

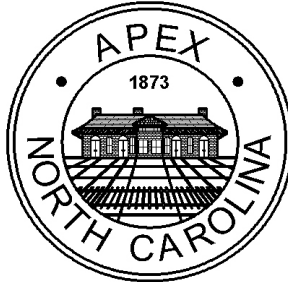
TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for April 20, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 20, 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



Web site: www.apexnc.org

Council Members:
Bryan Gossage,
Mayor pro tempore
Bill Jensen
Mike Jones
Lance Olive
Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, 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; with no amendments to be made to the consent agenda, the following action was taken: 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 April 6, 2010 Town Council meeting.
2. Minutes of April 6, 2010 Town Council Closed Session (separate cover).
3. Minutes of April 7, 2010 Town Council and Planning Board Worksession Veridea Project.
4. Annexation Petition # 450: LHP Development, LLC. owner/petitioner; Petitioning to annex 11.096 acres into the Town's corporate limits and located at 2650 Evans Road;
1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and
3) Resolution Setting Date of Public Hearing for May 4, 2010.
5. Budget Ordinance Amendment No. 8: Collection of surety bond, stormwater improvements Old Mill Village.
6. Accept settlement offer from Selective Insurance Company of America in the amount of \$27,500 to correct storm drain alignment in Waterford East Subdivision and authorize Town Manager to execute attached Final Release and Assignment.
7. Order to close several streets in Scott's Mills, The Green and Magnolia communities for approximately 1.5 hours on Saturday, May 15, 2010 beginning at 7:30 a.m. to accommodate the 3rd. Annual St. Mary Magdalene Monarchs in Motion 5K Race/Walk.
8. Wake County Tax Report approved and accepted by the Wake County Board of Commissioners in their regular session of April 5, 2010.

End of Consent Agenda



REGULAR MEETING AGENDA

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

PUBLIC HEARINGS

Presenter: Principal Planner Brendie Vega

Public Hearing # 01 – Major Site Plan: Providence Green

Review: Planning Board held their public hearing April 12, 2010 and with the public hearing closed, voted 7-1 to continue consideration of major site plan for Providence Green to the May 10, 2010 Planning Board meeting; staff will ask Council to continue this hearing to Council meeting of May 18, 2010; no staff report is prepared; Public Notice:

http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB50958A-BA91-3EFF-DB9A85C30A2A7A1A.pdf

Quasi-Judicial Public Hearing regarding major site plan for Providence Green, Scotts Woods, LLC, applicant, proposes 81,275 square foot building containing 72 multi-family residential units for the property located at 1400 Providence Green Lane containing 153 acres.

Staff recommended the Quasi-Judicial Public Hearing and Major Site Plan for Providence Green be continued to the May 18, 2010 Council Meeting; Planning Board continued same to their May 10, 2010 meeting to allow time to revisit the site. Planning Board requests Town Attorney attend their May 10, 2010 meeting to answer questions regarding vested rights. Note by Clerk: (Persons who address the Planning Board and Town Council during the quasi-judicial public hearing must be administered an oath to state true facts only, and relevant to the major site plan). Mayor Weatherly referred the matter to Council.

Action: Council Member Jensen made the motion to continue the Quasi-Judicial Public Hearing and Major Site Plan for Providence Green to the Council meeting of May 18, 2010. Council Member Jones made the second to the motion. Motion carried unanimously.

Quasi-Judicial Public Hearing # 01 continued to May 18, 2010 Council Meeting

Presenter: Senior Planner June Cowles

Public Hearing # 02 – Conditional Zoning Case #10CZ03: Estates of Bella Casa Master Subdivision Plan

Review: Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval with conditions noted by applicant. Public Notice:

http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB4F4F5E-A6FA-C819-6F16C13FF9247CBD.pdf

Public Hearing and possible motion regarding Estates at Bella Casa Master Subdivision Plan and Rezone #10CZ03; rezone from Rural Residential district to Medium Density Conditional Zoning district; property located at 2650 Evans Road containing 11.096 acres.

Staff presented the Planning report which is incorporated as a part of the minutes; oriented to the site and noted current zoning, requested zoning and adjacent zoning and land uses. Applicant proposes rezone and master subdivision plan for 23 single family lots and one storm water pond. Applicant proposes to permit all allowable uses in the medium density residential district except: nursing or convalescent facility, church, communication tower, camouflage stealth, and recycling collection station. Applicant proposes the following conditions:

1. The property will not provide direct public street access to the Town of Apex property.
2. The property will provide at least two means of public street access
3. The maximum density for the development is 3.0 units per acre.
4. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding.
5. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles.
6. Covered porches are required on the front façade of each single family residential structure facing the public right-of-way.
7. All residential units shall require a crawl space or a minimum of two (2) steps or 14 inches to the front door.
8. Front-loaded garages shall recess 12 inches from the front face/façade of the house.



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Public Hearing # 02 continued**

2025 Land Use Plan identifies site as Medium Density Residential; rezone is consistent. Adverse impacts on neighboring properties: increased traffic, light, and noise; impacts will be mitigated by road improvements, utility and infrastructure improvements, conservation and provision of buffers and natural areas, and current lighting standards of the UDO. Applicant conducted a neighborhood meeting February 24, 2010; as reported, no one attended. Resource Conservation Area is not required for the subdivision as density is less than 2.0 units per acre. Collector streets have a 10 foot wide Type D buffer included in the subdivision plan. Parks, Recreation, and Cultural Resources Advisory Commission reviewed Estates at Bella Sera and recommended payment of fees- in-lieu. Proposed subdivision includes one stub road to the west and two roads connecting to existing roads to the east and south. Subdivision Plan is consistent with Apex Transportation Plan that includes collector streets. Applicant is providing a 10 foot wide multi-use sidewalk along Evans Road. Proposed Estates at Bella Sera Subdivision Plan is compliant with standards provided in the UDO. Planning Board reviewed and unanimously approved Estates at Bella Casa rezone and master subdivision plan April 12, 2010. Staff recommends approval with the conditions noted by applicant.

Public hearing opened at 7:12 p.m. Stuart Jones, Jones and Clossen Engineering, PLLC spoke in support of the request; the property will not provide direct public street access to Town of Apex property, however a 10 foot wide multi-use sidewalk along Evans Road will be provided. Proposed Estates of Bella Casa will share recreation facilities, name, lot styles, building types of existing Bella Casa; one-half acre estate lots back to town's park property and consistent with the Land Use Plan; medium density development allows flexibility with market conditions (almost low density development). No one spoke in opposition and the public hearing closed at 7:16 p.m. Director of Planning stated the plan is consistent with the Town's plans: Town has no plans for direct access from this property to the Town Park, and agrees with the provision for the 10 foot wide multi-use sidewalk along Evans Road. Public hearing closed at 7:16 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve Rezoning #10CZ03 and Estates at Bella Casa Master Subdivision Plan as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing #02

Presenter: Senior Planner June Cowles

Public Hearing # 03 – Conditional Zoning Case #10CZ05 and Land Use Plan Amendment

Review: Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval with conditions noted by applicant. **Public Notice:**

http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-AB4FC54A-C284-7449-F032B2CC36BFC78E.pdf

Public Hearing and possible motion regarding Land Use Plan Amendment and Rezone #10CZ05; to amend the current 2025 Land Use Classification from High and Medium Density Residential to Office Employment, and rezone from Residential Agricultural district to Office & Institutional Conditional Zoning district, property located at 924 Center Street containing 0.275 acres.

Staff presented the Planning report which is incorporated as a part of the minutes; oriented to the site and noted current zoning, requested zoning and adjacent zoning and land uses. Applicant requests a Land Use Plan amendment from Medium and High Density Residential to Office Employment and a rezone of 0.275 acres from Residential Agricultural (RA) to Office and Institutional Conditional Zoning (O&I-CZ). The objective of the Land Use amendment and rezone is to rezone the property from residential to office use as the existing building has been remodeled and offered for rent to residential customers but has not been rented. Adjacent industrial site, increased traffic volumes along Center Street and physical proximity to Center Street inhibits the site to be utilized as a residential site. Due to the adjacent industrial site, applicant believes site could be attractive as an office location.



**Apex Town Council
Meeting Minutes for April 20, 2010
Public Hearing # 03 continued**

The applicant has proposed to permit the following uses in the Office and Institutional – Conditional Zoning to be allowed:

1. Office, Business or Professional
2. Medical Office
3. Real Estate Sales Office
4. Studio for Art

Applicant conducted a neighborhood meeting March 23, 2010; one neighbor asked questions in regard to traffic and parking. Planning Board met April 12, 2010 and reviewed and unanimously approved the rezone and Land Use Plan amendment. Staff recommends approval with conditions noted by applicant.

Public hearing opened at 7:20 p.m. Stuart Jones, Jones and Clossen Engineering, PLLC spoke in support of the request; noted residential renovation included residential parking; approved rezone will require parking change to include turn-around; noted minimal traffic with the 800 s.f. space, and has an interested party; neighbor across the street had no issues with the proposed. No one spoke in opposition. The public hearing was closed at 7:20 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve Rezone #10CZ05 and Land Use Plan Amendment as presented with conditions stated. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #03

Presenter: Principal Planner Brendie Vega

Public Hearing # 04 – UDO Amendments (Various Sections)

Review: Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval. Public Notice: http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf

Public Hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance: Sec. 7.3 Park, Recreation and Open Space Sites; Sec. 7.5 Required Improvements; Sec. 2.3.4 Planned Development Districts to amend Phasing of PD Plans; Sec. 8.7 Signs to add Home Occupation signs.

Staff presented the Planning report regarding various amendments to the Unified Development Ordinance which is incorporated as a part of the minutes. Amendment to Section 7.3.4, 7.5.9, and 7.5.16 add Performance Guarantees to Parks, Recreation, and Open Space Sites; Section 7.5.14 Defects Guarantee did not go to the Planning Board, adds greenways; Section 2.3.4 Planned Development Districts clarifies phasing of development; Section 8.7 permits signs for Home Occupations (home occupations are permitted in all residential districts). Planning Board met April 12, 2010 and unanimously recommended approval of the proposed Unified Development Ordinance amendments. Staff recommends approval of the UDO Amendments.

Public hearing opened at 7:29 p.m. No one addressed the proposed amendments. Public hearing closed at 7:29 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to approve Unified Development Ordinance amendments to various sections. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #04



Presenter: Principal Planner Brendie Vega

Public Hearing # 05 - UDO Amendments: Electronic Gaming Operations

Review: Planning Board met April 12, 2010; Vote: Unanimous approval. Staff recommends approval. Public Notice: http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-CE1D4DCC-E24C-1EB8-1B81ADA1DD64EEA2.pdf

Public Hearing and possible motion regarding amendments to the Unified Development Ordinance for Electronic Gaming Operations (also referred to as internet cafes, internet sweepstakes, business centers, electronic gaming machines/operations, video sweepstakes and cybercafés, or by whatever other terminology such establishment might be known).

Staff presented the Planning report which is incorporated as a part of the minutes. Amendment to Section 4.2.2 Use Table adds Electronic Gaming Operations, Light Industrial, Adult Use; new Section 4.3.5(A)(3) Use Classifications: Electronic Gaming Operations defines Commercial Use type; new Section 4.4.5(A)(3) Supplemental Standards; Electronic Gaming Operations provides required supplemental standards (falls under a variety of names as an adult use in the Light Industrial District. Note: owner has option to lease space or not, requires a special use permit and allows town ability to revoke if violated; suggested: church be replaced with place of worship.

Director of Planning reported secondary impacts related with internet sweepstakes businesses. Research report: Public Law UNC School of Government Professors Rich Ducker and Christopher McLaughlin: zoning can influence location and how such are installed; some ordinances treat such uses as legal, but less than desirable uses, as secondary impacts have been linked and associated with impacts similar to night clubs and adult establishments and casinos. Report related crime incidences: robbery and kidnapping. Report on activity from a Durham business: witness saw individuals believed to have been consuming alcohol, in/out of establishment to vehicles; next day, sidewalks were cleared of food items, bottles, and cigarettes.

Public hearing opened at 7:40 p.m.

Annette Champion, Attorney, Daughtry, Woodard, Lawrence, and Stallings, Smithfield, N.C. spoke for owners/operators of phone time sweepstakes machines, located in Apex: Sparks, Rudino's and MoJoies, who's machine operations would be prohibited should the ordinance be adopted in its proposed form, and who currently operate by Order for Preliminary Injunction: findings (Exhibit A); allows four machines at any of the locations; in existence for several months. Current Apex moratorium ordinance applies to development of internet sweepstakes cafes, not the case for these businesses; they and their employees rely on income from these machines located in gaming entertainment locations where food is served, have juke boxes, pool tables, and other electronic games. Request: these games pursuant to the injunction be excluded or those games at their current locations be grandfathered in as they were already in operation and relied upon by the businesses and their employees.

Attorney Fordham advised the injunction was preliminary and not a final decision; doesn't relate to the town's zoning ordinance; doesn't describe in detail what the state planned to do; stops enforcement action believed treated as a criminal or illegal activity and not what's before Council; what is before Council is whether or not to adopt the zoning ordinance that would impose location requirements in a specific zoning district in which the activity could occur. The injunction doesn't directly apply to Apex; Apex was not a named party to it; main point, it does not deal with zoning. Attorney Champion responded their point: because of the injunction each operator is only allowed four machines at their location and have that; it does limit them and may prevent some concerns of the Town.

Council Member Gossage asked regardless of the injunction would the proposed ordinance preclude existing businesses to continue operation of their machines. Attorney Fordham responded: the way the ordinance is drafted it would cover them and prevent them from continued operation; advised if the party had a pre-existing vested right to continue and lawfully had undertaken an activity and did it at a time no permit was required, by its terms, the ordinance would apply to them; but if they spent money in reliance on starting a lawful operation then it probably couldn't be applied to them, but thinks it would be a fact by fact determination; doesn't know all facts about how a particular use started; there's some indication from preliminary investigation that the existing examples of this type of use would have required a site plan or some type of



approval so it may not have been, from a zoning standpoint, in lawful operation; the proposed ordinance prohibits all this type activity. He advised when considering whether someone is to be grandfathered: 1) Council could grandfather folks in the ordinance, 2) if the person has an independent legal right to continue something, even if Council chooses not to, occasionally a person has that right. Council Member Gossage asked if that's up for dispute. Attorney Fordham response: this hasn't been fully investigated and doesn't know. Council Member Gossage asked isn't that somewhat the attorney's point? Attorney Fordham response: he didn't hear her say they have a legal right to continue; she asked you to either grandfather them or exclude them. Council Member Gossage meant if they have a legal right to operate in the first place, not to continue. Attorney Fordham responded she didn't address whether they followed all their zoning requirements to start.

Director of Planning Dianne Khin stated no applications were received for any certificates of zoning compliance for machines found throughout town businesses and should have received a zoning compliance certificate. Staff didn't know these businesses had the machines and the businesses didn't know they needed a zoning compliance certificate; they would have stated they would be utilizing a game room and devices, which is the closest terminology in the Town's zoning ordinance. The one establishment that applied was asking permission for 40 machines. Director of Planning stated if Council does wish to grandfather the convenience stores, restaurants and bars that already have them, she would not rely on a vested right, as it would be much more difficult for them to prove; if Council wants to grandfather them, it should be in the ordinance. Council Member Gossage expressed concern they would grandfather something that hasn't already been approved. Khin response: we haven't already approved it. Attorney Fordham response: he didn't know enough about the use in those particular circumstances and what the requirements were to know if they had to apply for some type permission from the Town to start these. Mayor that would be determined, with Khin responding yes, it would be too late if that's what you are going to rely on.

Attorney Fordham advised, if Council's preference is to grandfather, it would be more straight forward to include this in the ordinance; if preference is not to grandfather, then it wouldn't be addressed in the ordinance and would be determined on a case by case basis whether it were a lawful use at the time the ordinance went into effect.

Danny Allen, Allen Amusements, owns phone time machines in Sparks; these type games and sweepstake machines are part of his gaming operation; hasn't had to have an ordinance anywhere he has gone; did not know Apex rules. Sparks is a nice restaurant and he could spend/borrow up to \$30,000 on machines and put them in; sweepstakes machines cost \$3,000 and brings in twice as much money as bowling and golf machines; customers can play long periods of time for \$5 - \$10, order food and buy drinks; an important part of their business; wasn't sure they were talking about his games; has them in four counties and doesn't have problems; thought Town was talking internet café's, which he doesn't run; with injunction, he can only place four sweepstake machines in any given location. Has not had problems in Town as far as drinking, crime, comings/goings; customers go in a nice restaurant and enjoy their time there. Offered any help related to phone time sweepstakes games; was not sure about being told he needed a permit; doesn't get a permit for pool tables, golf, bowling, jute boxes as this is part of his normal games; doesn't see a problem and doesn't think Town has had a problem at any of their locations as far as criminal activity or trash in the streets or parking lots. Council Member Gossage was not saying he should have; question was whether or not something like that should have taken place and doesn't have the answer. Allen would like to keep these games as they are an important part of his business and sure Sparks owner would like to keep them also.

Kyle Stimbrig, Sparks Owner, reported no criminal activity and no street trash; has manager on staff with phone minutes sold through manager and nothing not regulated and a key part of his business; struggles to make ends meet and as far as his partnership with Allen, hopes there's a light at the end of the tunnel; hopes Council makes the right decision on these type games, as his livelihood is on the line; asked Council think about what these people know and have said and keep the games; people eat his food, patronize his business, play games; those people who play his games are professional people and he'd hate to see them go to some other city to play; you can walk 100 feet to the grocery store and play games and the state owns that game; hopes with what's been said, Council can make the right decision best for Apex and asked they leave what the town has, and stop what's wanting to come in; internet cafes is not what he wants; he's nowhere close to one; He doesn't want more games to come to his area, but wants folks to come and play his games and eat his food; at internet cafes they just play games, they don't have food. He likes his patrons.



Action: Council Member Gossage made a motion to go into Closed Session for legal advice from the Town Attorney. Mayor Weatherly stated the public hearing should continue.

Earl Crawford, Owner of Play for Fun, Glenville, N.C., sells telephone time where folks buy to call anywhere in the United States and in all his stores; he promotes their use through sweepstakes programs; four machines allowed per retail location. Joe Curtin Zoning Compliance came into Racing Mart, Salem Street and told those folks to unplug their machines or they would shut them down. Crawford met with Town Attorney and shared Judge's ruling to allow four machines in each retail establishment and also says sweepstakes program is allowed to promote sale of telephone time. He's the small person going against ATT and Verizon phone cards, found in almost any place. Sweepstakes machines do not accept money, tokens or cards, unlike Vegas or Atlantic City, or true casino like Cherokee. A person can walk into a convenient store and buy \$20 in phone time and can walk away and does not have to play the sweepstakes, an added bonus to help sell phone time. Some buy phone time, play machines and win prizes, money, sometimes not winning. His point was their system should not be incorporated within internet cafes with 20, 30, 40 terminals; has to be a retail establishment per the judge's order and only four machines. Convenient Store is an established business with a license, no different than McDonald's sweepstakes program, Coca-Cola sweepstakes promoter where you have to buy Coke, pull the tab off the cup and you may win a hamburger, a coke, or \$1000; or Publisher's Clearing House. Their program for phone time is absolutely no different; it's your choice to play sweepstakes machine or just buy phone time and walk out the door and go use phone time. Asked Council consider separating the sweepstakes program where only 4 machines are allowed from the internet café ordinance.

Public hearing was closed at 7:55 p.m. Mayor Weatherly asked the motion be restated.

Action: Council Member Gossage restated his motion to go into Closed Session at 7:55 p.m. to take legal advice from the Town Attorney. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes are recorded separately. **Action:** Council Member Jones made the motion to move back into Regular Session at 8:25 p.m. Council Member Olive made the second to the motion. Motion carried unanimously. With Council having moved back in regular session, discussion continued.

Council Member Jensen expressed concern with auxiliary use for restaurants; was in favor of the ordinance as written and should allow auxiliary use up to a number of machines and when it doesn't impact anyone in the area. Wanted to alter the proposed ordinance to allow auxiliary use in places of business such as restaurants, up to a certain number, maybe grandfather up to four and allow two in other places that wants to.

Mayor Weatherly in response, was in hopes Council wouldn't amend the ordinance to allow for the proliferation of gaming devices; they were talking about grandfathering those in current existence, if they were lawfully established and would be a finite number; but to allow accessory use, to allow every retail establishment in Town, every convenience store, tanning booth, gas station, to have up to four asking if that was what he was talking about.

Council Member Jensen responded no and would clarify; we have to be careful between a zoning ordinance and legislating morality; his job was to ensure areas around any of these establishments are not affected by the establishments itself. With respect to McDonalds, noted it quite different than this, as you mainly buy food there; gambling in his opinion is an individual's decision, when gambling affects someone around the establishment within the neighborhood, then that's when Council gets involved. He's happy to pass the ordinance as is, but at very least grandfather in machines that are there in the establishments, that are lawfully operating. Example: Sparks, no problems have been noted there. Council Member Schulze agreed with need to be operating lawfully.



Council Member Jones reported he visits Sparks regularly, noted good food and didn't know there were sweepstakes machines and not something they market when you walk in; apparently is important to their operation. He's not seen any behavior or circumstances that would cause him to be alarmed or to be worried about the shopping center. To start, Council were talking about internet cafes, described at the last hearing, as many as 40 machines, a much different situation than an accessory use. He would support grandfathering in the lawfully existing businesses, with limits put in place by the preliminary injunction of four machines, at each address location or each business.

Council Member Jensen asked if we allow this to go beyond those that are being grandfathered in, could it be done by license, limiting up to ten; noted four machines apparently hasn't caused problems; allowing internet café's apparently in other places have caused problems; if we have a number of establishments with two or four machines, in his mind would discourage internet café's because competition is there for folks to get someplace else. He's not against gambling if they wish; asking if the Town could require a license for the machines or limit number of machines in each establishment; state limits lotto machines which Apex doesn't have at every gas station; to not exceed ten locations within the jurisdiction.

Attorney Fordham response: he didn't think you could pick the number of locations, no. If there were secondary impacts from locations that have four of these units as an accessory use, if there are secondary impacts that are negative then you could have disbursement requirements similar to what you have with present ordinance; the present ordinance has a disbursement requirement that would limit the number.

Mayor Weatherly asked if anyone would want to make a motion.

Council Member Olive wanted Council to consider sections of the ordinance separately and felt there was common understanding for the definition; keep language as written including accessory use, because of those set in other cities/towns, business center, and in smaller print sweepstakes, however, they are teaming with people who play sweepstakes, not printing, faxing, not copying, not wanting to be on the side of burden of proof; the primary use is not what's advertised on the outside, but rather what's happening on the inside.

Action: Council Member Olive made the motion to approve Section 1 of the ordinance for gaming operations as written, from the revised version of the ordinance. Mayor Weatherly questioned adoption of sections separately. Attorney Fordham response: it was not unlawful to adopt sections separately; best to discuss each section separately and have them as one ordinance when you make the motion for adoption. Mayor Weatherly thought he wanted to have separate discussion and when comfortable with the entire ordinance, then vote. Council Member Olive response: if it's problematic to have a definition, if the definition were to go in without having a valid use later and is problematic, he doesn't see why that would be a problem to define something, not necessarily meaning you must have a use for it later nor does it. Attorney Fordham response: definition would relate to the impact the definition has on uses, and if you don't have it together you would have a definition that would be separated from its legal significance in terms of regulating behavior or land use. Council Member Jones was not comfortable voting on it separately, a section at a time.

Action: Council Member Olive withdrew his motion. Council Member Jones stated his issue was Council needs to decide on grandfathering of the entire ordinance. Mayor Weatherly suggested a consensus on each section, before moving forward.

Section 1. No concerns were expressed.

Section 2. Council Member Schulze questioned screening from outside; noted Manager Radford visited an establishment where windows were painted black; he didn't want to see that and asked could the ordinance restrict doing that; this really applies to internet cafes.



Section 3(e) Council Member Schulze asked why we care what they see or don't; restaurants have back rooms. Principal Planner Vega response: easy for police security and is an esthetic issue. Mayor Weatherly noted this could be an amendment when a motion is offered on the ordinance. Mayor Weatherly called for a motion, if Council chose to make one. With the absence of a motion, discussion continued. Council Member Schulze was hearing a consensus of Council to allow grandfathering for existing businesses that are in operation today, lawfully; if there's an existing business today, operating that's not lawful, then they are not grandfathered. Attorney Fordham response: there could be a phrase if Council so choose that says, this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use were lawfully in existence at the time of the enactment of this ordinance. Mayor Weatherly clarified it would restrict the number of machines currently in existence. Attorney Fordham response: it would only apply to a machine that was in use at the time you enact it, and lawfully in use.

Action: Council Member Jones moved to adopt the ordinance with the grandfathering clause presented by the Town Attorney, asking he repeat the wording. Attorney Fordham restated: this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use were lawfully in existence at the time of the enactment of this ordinance. Council Member Jones stated that would be his motion.

Council Member Jensen thought it nebulous whether they comply or don't; thinks they should grandfather them in; problem is if they haven't met the letter of the law to run these devices, and it's not affecting anybody; doesn't think they should force a place like Sparks or any of the places that have the machines, only if they are affecting their neighbors, society basically. Mayor Weatherly's response: that's like saying anybody that does anything outside the current ordinance and is not in compliance, and if they are not bothering anybody and nobody complains, we should wink and nod. Council Member Jensen responded your response was correct and withdrew the idea. Council Member Jones expressed concern with zoning compliance, their lawful existence; must assure they are in lawful zoning compliance or seek permission to do otherwise. Mayor Weatherly asked for a second to the motion before continuing discussion.

Action: Council Member Schulze made the second to the motion. Council Member Jensen asked if an establishment has one of these machines, how that fits into the ordinance (game rooms and devices); if this were set aside and they happened to apply for a permit or whatever they have to do for a zoning change, then they would be out of compliance and would be gone if not properly zoned; can they come back - in compliance or made to be in compliance would be what he would like to see in the ordinance. He would like to give these folks opportunity to be in compliance under the rest of the ordinance, if they happen not to be today. He sees people that had no idea they needed to come to get a permit; that is on their shoulders, but this is a situation that is questionable. Attorney Fordham asked Council for a brief closed session.

Action: Council Member Jensen asked for a motion to move into closed session at 8:50 p.m. to receive legal advice from the Town Attorney. Council Member Gossage 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 back into regular session at 9:00 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly stated there was a motion and a second on the floor.

Attorney Fordham restated the wording for the motion: to adopt the revised ordinance with the addition of an additional subsection inserted in place of the language in Section 4 and substitute the following, "This ordinance shall be effective upon enactment on this 20th day of April 2010, except that this ordinance shall not apply to a use that would otherwise be regulated by this ordinance if the use was lawfully in existence at the time of the enactment of this ordinance."

Mayor Weatherly asked if there were any discussion. Council Member Jensen stated new gaming rooms needed to be legal with respect to the ordinance; he thinks what's being done with grandfathering is well taken; he down line would carefully want to see additional units to allow people to do what they want to do, as long as they don't hurt anyone else; he will vote for the ordinance as is; felt these folks need to understand this doesn't solve their problem and they need to get legal with respect to the rest of the ordinance.



Council Member Jones fully anticipates this will not be the last of the discussion that's before them; but Council does need to take some action tonight. Council Member Jensen thinks what's being done with gaming rooms is the correct way; he wants to allow people as many options as can; as we get more people in tighter spaces, freedoms go down; and you don't want to take away any more freedoms than we have too. Council Member Schulze was willing to pass on the concern for the windows as it sounds they will revisit this in discussion of the language for internet cafes, so that doesn't happen.

Action: Council Member Jones asked to amend his motion, under Section 1: 4.3.5 A) 3) to conduct games of chance, as it was a duplication. Mayor Weatherly noted this was a technical amendment, not needing a motion. Council Member Jones withdrew his motion.

Council Member Olive made the following statement: Electronic Forms of sweepstakes are specifically designed to appeal to people who enjoy the thrill of gambling; he does not equate it to the same as tearing off a sticker from a McDonald's cup; they are very different. These electronic forms of gambling are designed to appear to be slot machines or other types of a thrilling type of gambling devices, where you pay your money, you play and hope to get a win, or big payback. Some people may take it or leave it, I understand that; there are people who are enslaved to this, perhaps to the detriment of their own bank accounts, and perhaps their family and their health. He wanted to vote for the definition because he thinks the definition is a good one, but he doesn't see any zoning in Apex where he believes this is a good choice, and he is not in favor of this amendment; this ordinance change.

Council Member Jensen asked clarity on the grandfathering. Council Member Olive was not in favor of any of it; doesn't see any zoning in Apex where he thinks this is a good use. Mayor Weatherly asked what we are allowed to outright prohibit under state law. Attorney Fordham response: he had rather answer that in closed session. Mayor Weatherly asked if there were further discussion. Council Member Gossage added the goal of this ordinance was to prohibit this use or limit this use almost exclusively throughout Apex.

Council Member Olive response: that's right, but in order to do that you add the capability of the special use requirement for light industrial; you could make the argument that light industrial is not a good place for that type of activity; you could talk to people who own space in light industrial areas and they would be perhaps opposed to this being next door to them; and perhaps there might be a zoning where this is appropriate, but he doesn't see where Apex has that type of zoning. He would be in favor of restricting this but doesn't see how to do this without voting against this.

Council Member Jensen understood state law is that you have to allow a place for these gaming rooms to be, and we do have the opportunity to allow.... Council Member Olive interjecting he didn't hear that statement earlier, with Mayor Weatherly adding legal counsel would prefer not to answer this in regular session, but as far as adult establishments, we have a zoning classification in Apex, that would allow for topless bars, because we are prohibited in his recollection when that ordinance was adopted, they were not allowed to outright prohibit them, we had to allow for them in some zoning classification, so they restricted them as much as they could, but we are not allowed... he thinks they would share that if they could outlaw them outright, they would, but were not allowed to do so. Council Member Olive voiced that he understood that.

Mayor Weatherly asked if there were further discussion on the motion. With none, he called for the vote on the motion. 4 voting in favor and 1 voting no; Council Member Olive cast the no vote. Motion carries with the amendment; the ordinance was approved. Motion carried.

End of Public Hearing #05



Presenter: Director of Planning Dianne Khin

Public Hearing # 06 - Annexation Petition # 449

Review: Public hearing notice was posted in subject area; public notice advertised on Town of Apex website; staff recommends approval of annexation and adoption of ordinance to incorporate the 0.525 acres. Public Notice:

http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-D83445F8-BA80-3825-08CF1DE3EBD93327.pdf

Public Hearing and possible motion regarding Annexation # 449: Intent to Annex Town-Owned Property known as the Apex Peakway public right-of-way, located off Tingen Road, containing 0.525 acres.

Staff stated the request to annex and the location of the public right of way, the section completed by the WalMart development, to become a part of the town's roads to receive Powell Bill monies for maintenance.

Public hearing was opened at 9:11 p.m. With no one addressing this annexation request, the Public hearing was closed at 9:11 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve Annexation # 449. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing #06

Presenter: Environmental Services Stormwater and Utility Engineer Jessica Bolin, PE, and John Cratch Water Reclamation Facility Manager

Public Hearing # 07 - Water Shortage Response Plan

Review: Apex has been required by the State of NC to have a Water Shortage Response Plan in place (2001); rule changes also require an update to the Apex Water Conservation Ordinance; staff recommends adoption of the Water Shortage Response Plan and the amendments to the Town's Water Conservation Ordinance. Public Notice:

http://www.apexnc.org/docs/public_notice/notice/1-2010-04-20-87495E2E-DDC7-F598-0193A35F42B03AD1.pdf

Public Hearing and possible motion to adopt an updated Water Shortage Response Plan and the amendments to the Town's Water Conservation Ordinance.

Bolin presented the Water Shortage Response Plan amendments to the rules that governs water use during droughts and water emergencies, and the proposed amendments to the Town's Water Conservation Ordinance. State has given preliminary approval to the plan and full approval requires formal adoption of the plan by Council. State rule changes require update to the Apex Water Conservation Ordinance; key changes were noted. With adoption of the plan amendments and associated water conservation ordinance amendments, the Town will be in compliance with all state regulations and requirements related to water conservation and will be consistent with the measures of other local municipalities.

Public hearing was opened at 9:15 p.m. With no one addressing this matter, the Public hearing was closed at 9:15 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to adopt the Resolution No. 2010-0420- _08_ for approval of the Water Shortage Response Plan. Council Member Jensen made the second to the motion. Motion carried unanimously.

Action: Council Member Jones made the motion to adopt the amendments to the Town's Water Conservation Ordinance No. 2010-0420- 05. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing #07

End of Public Hearings



OLD BUSINESS

There were no Old Business items to discuss.

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.
No one spoke during public forum.**

NEW BUSINESS

Presenter: Mike Couch, Electric Utilities Manager

New Business # 01- Utility Relocation Agreement

Review: Construction of NC-540 near Apex requires relocation of existing Apex electric utilities.

Possible motion to approve Utility Relocation Agreement among the North Carolina Turnpike Authority, NCDOT, and Town of Apex. and approve contracts with Lee Electric Construction, Inc. and ML Hydrocut, Inc. and for the Town Manager to sign the same on behalf of the Town.

Staff presented the above referenced Utility Relocation Agreement and the contracts associated to the relocation of the existing Apex electric utilities associated with the construction of NC-540. The agreement allows the Town to be reimbursed for costs associated with the relocation projects for the first portion of NC-540 built in the Apex area. Future agreements will cover sections of NC-540 that involves additional electric utility relocation. The town will be reimbursed for all non-betterment costs, including design, construction, materials, rights-of-way, and clearing. Lee Electric will perform relocation work on electric lines and ML Hydrocut will provide right-of-way clearing services in wooded areas where the lines will be moved. Areas with significant relocation affected by the Utility Relocation Agreement: Roberts Road, Jenks Road, Green Level Church Road and US64. Estimated reimbursement: \$468,000. Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to approve the Utility Relocation Agreement as recommended and the associated contracts with Lee Electric and ML Hydrocut, and authorizing the Town Manager to execute same. Council Member Gossage 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.

ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 9:18 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the April 20, 2010 Council Meeting were submitted by the Town Clerk to the Town Council for their approval during the May 4, 2010 meeting.

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

/s/Keith H. Weatherly
Mayor