



Apex Town Council Meeting

Tuesday, October 3, 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, October 3, 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, 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

Absent was Council Member Denise C. Wilkie

COMMENCEMENT

Mayor Olive called the meeting to order, Pastor Kyle Myer of Peak United Methodist Church gave the Invocation, and Mayor Olive led the Pledge of Allegiance.

PRESENTATIONS

Presentation 01 : Mayor Lance Olive

Presentation of Proclamation for Public Power Week to Rodney Smith, Interim Electric Department Director

Town Manager Drew Havens stated our Communications Department put together a video of the men and women in our Electric Department. The video was shown. Mayor Olive read the Proclamation and presented it to Interim Electric Department Director Rodney Smith. Ken Weatherman, Electric Crew Field Supervisor, was also in attendance.

CONSENT AGENDA

- Consent 01 Minutes of the Regular Town Council Meeting of September 19, 2017
- Consent 02 Budget Ordinance Amendment No. 4 and Capital Project Ordinance Amendment No. 2018-2 to provide for increased funding in the amount of \$50,000.00 for the Public Safety Station 5 project to cover additional furniture storage costs and legal fees
- Consent 03 Budget Ordinance Amendments No. 5 and No. 6 to fund debt service payment due in the current fiscal year under the terms of an installment financing agreement (IFA) entered into with Branch Banking and Trust Company (BB&T) for the purchase of land for parks and recreation
- Consent 04 Budget Ordinance Amendment No. 7 to appropriate funds to be received under a grant from the North Carolina Governors Highway Safety Program for the purchase of a new motorcycle to supplement the Police Department's Traffic Unit
- Consent 05 Various updates to the Town of Apex Fee Schedule
- Consent 06 Wesco as the Sole Source Provider of Electric House Meters
- Consent 07 Set Public Hearing for the October 17, 2017 Town Council Meeting regarding Rezoning Application #17CZ18 (Gracewood PUD) and Ordinance. The applicant, Community Properties, Inc. seeks to rezone ±232.565 acres located at 0, 0, 0 Old US Hwy 1, 0 Horton Road, and 4316 Old US 1 Hwy from Wake County Zoning R-80W & R-40W to Planned Unit Development-Conditional Zoning (PUD-CZ).
- Consent 08 Set Public Hearing for the September 19, 2017 Town Council Meeting regarding Rezoning Application #17CZ21 (Sweetwater PUD Amendment). The applicant, Experience One Homes LLC seeks to rezone approximately 164.072 acres located at the addresses shown on the Agenda Item Cover Sheet from Planned Unit Development-Conditional Zoning (PUD-CZ #16CZ21) to Planned Unit Development-Conditional Zoning (PUD-CZ).
- Consent 09 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 Chatham Partners, LLC, Morisey II, LLC, Fonville Ventures II, LLC and Brookfield Properties, LLC (Gracewood PUD) property containing 232.46 acres located at 0 Old US 1 Hwy, 0 Old US 1 Hwy, 0 Old US 1 Hwy, 0 Horton Rd, 4316 Old US 1 Hwy, Annexation #609 into the Town's corporate limits
- Consent 10 Set Public Hearing for the October 17, 2017 Town Council Meeting regarding amendments to the Unified Development Ordinance related to buffers
- Consent 11 Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of September 19, 2017 related to parking
- Consent 12 Statement of the Town Council and Ordinance for Rezoning Case #17CZ17 (804 S. Salem Street PUD), Stuart Jones, Jones & Cnossen Engineering, PLLC/Jennifer A. Quick, petitioners for the properties located at 0 and 800 S. Salem Street

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONSENT AGENDA. COUNCIL MEMBER

SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

THE MOTION CARRIED BY A 4-0 VOTE.

REGULAR MEETING AGENDA

Mayor Olive acknowledged that Public Hearing 02 would not be heard at this meeting. He requested that Public Hearing 03 be heard prior to Public Hearing 01.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE REGULAR AGENDA. COUNCIL MEMBER MOYER MADE THE MOTION WITH THE NOTED MODIFICATIONS; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

PUBLIC FORUM

No one wished to speak during Public Forum.

PUBLIC HEARINGS

Public Hearing 03 : Joanna Helms, Economic Development Director

Staff requested continuance to the October 17, 2017 Town Council Meeting

Public Hearing and possible motion to approve a contract for the acquisition of real property for the purpose of economic development for industrial or commercial use under G.S. 158-7.1.

The proposed contract is an agreement between the Town and a private property owner to co-develop a 121.3 acre site located at 451 Pristine Water Drive. The appraised value of the site is \$6,670,000 or \$54,985/acre. Anticipated costs to the Town associated with the development of the site and terms are as follows:

- **Ground Lease - 3 years initially plus additional three 3-year leases (12 years total)**
- **Lease Payments - amount by which the property taxes increase from the previous year**
- **Option to purchase - \$100 per year**
- **Deferred Taxes - The Town will provide funds if the property owner has to pay taxes as a result of change of zoning (will be credited towards any initial purchase by the Town)**
- **Purchase Price - Base price is the same as current appraised value = \$54,985/acre; plus 25% of the "equity" created by the Town's development and marketing efforts**
- **Initial infrastructure - Estimated costs are \$1 - \$3 million**

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO CONTINUE THE PUBLIC HEARING AS REQUESTED; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 01 : Liz Loftin, Planner II

This item was continued from the August 15, 2017 Town Council meeting.

Public Hearing and rezoning application #17CZ15 (Peak City Properties LLC). The applicant, Kelly Viau, seeks to rezone approximately 0.18± acres located at 200 W. Chatham Street from Mixed Office - Residential - Retail - Conditional Use (#05CU11) to Mixed Office - Residential - Retail - Conditional Zoning, to include additional use.

Staff oriented Council to the site and gave a brief history of the structure which is in the historic district and small town overlay district. A neighborhood meeting was held. The Planning Board recommended denial by a 6-1 vote based on lack of sufficient parking. Staff conducted a subsequent review of the area for adequate parking spaces. Staff recommended approval and stated reasons for doing so.

Staff distributed to Council an explanation of historic uses, outlining the information contained therein. Staff answered Council questions on allowed uses in the district.

Mayor Olive declared the Public Hearing open.

Dr. Kelly Viau, applicant, gave a brief history of taking over her dentistry business and why she was requesting to move the business from Salem Street to her home. She explained where her patients park, stating that her staff has counted parking spots available at various times during the day. There is ample parking in the area; therefore, she has met the UDO requirements. Dr. Viau spoke about her hours of operation in comparison to other businesses. Her employees are required to park at the church parking lot in order to free up spaces on the street. Dr. Viau spoke about the ease of converting the house back to a residence from a business and gave a history of the businesses which had been located there. The house in itself is preserved. Dr. Viau spoke about her involvement with the community and how she's looking only to add to the charm of downtown.

Penny Maguire talked about the changes they've experienced on Chatham Street and calls which had been made to the Police Department because of parking. She felt the use would be incompatible and intrusive and have a negative impact on the quality of life. Ms. Maguire asked that Council follow the Planning Board's recommendation.

Laura and Don Grimes spoke about the attributes of the UDO which address adaptive reuse and about Dr. Viau using the structure as a residence for many, many years. Mr. Grimes gave a history of the other residential structures on the street, some which had been converted from a business to a residence. He stated rezoning would be spot rezoning which was against legislative regulations and how this would be detrimental. He noted the Planning Board's recommendation for denial. Mrs. Grimes spoke about the South Saunders parking lot which had been approved for alternate parking via agreement with Dr. Viau. She stated handicap parking would be difficult.

Mack Thorpe supported Dr. Viau and noted that he was representing downtown businesses.

Jamie Rohrbauck spoke about the appeal of buying her current property. She is a business owner and told the history of her growing business and how parking became a problem. She found alternate space which was more appropriate for her growth. She asked Council to deny the request since the rezoning would not be compatible with the surrounding zoning and environment.

Ms. Patterson talked about her daughter's purchasing her home and how they both enjoy the neighborhood. She asked for denial of the request.

John Pearson spoke about his growing up in Apex. He thought an additional use should be added to the UDO and cited an example of another residence which was converted to a business and back with no problem. This is easy to do and does not impact the neighborhood. Mr. Pearson stated there is floating parking on the streets. Both dental offices he goes to elsewhere are in residential neighborhoods in residential housing, and this works out fine. He was in favor of the request.

Amy and Brady Terrance stated they supported Dr. Viau. Moving her office one block was not going to hinder but enhance Apex, and Dr. Viau is not going to disrespect her neighbors on Chatham Street. People park downtown for various reasons, and the Terrances gave examples of where more parking could be generated.

Mayor Olive declared the Public Hearing closed.

Council requested a Closed Session to discuss spot zoning.

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION FOR THE REASON STATED.
COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER MOYER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR OLIVE CALLED FOR THE RETURN TO OPEN SESSION WITH NO OBJECTION FROM COUNCIL.

Council asked staff the allowable uses in the district, upon which were all stated. Council stated he was now less concerned about parking. It was already proposed for staff to park off the street, so this would not impact the number of cars on the street. Council thought moving the office was a good idea in order to free up a retail space in downtown. Council stated it seemed like one potential use was singled out and that she would agree with the Planning Board until the parking issue was resolved. Council stated the Attorney thought spot zoning was not an issue in this case. Council stated parking was on the CIP, this would open up spaces downtown, and that the dental office would be a good neighbor. Council stated the chiropractic office does not take advantage of the parking lot and that he hoped staff could talk to them to get them to park there.

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

Council asked should the Planning Board look at this to see how far down Chatham Street zoning should be. The Mayor stated staff could include this in the 2025 project.

COUNCIL MEMBERS SCHULZE, MOYER, AND JENSEN VOTED IN THE AFFIRMATIVE;
COUNCIL MEMBER DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-1 VOTE.

Public Hearing 02 : Amanda Bunce, Planning Manager

Note that a new public notice and Planning Board recommendation is required prior to a Town Council Public Hearing on this matter; this Public Hearing will not be heard on October 3, 2017

Public Hearing and possible motion on amendments 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).

Public Hearing 04 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council's intent to annex Duane D. Raver (single-family) property containing 4.565 acres located at 2641 Whistling Quail Run, Annexation #613 into the Town's corporate limits

Staff stated the applicant, Shawn Smith, wished to address Council. Mr. Smith requested a continuance to the October 17, 2017 Regular Meeting as they are working through a minor subdivision and want to have this in hand.

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

OLD BUSINESS

Old Business 01 : Drew Havens, Town Manager

Resolution to begin the upset bid process for the sale of a parcel of Town-owned land

Staff stated we had offer to purchase land owned by the Town at 55 and 64. Council rejected the original offer and now there's another from the prospective purchaser. Steve Adams would explain what this land is made up of and how the new offer is a fairer representation.

Staff oriented Council to the site which will need some substantial site work. He spoke about the easements for which we will ask. Staff answered questions from Council about buffers.

Staff stated the new offer is \$240,000, and he requested Council to adopt the Resolution if it felt it would accept the offer. The proceeds would go into General Fund Revenue. Staff stated the offer was a bit aggressive given the conditions of the land, the offer was reasonable for the taxpayers, and the land was not doing the Town any good. He did not know what the assessment for taxes would be.

MAYOR OLIVE CALLED FOR A MOTION. COUNCIL MEMBER MOYER MADE
THE MOTION TO APPROVE THE RESOLUTION AND BEGIN THE UPSET BID PROCESS;
COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

UNFINISHED BUSINESS

Unfinished Business 01 : Drew Havens, Town Manager

Contract with GreenPower NC for the lease/purchase of a solar photovoltaic electric generation system to be installed on the Public Works Operations building and authorization for the Town Manager and Town Attorney to make any additional minor modifications to and execute the contract, and Budget Amendment No. 8 to appropriate Fund Balance to pay for the costs of the project

Staff presented the purpose and history behind the request. We put out an RFT and evaluated responses from six vendors. He presented the GreenPower response to Council, stating they were the lowest bidder. They also provided us with an option of a lease/purchase at a lower cost to the Town, which is a new arrangement for them. Staff stated the lease/purchase was recommended by staff, and he explained the nuances of the system and its warranties. The payback will be in about eight years.

Staff stated he was requesting approval of the draft contract and authorization for the Attorneys to make modifications to and execute the contract and approve Budget Amendment 08. Council asked about maintenance, staff responding that this would be covered under warranty during the lease period. Council stated this company is likely to be in business after 25 years. Staff stated installation would begin as soon as practical by the vendor, usually within 30 days. Results will be included in the Manager's monthly report as soon as practical.

MAYOR OLIVE CALLED FOR A MOTION TO APPROVE THE CONTRACT, MAKING MODIFICATIONS WHERE NECESSARY,
AND TO APPROVE BUDGET AMENDMENT 08. COUNCIL MEMBER JENSEN MADE THE MOTION;
COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

NEW BUSINESS

There were no New Business items for consideration.

CLOSED SESSION

Closed Session to discuss a personnel matter

MAYOR OLIVE CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER
SCHULZE MADE THE MOTION; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR OLIVE CALLED FOR A RETURN TO OPEN SESSION WITH NO OBJECTIONS FROM COUNCIL.

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