



Apex Town Council Meeting

Tuesday, September 5, 2017

Lance Olive, Mayor
Nicole L. Dozier, Mayor Pro Tempore
William S. Jensen, Eugene J. Schulze, Denise C. Wilkie,
and Wesley M. Moyer, Council Members
Drew Havens, Town Manager
David Hughes, Assistant Town Manager
Shawn Purvis, Assistant Town Manager
Donna B. Hosch, MMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 5, 2017, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Lance Olive, Mayor Pro Tem Nicole L. Dozier, and Council Members William S. Jensen, Eugene J. Schulze, Denise C. Wilkie, and Wesley M. Moyer
Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Olive called the meeting to order, Council Member Wilkie gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Graham Wilson, Apex Sunrise Rotary Club

Presentation by Graham Wilson from the Apex Sunrise Rotary Club reporting on Peak City Pig Fest 2017

Mr. Wilson presented an update on this year's Pig Fest, highlighting the teams that participated, attendance, the grand champion, the various events, sponsorships, and beneficiaries of funds raised. He gave a brief history of this event which has been in existence for six years and is a State championship. Mr. Wilson complimented the work and support of Town staff. This year two scholarships will be awarded to local students.

Presentation 02 : Dianne Khin, Planning Director

Introduction by Dianne Khin of recently hired Planning Department employees Sarah M. Rayfield, AICP, Senior Planner, and Lauren Staudenmaier, Planner I

Ms. Khin introduced the new employees, providing an educational and work profile of each.

CONSENT AGENDA

- Consent 01 Minutes of the August 15, 2017 Regular Meeting and the August 22, 2017 Special Meeting
- Consent 02 Statement of the Town Council and Ordinance for Rezoning Case #17CZ13, Crossroads Holdings, LLC, petitioners for the property located at 0 N. Salem Street
- Consent 03 Agreement between the Town of Apex, Town of Cary, and Town of Morrisville to conduct a 911 Feasibility Study and authorization for the Town Manager to sign on behalf of the Town
- Consent 04 Encroachment Agreement and authorization for the Town Manager to execute the same for four private storm drain easements and one private sanitary sewer easement to encroach upon a portion of the Public Waterline Easement
- Consent 05 Findings of Fact, Conclusions of Law, and Decision approving the Crossroads Ford Major Site Plan
- Consent 06 Resolution to add Sarah M. Rayfield and Lauren Staudenmaier as Wake County Review Officers in order to certify each map and plat presented to the Wake County Register of Deeds for recording satisfies the statutory requirements for recording
- Consent 07 Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of August 15, 2017 related to the sale of alcohol
- Consent 08 Set the Public Hearing on September 19, 2017 for rezoning application #17CZ12 to rezone ±1.2651 acres located at 0 & 2248 East Williams Street from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ)
- Consent 09 Set the Public Hearing on September 19, 2017 for rezoning application #17CZ17 (804 S. Salem Street PUD). The applicant, Jennifer A. Quick, seeks to rezone approximately 7.17± acres located at 0 & 800 S. Salem Street from Medium Density Residential (MD) to Planned Unit Development-Conditional Zoning (PUD-CZ). The area to be rezoned is located within the Small Town Character Overlay District.
- Consent 10 Set the Public Hearing for the September 19, 2017 Town Council Meeting regarding an amendment to the 2030 Land Use Map and Rezoning Application #17CZ19 (Horton Park PUD). The applicant, MFW Investments, LLC seeks to amend the 2030 Land Use Map classification of ±42.67 acres located at 5101 & 5220 Jessie Drive from Medium/High Density Residential and Office Employment/Industrial Employment to High Density Residential, Office Employment/Commercial Services and Medium/High Density Residential and to rezone ±149.029 acres located at 5100, 5101, 5125, & 5220 Jessie Drive, 0 Dezola Street, and 8140 & 8308 Smith Road from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ) and Light Industrial-Conditional Zoning (LI-CZ).
- Consent 11 Statement of the Town Council for Rezoning Case #17CZ16, Betty M. Twiggs, petitioner for the property located at 8732 Castleberry Road
- Consent 12 Set the Public Hearing on September 19, 2017 for rezoning application #17CZ22 and Ordinance. The petitioner, Alonzo Wilson for ATM Development, LLC, wishes to rezone +/- 5.5475 acres located at 5112 Church Road, and 3028 & 3024 New Hill Holleman Road from Wake County R-30 & GB to Medium Density-Conditional Zoning (MD-CZ).
- Consent 13 Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex the ATM Development, LLC properties containing 5.5475 acres located at 0 Church Road and 3024 & 3028 New Hill Holleman Road, Annexation 611, into the Town's corporate limits

- Consent 14 Set Public Hearing for the September 19, 2017 Town Council Meeting regarding various amendments to the Unified Development Ordinance related to parking
- Consent 15 Reconveyance of Lot 285 Plots E and F back to the Town of Apex Cemetery
- Consent 16 Apex Tax Report dated 07/12/2017

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

REGULAR MEETING AGENDA

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA. COUNCIL MEMBER MOYER MADE THE MOTION; COUNCIL MEMBER DOZER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC FORUM

Charles Sandhofer spoke about bulk and yard waste. Because his is a condominium community, he felt they should not be charged for waste pick up. He requested that a truck no longer service their neighborhood. Mr. Sandhofer wants these services to be a part of the actual tax bill, and he gave advantages of this for all the townhomes in the town.

Brett Gantt complimented Police who have been great, friendly, and welcoming. He lives next to the Shangra La mobile home park of primarily Hispanic residents who he felt might have a fear of the police in light of current events. Mr. Gantt suggested increased community policing with a focus on Hispanics and clear guidelines as to what issues should be addressed. The children have a fear of being deported. Immigration is an important issue.

Alexia Wolfe stated she emailed Council regarding her property which has been on the market for a few years. She explained there were contracts that didn't go through due to density issues. She spoke about the difficulties for builders if they can only build one home/acre. She would like the same opportunity that her neighbors were given in terms of density so that she can also sell and prosper.

CLOSED SESSION

Mayor Olive stated there was a request for a Closed Session to receive legal advice from the Town Attorney.

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER
JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER
WILKIE MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Shelly Mayo, Planner II

Ordinance on the Question of Annexation – Apex Town Council’s intent to annex La Mission De L’Esprit Saint Erl (Garris Road) property containing 18.740 acres located at 0 Garris Road, Annexation 608 the Town’s corporate limits. This item was continued from the 8/15/2017 Town Council Meeting.

and

Public Hearing 02 : Shelly Mayo, Planner II

Rezoning application #17CZ14 and Ordinance. The applicant, Michael Foley from New Hill Development, LLC, wishes to rezone +/- 18.740 acres located at 0 Garris Road from Wake Co. R-30 and GB to Medium Density-Conditional Zoning (MD-CZ). This item was continued from the 08/15/2017 Town Council meeting.

Staff oriented Council to the site, noting that these two Hearings would be heard together. Staff recommended approval of the rezoning as did the Planning Board.

The applicant, Mike Foley, summarized the highlights of the project and answered questions from Council on buffers, garage space, and solar on these starter houses. This will give staff an opportunity to live in town, especially those in the police and fire departments.

Mayor Olive declared the Public Hearings open.

Alonzo Wilson stated he supported the development. He currently owns properties in the area, and he has collaborated with the developers. He explained the strategy for his property which would be workforce housing which parallels what the applicant wants to do. He talked about a Habitat project in which he was involved in the area. Mr. Wilson stated he would be looking to annex his other properties within the next few weeks.

Mayor Olive declared the Public Hearings closed.

Council stated support of this range of housing which will be a good project. Council thanked Mr. Wilson for his involvement in the Habitat project.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE THE ANNEXATION ORDINANCE, REZONING, AND REZONING ORDINANCE WITH CONDITIONS AS STATED FOR BUFFERS, UNITS/ACRE, AND PRE-WIRING FOR SOLAR; COUNCIL MEMBER WILKIE SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

An audio recording of the following Quasi-Judicial Public Hearing made by the Town Clerk is incorporated into these Minutes by reference. The audio recording or transcript of the Hearing should be used as the verbatim record of the questions, testimonies, evidentiary rulings, and discussions that occurred at the Quasi-Judicial Hearing.

**Public Hearing 03 – Quasi-Judicial : Shelly Mayo, Planner II
Special Use Permit (#17SUP03) for the Pine Springs Preparatory School located at 814 E. Williams Street**

Mayor Olive stated the process of this type of Hearing.

Mayor Olive declared the Public Hearing open.

The Town Clerk swore in all those who intended to testify.

Mayor Olive referred Council to the Standards checklist.

The applicant, Paul Stam, identified those who would be testifying.

There was no opposition to the request.

Council Member Wilkie stated she had a business relationship with the school and asked to be recused. All other Council stated they had no conflicts, no communications with the applicant, and that they could make an impartial decision.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO RECUSE COUNCIL MEMBER WILKIE FROM THIS QUASI-JUDICIAL HEARING; COUNCIL MEMBER SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A 4-0 VOTE.

Council stated none of them had viewed the site.

OPENING STATEMENT BY STAFF – None.

OPENING STATEMENT BY APPLICANT – Mr. Stam stated this would be a temporary use of an existing church for school students until the school in Holly Spring opens. Under the law, this requires a Special Use Permit.

PRESENTATION OF EVIDENCE BY STAFF – Ms. Mayo presented her credentials and work history and oriented Council to the site. A neighborhood meeting was held.

CROSS EXAMINATION OF STAFF BY COUNCIL – Staff Member Russell Dalton presented his credentials and work history and answered questions from Council on the off-duty officer.

CROSS EXAMINATION OF STAFF BY APPLICANT – Staff answered questions posed by the applicant.

PRESENTATION OF EVIDENCE BY APPLICANT WITNESS – Tim Sivers presented his credentials and work history. He described the location of the project and the stage of development for the building in Holly Springs.

CROSS EXAMINATION OF APPLICANT WITNESS BY COUNCIL – None.

PRESENTATION OF EVIDENCE BY APPLICANT WITNESS – Joshua Reinke presented his credentials. He stated he addressed the Traffic Impact Analysis for the project.

CROSS EXAMINATION OF APPLICANT WITNESS BY COUNCIL – Mr. Reinke answered questions related to traffic stacking.

PRESENTATION OF EVIDENCE BY APPLICANT WITNESS – Mr. Reinke answered questions related to stacking and from where most of the traffic will be coming from Mr. Stam.

REBUTTAL EVIDENCE BY STAFF AND APPLICANT – None.

CLOSING ARGUMENT BY STAFF – None.

CLOSING ARGUMENT BY APPLICANT – Mr. Stam hoped that Council would approve this request.

Staff explained why no staff recommendation was made. The request does meet the requirements.

Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE SPECIAL USE PERMIT; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Wilkie returned to the dais.

Public Hearing 04 : Amanda Bunce, Planning Manager

Various amendments to the Unified Development Ordinance related to Veridea. This item was continued from the August 15, 2017 Town Council meeting.

Staff oriented Council to the amendments and summarized the proposed language. The Planning Board recommended approval. Staff did not have a recommendation since this was more of a policy decision.

Jason Barron, Morningstar Law Group, stated that Joe Morningstar and Mr. Ortiz were the owners of the vast majority of the land. He introduced several members of the team who are responsible for bringing in developers. Mr. Barron spoke about the town wanting to see economic growth and moving this project forward to do so. He thought the proposed amendment would make for a better UDO, and he detailed the reasons why.

Mayor Olive declared the Public Hearing open.

Jan Jackson talked about the history of the past negotiations, there being contracts no longer in effect. She stated why she thought Hudson could not develop the land as in the original contract. She wished to see Tom Hendrickson remain.

Alan Maness gave a brief history of his involvement in Veridea over the past few years. This project needs to be done correctly in order to benefit the tax base. He stated that the Morningstar group originally agreed to the rezoning procedure and now they want to go around it. Mr. Maness asked when the new language was presented to the public. He asked Council to deny the request.

Tom Hendrickson stated he had not seen the new language until this evening. He spoke about the history of the SD Plan and the responsible person. Mr. Hendrickson stated approval of the request would create confusion and questionable language in the Plan. The original vision needed to be maintained, and he asked Council to reject the proposed language.

Mayor olive asked staff to clarify when the new language was received.

Mr. Barron spoke about how the SD Plan was not changing, how the Plan would affect Mr. Hendrickson, and number of acres under their control.

Mayor Olive declared the Public Hearing closed.

Council presented the following thoughts: this is a tough decision because of high stakes on both sides; the SD Plan is a living document that can be tweaked as time goes on; we need to make a change if we want to see something move on this; this proposal had not been presented to Mr. Hendrickson, him stating he would be willing to meet with the Hudson group; government should not be involved in a private venture; there has been no evidence that the arrangement is not working; the Town did not force this partnership; want to see both sides work this out; it is troubling the way the responsible person arrangement works; and Council provided ideas on how this could be resolved by a rezoning.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE
THE AMENDMENTS; COUNCIL MEMBER JENSEN SECONDED THE MOTION.

Council spoke about the time and effort put into the original plan and how everyone signed off on it. The Town was being thrown into something it did not create. Both parties want the same thing but they can't get together for the same goal. Council has not seen anything come forward.

COUNCIL MEMBERS SCHULZE AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS
DOZIER, WILKIE, AND MOYER VOTED IN THE NEGATIVE.
THE MOTION FAILED BY A 3-2 VOTE.

Mayor Olive called for a nine minute recess.

Public Hearing 05 : Joanna Helms, Economic Development Director

Economic development incentives for Project Bluewater in accordance with the Town's Policy on Economic Development Incentives, direction for staff and the Town Attorney to draft an agreement between the Town and the company according to terms provided herein by Council, and authorization for the Town Manager to approve and execute the final agreement

Staff reviewed the Incentive Policy and described to Council the particulars of this company and the grant. Questions from Council were answered on how the process would work, possible growth of the company, benefits of the company locating here, and probable salaries. Council gave his reasons for being in opposition.

Mayor Olive declared the Public Hearing open. With no one wishing to speak, Mayor Olive declared the Public Hearing closed.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER MOYER SECONDED THE MOTION. COUNCIL MEMBERS WILKIE, MOYER, JENSEN, AND DOZIER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER SCHULZE VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 4-1 VOTE.

OLD BUSINESS

Old Business 01 : Vance Holloman, Finance Director

Resolution authorizing the execution and delivery of an installment financing agreement with Branch Bank and Trust Company

Staff stated this was the last step in the process before going to the Local Government Commission. He stated this was similar to a mortgage on a home, giving a very good interest rate.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE THE RESOLUTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

UNFINISHED BUSINESS

Unfinished Business 01 : Drew Havens, Town Manager

Resolution authorizing the completion of the sale of the Town owned property

Staff stated Council previously authorized the sale of this property. It is landlocked and doesn't serve us a purpose. We received one offer for these 7+ acres, which came in below the appraisal value. A good portion of the land is not usable because of wetlands. There was discussion about not selling at the offered price and negotiating an offer closer to the appraisal.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO DENY THE OFFER; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

NEW BUSINESS

New Business 01 : Shelly Mayo, Planner II

Proposed Findings of Fact, Conclusions of Law, and Decision approving the Special Use Permit 17SUP03 Pine Springs Preparatory School located at 814 East Williams Street

Staff stated that in order for the school to keep their State funding, they needed to open by the end of the week. Students may be in this temporary location for a few weeks until the school opens in Holly Springs.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER JENSEN SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, JENSEN, DOZIER, AND MOYER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER WILKIE ABSTAINED.
THE MOTION CARRIED WITH 4 VOTES IN THE AFFIRMATIVE.

CLOSED SESSION

Closed Session to (1) discuss negotiating positions to be taken on behalf of the Town in negotiating material terms of a proposed contract for the acquisition of real property, (2) to consider and establish the Town's negotiating position with respect to acquisition of real property, and (3) to discuss a personnel matter

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER WILKIE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR OLIVE CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER SCHULZE MADE THE MOTION; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business, Mayor Olive adjourned the meeting.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Lance Olive
Mayor