

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for June 15, 2010

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 15, 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.
Council Members Jensen, Gossage, Jones and Schulze were present.
Council Member Olive was absent.

Mayor:
Keith H. Weatherly



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

<http://www.apexnc.org/>

COMMENCEMENT

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

CONSENT AGENDA

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

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. The Consent Agenda was set with no amendments. **Action:** Motion by Council Member Schulze to approve the Consent Agenda. Council Member Jones made the second to the motion. Motion carried unanimously with vote of 4 and 0.

1. Minutes of June 1, 2010 Town Council meeting.
2. Minutes of May 27, 2010 Town Council Work Session.
3. Minutes of June 8, 2010 Economic Development Committee.
4. Transfer of Lot 89 Plot(s) B, C and D in the Apex Town Cemetery: Mary C. Chapman, 1200 Fairlane Road, Cary, N.C. owner requests transfer of ownership to Mr. and Mrs. William Spillane, 1225 Lochcarron Lane, Cary, N.C.
5. End of FY09-10 Budget adjustments including Budget Ordinance Amendment No. 10 and Capital Projects Ordinance Amendment for General Capital Projects Fund.
6. Set Public Hearing July 20, 2010: Bella Casa PUD Amendment Rezone #10CZ06/Master Subdivision Ph 5.
7. Renewal of Cooperative Bid Agreement with Electricities to bid on utility materials, supplies, and equipment, effective July 1, 2010 through June 30, 2013.
8. Renew Contract with Capital Area Preservation, Inc. to cover basic historic preservation and Small Town Character Overlay District consultation services.
9. Revised 2010 Wake County Fire Agreement for the provision of fire protection by Apex Fire and EMS to the unincorporated areas surrounding Apex and authorization for the Town Manager to sign the agreement (reflects change regarding indemnification clause to satisfy both entities.)
10. Resolution 2010-0615-13_Abandon Portions of Existing Public Electric Utility Easements not in use.



11. Ordinance 2010-0615-07 Repeal Sections 13-30 through 13-38 of [Apex Code of Ordinances](#) Related to Game Rooms and Devices (no longer needed; covered in [Unified Development Ordinance](#)).
12. [Resolution 2010-0615- 14](#) Consider Closing portion of Laura Village Drive in conjunction with development plan for Hendrick Automotive (west of its intersection with Merchant Drive) and set Public Hearing for July 20, 2010.
13. Set Public hearing for July 20, 2010 to consider an amendment to Section 7.5.4 Streets of the Unified Development Ordinance (UDO) and other Sections of the UDO affected by the amendment thereof.

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 Regular Meeting Agenda was set.

PUBLIC HEARINGS

Presenter: Principal Planner Brendie Vega

Public Hearing # 1 - Quasi-Judicial Public Hearing Providence Green Major Site Plan

Review: [Public Notice](#) and vicinity map.

Quasi-judicial public hearing and possible motion for Providence Green major site plan; proposed 71-unit, age restricted, multi-family development on Lot 12 of the Green at Scott's Mill. Town received a letter from applicant requesting withdrawal of Providence Green Major Site Plan. This may come back at some future time in another form; the project will no longer be considered as proposed. No public hearing was held.

End of Public Hearing # 1

Presenter: Principal Planner Brendie Vega

Public Hearing # 2 - Unified Development Ordinance Amendments

Review: [Public Notice](#). Planning Board met June 14, 2010; staff will report recommendations; staff recommends approval.

Public hearing to consider various amendments to the [Unified Development Ordinance](#): Sec. 2.3.6 Site Plan; Sec. 4.3.5(A)(3) Electronic Gaming Operations; Sec. 4 Use Regulations; Sec. 7.5.4 Streets.

Staff presented the Planning report for proposed UDO amendments and are incorporated as a part of the minutes. Planning Board recommended approval with minor changes; staff recommends approval.

1. Section 2.3.6(D)(1) and (2) Site Plan: provide process by which multiple site plan submissions in a three year time period are treated in aggregate for determination of minor vs. major site plan. Planning Board recommended: increase 5 (suggested by staff) to 40 multi-family units (discussed by Council). Section 2.3.6(D)(2)(b): site plans proposing 100 or more additional parking spaces to existing development (Council agreed). Section 2.3.6(D)(2)(d): decrease 4 stories to 3: site plans proposing any building taller than 3 stories; Council agreed.

Staff gave clarity to Section 2.3.6(D)(2)(e) "exotic architecture" - a historical architectural preservation term, anything outside western tradition, from the Middle East, India and Asia. Attorney Fordham advised it would be helpful have the term defined in the UDO for common understanding in the architectural community; if consideration is given to defining the term, the amendment could be made now as it pertains to this specific section, however if there's different section(s), should be advertised. Staff will prepare a public notice for July 20, 2010 public hearing for Section 12.2 Terms Defined, to add the definition of "exotic architecture".



2. Section 4.3.5(A)(3) Electronic Gaming Operations to grandfather those places of business in B1 District where electronic gaming operations existed and where a Certificate of Zoning Compliance could have been issued prior to the moratorium date of March 2, 2010: Sparks, Racing Mart and Iron Horse (allows continued operation of such games as an accessory use to the principle use, but did not obtain conditional zoning compliance prior to March 2, 2010); Council agreed.

3. Section 4 Use Regulations: change definition and supplemental standards for Game rooms and device, and exempt accessory game rooms and devices from being a separate use within primary uses such as community centers, restaurants, bars, and hotels; (Code of Ordinances Sections 13.30 – 13.38 is repealed; game rooms are kept in B1 District); Council agreed.

4. Amend Section 7.5.4 Streets: change references in 7.5.4.B.2.b to refer to appropriate sections; Council agreed.

Mayor Weatherly opened the public hearing at 7:20 p.m. No one addressed the proposed amendments, the public hearing was closed; the matter was referred to Council.

Action: Council Member Gossage made the motion to approve all the amendments as recommended.

Council Member Jones made the second to the motion.

Action: Council Member Jensen offered an amendment to the motion: Section 2.3.6(D)(1) and (2) decrease 40 multi-family units to 20. Council discussed size and experience with multi-family units typically 100 to 200 range and whether or not pending applications should be grandfathered. Staff reported amendments would effect pending applications: 1) Methodist Church parking spaces-review delayed but close to approval; if not grandfathered would qualify for a major site plan; and 2) Green at Scotts Mill Sec. 8 has not received its first TRC comments (applications 40,000 square feet or 50 multi-family units qualify as a major site plan and must go through the quasi-judicial public hearing; compatibility standards were removed from minor site plans and no public hearing is required). Council Member Jones made the second to the motion; felt Council would see multi-family units in the 20 / 40 range and would want to review those 25 units or more. With no further discussion, Mayor Weatherly called for a vote on the amendment to the motion. Vote on the amended motion was 4 and 0. Motion carried unanimously.

Mayor Weatherly stated discussion continues to approve the ordinance change as amended. Attorney Fordham advised if Council were to consider grandfathering of pending applications, they may want to consider a motion to add grandfathering to the proposed ordinance rather than treating it as a separate item.

Staff added Council should be explicit as to whether to grandfather or not, and the proposed ordinance as its written included grandfathering and the motion should remove one of the two options in Section 6: *1) This amendment shall not apply to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained before the enactment of this ordinance. OR 2) This amendment shall not apply to the completion of projects for which a site plan application or subdivision application or both have been received by the Town or to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained, before the enactment of this ordinance.*

Staff asked if it were a lawful option to consider a point in which a project could be grandfathered. Attorney Fordham advised it was a lawful option as long as it could be determined which was which; in considering Section 6, advised practice had always been to grandfather projects that had received prior approval, but was never explicitly stated. Section 6-2 goes further than grandfathering projects that have already been approved - in reaching back to those that submitted applications, and lawfully can do. He continued if there is no guidance as an amendment in the UDO, would have to go through a complex analysis as to whether the party who has received the approval has made substantial expenditures. He noted the perception has always been by Council, if you already had your approval and were moving forward then the amendment would not affect them; so this is to make that explicit. He continued if that's the case, would always have the first option and if you want to grandfather applications, then you would go to the second option. Mayor Weatherly asked if there were another amendment needed for grandfathering applications. Attorney Fordham responded the appropriate selection would be Section 6-2 if Council wanted to grandfather applications that have been submitted.



Attorney Fordham ask clarity with respect to applications, what Council wanted to grandfather. He advised Section 6-2 applies to specific "x" and Section 6-1 applies to everything else (define "x" that which is receiving the extra grandfathering of applications). Council Member Schulze agreed Section 6-2, grandfather everyone at less than 20 multi-family units and 20 automatically qualifies as a major site plan. Council Member Jensen felt obligated to review Scotts Green Sec 8 application. Council Member Jones felt Council should clarify those sections that shouldn't apply to pending applications, with the rest as an option if they had been through multiple reviews. Attorney Fordham advised if there's a rationale basis and it seems so from other criteria, then it would be lawful to do that. Staff asked if it were lawful to consider a specific plan that has been through a certain number of reviews or multiple reviews. Attorney Fordham advised you can pick levels of review, with the argument for grandfathering stronger the more you've been through the process; can pick a certain level of review and you don't want to go back to the application, then the application plus TRC would be a rationale thing to do if that was the policy decision Council chose to make. At this point, staff stated their uncertainty whether the Green would qualify as a major site plan.

Attorney Fordham restated it was a lawful option to grandfather an application at a certain level of review if Council chooses and would select Section 6-2, with the inclusion of the language in italics: "This amendment shall not apply to the completion of projects for which a site plan application or subdivision application or both have been received by the Town *and the application has proceeded through (reached a certain level of review)* or to the completion of projects for which site plan approval or subdivision plan approval or both have been obtained, before the enactment of this ordinance."

Mayor Weatherly commented on expenditure of money during predevelopment planning and Council should consider the developer had been asked to invest money and it could be a significant obstacle. In discussion of Scotts Green Sec 8, Attorney Fordham advised the project would either come to Council with a compatibility standard, opposed to not coming to Council and without a compatibility standard. Staff stated they had done calculations on Scotts Green Sec 8 and determined it would go through a major site plan process, with 20 multi-family units.

Council Member Gossage referenced the optional language in the ordinance to differentiate between the two projects noted, for grandfathering. Mayor Weatherly stated the motion on the floor that is amendable is that Council approve all the UDO ordinance amendments; that has been amended once and now, and would look for another amendment, until Council adopts all UDO amendments; if Council chooses to make a motion to amend, which was to take off one of the suggested languages in Section 6 as the initial motion included both options.

Action: Council Member Gossage made a motion to amend Section 6-2: "This amendment shall not apply to the completion of projects for which a site plan application or subdivision application...; he then sought the Attorney's guidance. Attorney Fordham referred to the Planning Director, one that would best understand what one should do at each level, and continued it was a policy decision for which level. Council Member Gossage wanted to assure the correct language for each project from both the legal and planning standpoint. Director of Planning Khin responded the language should be ... *and has been submitted at least one time*. Attorney Fordham will assure the language is correct in the final version of the ordinance. Council Member Gossage then continued, this would be his amendment. Mayor Weatherly stated the motion was to amend as so stated. Council Member Schulze made the second to the motion. There was no further discussion and Mayor Weatherly called for the vote on the amendment as so stated. Vote was 4 and 0.

Mayor Weatherly stated the discussion recurs on the motion to approve the UDO ordinances as amended. With no further discussion, he called for the vote on the motion to approve the UDO amendments as modified. Vote on the motion was 4 and 0. Mayor Weatherly stated all the UDO amendments are approved as amended. Mayor Weatherly clarified outcome for pending applications: United Methodist Church parking lot project has been grandfathered, and Scotts Green Sec 8 project in all likelihood according to the calculations, has not been grandfathered.



Presenter: Director of Planning Dianne Khin

Public Hearing # 3 – Annexation Petition # 451 Hendrick Automotive Group

Review: **Public Notice:** Annexation is required by the Town, vested right, in conjunction with the site plan.

Public hearing and possible motion regarding Annexation Petition # 451 Hendrick Automotive Group, 6000 Monroe Road, Charlotte, N.C., owner/petitioner, petitioning to annex 20.383 acres including CSX Railroad right-of-way, into the Town's corporate limits, and located at US64 Hwy. Property is identified in the Wake County Registry as: (PIN: #0742879872: 1.67 acres, 1911 Laura Duncan Road); (PIN: #0742980140 – 2.59 acres, 1913 Laura Duncan Road); and (PIN: #0742881153 - 14.84 acres, including CSX Railroad right-of-way – estimated 1.283 acres, 1907 Laura Duncan Road).

Staff presented the petition for consideration, required by the Town, vested rights and in conjunction with site plan. Mayor Weatherly opened the public hearing at 7:50 p.m. With no one addressing the petition for annexation, the public hearing was closed. Mayor Weatherly referred the matter to Council.

Action: Council Member Jones made the motion to approve annexation petition # 451 for Hendrick Automotive Group. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 4 and 0.

End of Public Hearing # 03
End of Public Hearings

OLD BUSINESS

Presenter: Town Manager Bruce Radford

Old Business Item # 01 - Town of Apex FY2010-11 Budget Ordinance

Review: **Proposed Budget:** Council will consider adoption of the FY2010-11 Budget Ordinance June 15, 2010 (second read).

Council Activity:

Public Notice: Pre-budget hearing January 19, 2010.

Public Notice: Council Work Session May 27, 2010.

Public Notice: Public Hearing held June 1, 2010 with Budget Ordinance first offered for possible adoption.

Possible motion to adopt the Town of Apex FY2010-11 Budget Ordinance (second read).

Action: Council Member Schulze made the motion to adopt FY2010-11 Budget Ordinance. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 4 and 0. Manager Radford noted the difficulty, due to the economy, in presenting a balanced budget; was fearful next year would be more difficult; applauded staff for tightening their belts. Mayor Weatherly commended staff, noting they had found ways to continue providing the level of services to the citizens without having to increase taxes; noted staff had been trained well; perform their jobs well; however, had accomplished a difficult task, and had presented a balanced budget.

End of Old Business # 01

Presenter: Director of Construction Management Kent Jackson

Old Business Item # 02 – Apex Peakway Completion Plan

Review: During Council's annual planning retreat, staff was asked to present additional information and suggestions for completion of the Apex Peakway.

Manager Radford asked the Apex Peakway Completion Plan presentation be pulled and would be brought to Council at their July 20, 2010 meeting.

End of Old Business # 02
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.

No one spoke during public forum

NEW BUSINESS

There were no New Business items to be considered.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss potential litigation and receive legal advice at 7:55 p.m. **Action:** Council Member Schulze made the motion to move into Closed Session for the stated purpose. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 4 and 0. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move from Closed Session back into Regular Session at 8:15 p.m. Motion carried unanimously with a vote of 4 and 0.

WORK SESSION

No Work Session was scheduled for this meeting.

ADJOURNMENT

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 8:15 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Gossage made the second to the motion. Motion carried unanimously.

The June 15, 2010 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the July 20, 2010 meeting.

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

/s/Keith H. Weatherly
Mayor