

# TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for April 6, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 6, 2010, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

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 Schulze 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.**

**Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of March 16, 2010 Town Council meeting.
2. Minutes of March 16, 2010 Town Council Closed Session (separate cover).
3. Minutes of March 02, 2010 Economic Development Committee meeting.
4. Minutes of March 19, 2010 Economic Development Committee meeting.
5. Minutes of March 25, 2010 Ethics Training Webinar.
6. **Resolution No. 10-0406- 06** Declaring Apex Town Council's Intent to Annex Town-Owned Property; Annexation #449: 0.525 acres: (Apex Peakway public right-of-way), located off Tingen Road; Public Hearing April 20, 2010.
7. List of official depositories for Town of Apex required by North Carolina law.
8. Release letter of credit for Time Warner Cable.
9. Budget Ordinance Amendment No. 7 and Capital Project Ordinance Amendment to fund continued design work at regional wastewater treatment plant and extension of Evening Star Drive.
10. Contract with Joyce and Company to perform audit for fiscal year ending June 30, 2010: \$47,200.
11. Statement of Apex Town Council and Ordinance for Rezone #10CZ02 Aquiline Apex, petitioner, for property located at 1528 E. Williams Street.
12. Statement of Apex Town Council and Ordinance for Rezone #10CZ04, Lowe's Food Stores, petitioner, for property located at 5400 Apex Peakway.



13. Set public hearing April 20, 2010: Estates at Bella Casa Rezone #10CZ03; 11.096 acres for the property located at 2650 Evans Road.
14. Set public hearing April 20, 2010: Land Use Plan amendment and Rezone #10CZ05; 0.275 acres located at 924 Center Street.
15. Set public hearing April 20, 2010 for various amendments to the Unified Development Ordinance.
16. **Ordinance No. 10-0406-04** Amend Chapter 4 Section 4.2 of Apex Town Code concerning animals (clarification).
17. Authorize Town Manager to execute General Release Agreement for Infrastructure Maintenance Bond (No. 5022191); Portrait Homes, Old Mill Village, LLC.
18. **Resolution No. 10-0406-07** accepting the offer of dedication of public right-of-way for the extension of Evening Star Drive to Kelly Road and the widening of Kelly Road as well as certain easements all near Creekside Commons.

End of Consent Agenda

## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

There were no scheduled Public Hearings.

## OLD BUSINESS

Presenter: Mayor Keith Weatherly

**Old Business # 01 - 2010 Legislative Agenda**

Review: Council on March 2, 2010 began preparation of a Legislative agenda to be considered by NC General Assembly during their short session; additional items were considered on March 16, 2010; Council will consider any additional items.

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).

Mayor Weatherly presented for consideration and approval, the 2010 Town of Apex Legislative Agenda, items 1-4. Council Member Jensen presented two items giving explanation for each however, he chose to pull them (attached). Mayor Weatherly presented the Wake County Mayor's collective list, with the Association having asked the endorsement by all local governing boards. Council voted on each item separately with minimal discussion of each item.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda. Council Member Schulze made the second to the motion. Vote was 4 in favor and 1 opposed. Council Member Jensen voted no. Motion carried unanimously.

1. The Apex Town Council will seek 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.



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Old Business # 01 continued**

**Action:** Council Member Schulze made the motion to approve this item for inclusion in the legislative agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

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.

**Action:** Council Member Gossage made the motion to approve this item for inclusion in the legislative agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

3. The Apex Town Council will seek legislation that would exclude email distribution lists or email data base from being disclosed as a public record.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

4. The Apex Town Council will seek legislation that would oppose the transfer of state roads from state maintenance to municipal maintenance.

**Action:** Council Member Olive made the motion to approve this item for inclusion in the legislative agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

5. The Apex Town Council will seek legislation to keep local revenues intact through the upcoming budget session.

**Apex doesn't force annexation; there was no motion:**

6. The Apex Town Council will seek legislation to retain municipal authority for annexation by supporting the League of Municipalities position.

**Action:** Council Member Jensen made the motion to approve this item for inclusion in the legislative agenda, Council Member Jones made the second to the motion. Vote on the motion was 4 in favor and 1 opposed. Council Member Gossage voted no. Motion carried unanimously.

7. The Apex Town Council will seek legislation to allow municipalities to reduce time frame from 1 year to 6 months for minimum housing enforcement; this pertains to structures.

**Action:** Council Member Schulze made the motion to approve this item for inclusion in the legislative agenda, Council Member Jensen made the second to the motion. Vote on the motion was 4 in favor and 1 opposed. Council Member Gossage voted no. Motion carried unanimously.

8. The Apex Town Council will seek legislation to give municipalities authority to use debt to pay down past retirement obligations.



**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda, Council Member Gossage made the second to the motion. Motion carried unanimously.

9. The Apex Town Council will support legislation to give all municipalities authority to use electronic notice of official meetings; Apex currently has this legislative authority.

**Action:** Council Member Jones made the motion to approve this item for inclusion in the legislative agenda, Council Member Olive made the second to the motion. Motion carried unanimously.

10. The Apex Town Council will seek legislation to allow municipalities to use the design-build concept for public capital projects.

Legislative agenda will be sent to Senator Stevens Co-Chairman of the Wake Delegation.

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.**

Stuart Jones, Jones and Cnossen Engineers, 221 N. Salem Street addressed Council in regards to the downtown: 1) opportunity for Town to acquire 1/4 acre of space in the downtown; did not get a response from his earlier proposal and could be used for additional open space or a park (restroom and perhaps a skate park); 2) Meckes Building has had vandalism (kids); asked police for more street patrol. Manager Radford will discuss with Police Chief Lewis, suggestion for more street patrol.

End of Public Forum

## NEW BUSINESS

Presenter: Manager Bruce Radford

### **New Business # 01 – Wake County Board of Elections**

Discussion and possible motion regarding Wake County Board of Election's request to use the Apex Community Center for 2010 Election Early Voting space.

Council gave consideration to Wake County Board of Elections request to use Apex Community Center Summit and Pinnacle Rooms to accommodate early voting in November 2010 Election, dates specified were October 11 – November 4, 2010, 24 hours per day on these dates; space requirements have increased significantly since last early voting at Apex Community Center; game room provided last election does not provide adequate space as WCBOE expects a high turnout this fall. Use of the facility would entail shutting down rooms for security reasons and scheduled activities would be cancelled or shortened and would impact approximately 500 people, majority being Apex residents and would impact the generated revenue, an estimated \$20,000 if programs are cancelled.



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New Business continued**

Cheri Poucher, Wake County Board of Elections, explained space needs and provided a handout outlining necessary requirements for an early voting space in Apex and needs for so much space, also, due to changes in law require additional staff, each with specific responsibilities to run the elections efficiently, noting WCBOE capability to determine the amount of staff and equipment necessary to assist voters and process votes; (Council and staff asked questions and made comments, directed towards the specific needs of computers, equipment, 30 staff members, number of voting booths, and possibility to either use alternative site, or scale back needs and use the game room for an early voting space). Poucher gave explanation to all needs and noted WCBOE was turned down by Apex in 2008 with over 16,000 plus voters having to go to Cary mall to vote, and would not be used for the 2010 election; noted with the 31,193 voters, 16,282 voters came to vote in Cary and lived in the Apex area (Apex zip codes); noted voter turnout in past general elections and WCBOE's inability to split the largest precincts in the county, noted Precinct 20-02 as one of the largest; WCBOE looks at precincts as a whole of Wake County voters with Precinct 20-02 having 8,142 voters and imperative to have an early voting place in Apex to ease congestion of high voter turnout (highest growth area) at these polling places (staff noted: the folks living in this precinct live outside Apex corporate limits and do not pay taxes to Apex); Poucher noted Apex has been the only municipality to turn WCBOE down, having requested the use of the Community Center, and noted the reason not to use alternate space was because of increased costs (staff noted: Apex offered an alternative site and would pay the rent, however WCBOE turned the alternate space down); Poucher noted they do not compensate municipalities for use of the facilities and were looking for use of community centers only and looking at square footage of the rooms to handle larger volume voters, due to continuity of sites and must plan ahead for November.

Mayor Weatherly turned to the Town's Attorney asking Council move into Closed Session at 7:45 p.m. to elaborate on what the law says in this regard. **Action:** Council Member Gossage made the motion to move into Closed Session. Council Member Jones made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 7:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Poucher stated WCBOE request was hard and fast and not room for negotiation, having to plan ahead for May and November 2010 elections; WCBOE is trying to find space that is publicly financed due to economic conditions are looking at community centers.

Mayor Weatherly wanted the record to reflect Apex has worked with WCBOE for early voting sites to serve Apex citizens which they expect; game room was deemed not sufficient in the presidential election, noting the Town had provided additional electrical connections and made space in the game room to accommodate WCBOE in a prior election; Apex worked to find alternative site and WCBOE deemed it inappropriate. Council agreed the community center was used to its fullest, and understood the position of WCBOE as it was an appropriate space to use, however would place a hardship on the Town, and chose to research options, having searched alternative space in the past, expressed willingness to continue to work with WCBOE to find an alternative space as it would inconvenience and disrupt tax payer citizens from using the community center, with some booked far in advance and in Council's opinion was asking way too much to ask the citizens of Apex to give this space up for such an extended period, and clearly would bring a financial hardship on the Town and burden its citizens. Recognizing the economic conditions and WCBOE's purpose to serve all of Wake County, Mayor Weatherly recommended Council send notice to the WCBOE that Apex would not approve their request, but express willingness to work to find an alternative space. Poucher would take the decision back to the WCBOE and go from there.

**Action:** Council Member Gossage made the motion to not approve the use of the three rooms at the Community Center knowing Council would have a period of time to work with WCBOE and see if they could find a suitable alternate location, with Mayor Weatherly asking if he would add to the motion, to direct staff to draft a letter to WCBOE, with Council's intent to work in good faith to do so; with Council Member Gossage adding that is exactly correct. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of New Business # 01**



**New Business # 02 – Appointments to Midtown 55 Advisory Committee**

Mayor Weatherly recommended for Council's consideration, appointments to the Midtown 55 Advisory Committee and ask for a volunteer from Council to serve on the Committee. Council Member Gossage volunteered to fill the Council volunteer position.

**Action:** Council Member Jones made the motion to approve the appointments to the Midtown 55 Advisory Committee, with Council Member Gossage serving in the volunteer position on the Committee. Council Member Olive made the second to the motion. Motion carried unanimously.

End of New Business

**CLOSED SESSION**

There were no Closed Session items to be discussed.

**WORK SESSION**

No Work Session was scheduled at this meeting.

Mayor Weatherly announced a joint Worksession of the Town Council and Planning Board to discuss proposed Veridea project would be held Wednesday, April 7, 2010 at 6:30 p.m., third floor training center of the Apex Town Hall.

**ADJOURNMENT**

Mayor Weatherly called for a motion to adjourn at 8:40 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the April 6, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the April 20, 2010 meeting.

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

Keith H. Weatherly  
Mayor