Closed Session back into Regular Session at 9:20 p.m. Council Member Olive made the second to the motion. Motion carried unanimously.

### ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 9:22 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 16, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the April 6, 2010 meeting.

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

Keith H. Weatherly  
Mayor