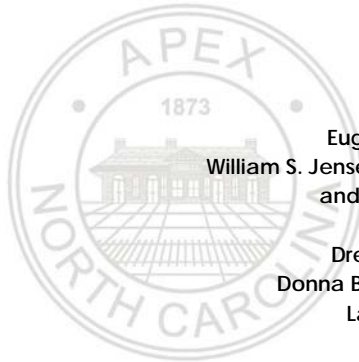


APEX TOWN COUNCIL MEETING TUESDAY, JANUARY 20, 2015



William M. Sutton, Mayor
Eugene J. Schulze, Mayor Pro Tempore
William S. Jensen, Scott R. Lassiter, Nicole L. Dozier,
and Denise C. Wilkie, Council Members
Bruce A. Radford, Town Manager
Drew Havens, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Laurie L. Hohe, Interim Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 20, 2015, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor William M. Sutton, Mayor Pro Tem Eugene J. Schulze, and Council Members William S. Jensen, Scott R. Lassiter, and Nicole L. Dozier. Absent was Council Member Denise C. Wilkie.

Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager Drew Havens, Town Clerk Donna B. Hosch, and Interim Town Attorney Laurie L. Hohe.

COMMENCEMENT

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

PRESENTATIONS

Town Manager Radford introduced two new department heads, expressing his delight in their becoming a part of Apex: Keith McGee, Fire Chief coming from Rocky Mount, and Vance Holloman, Finance Director, coming from the State of NC.

CONSENT AGENDA

- Consent 01** Minutes of the January 6, 2015 Regular Council Meeting, the November 25, 2014 Personnel Committee Meeting, and the Closed Session on December 16, 2014 (Closed Session Minutes recorded separately)
- Consent 02** Apex Tax Report dated 12/01/2014
- Consent 03** Resolution to change the name of a portion of James Street Extension between Tingen Road and the James Street Station development to James Street and, thereby, extend the block range of existing James Street through James Street Station and Salem Village to the new road terminus at Apex Peakway
- Consent 04** Resolution codifying the Town's Code of Ordinances and the Unified Development Ordinance (UDO)

- Consent 05 Revisions to the Town Standard Specifications and Standard Details
- Consent 06 Surplus and disposition of the old Police uniforms
- Consent 07 Utility Infrastructure Reimbursement Agreement between the Town of Apex and WS-JPA, LLC (the developers of Jordan Pointe), and authorization for the Town Manager and Interim Town Attorney to make minor modifications not affecting the term or percentages of reimbursement to the Agreement and authorization for the Town Manager to execute the Agreement on behalf of the Town
- Consent 08 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 Toll NC II, DP property for the Glen at Green Level Crossing project containing 6.813 acres located at 8129 Green Level Church Road, Annexation #530 into the Town’s corporate limits
- 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 Henry Lewey Heirs, Michael Yang, Country Living Rentals, Dennis & Maureen Heck, Freeman& Linda Johnson and Standard Pacific of the Carolinas, property containing 60.118 acres located at Green Level West Road and Castleberry Road, Annexation #515 into the Town’s corporate limits
- Consent 10 Resolution No. 15-0120-01 Declaring Town Council’s Intent to Annex, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing on the Question of Annexation of Town-owned property known as “Pleasant Park” containing +98 acres located at 3400 Pleasant Plains Road, Annexation #528 into the Town’s corporate limits

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO ACCEPT
THE CONSENT AGENDA; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

REGULAR MEETING AGENDA

Mayor Sutton canvassed Council for additions to/deletions from the Agenda. Council Member Lassiter requested a Closed Session to discuss a personnel matter. Council Member Jensen requested a Closed Session to receive legal advice from the Town Attorney regarding train issues.

PUBLIC FORUM

Jeanine Gull, resident of Walden Creek, addressed Mayor Pro Tem Schulze regarding her last voting experience. She perceived him to be rude as he interrupted her conversation and interjected his political views. She expressed she will support candidates who support all people. Mayor Pro Tem Schulze responded that he did not remember this conversation, emphasizing that while he is a strong republican, he has respect for everyone. Both parties have fun together at the polls; Ms. Gull was asked not to be threatening.

PUBLIC HEARINGS

Public Hearing 01 : Lauren Simmons, Planner II

Continuance of the Public Hearing to the February 17, 2015 Town Council Meeting regarding rezoning application #14CZ23 (Richardson West PUD) to rezone 70.5± acres located on the Southwest quadrant of Olive Chapel Road and Richardson Road from Wake County R-80W to Planned Unit Development-Conditional Zoning

Staff requested this continuance.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO CONTINUE THE PUBLIC HEARING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 02 : Brendie Vega, Principal Planner

Public Hearing and Rezone #14CZ27 (Salem Pointe PUD Plan), 10.74 acres located at 0 and 1530 Salem Church Road and 0 North Salem Street from Residential Agricultural (RA), Medium Density Residential Conditional Use (MD-CU), Medium Density Residential (MD), and Office and Institutional Conditional Use (O&I-CU) to Planned Unit Development Conditional Zoning (PUD-CZ)

Staff oriented Council to the site. A neighborhood meeting was held, the Parks and Recreation Commission recommended payment in lieu, and the proposal is consistent with the Land Use Map, the Transportation Plan, and the UDO. Staff recommended approval.

Mayor Sutton declared the Public Hearing open.

Speaking in favor, Jeff Roach, Peak Engineering and Design representing the owner, thanked staff for the exceptional job they did in their presentation. Mass grading will be done, and there will be 22% RCA.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER SCHULZE MADE THE MOTION TO APPROVE THE REZONE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Council Member Lassiter requested the opportunity to address the Council and members of the audience. He stated he believes the Council works well together and serves Apex well. Each Council Member has his/her own varying political views. He was not sure why anyone would seek to undermine the Council's working relationship. He professed to not knowing the specifics of which Ms. Gull spoke.

Public Hearing 03 : Shelly Mayo, Planner

Public Hearing and Rezone #14CZ28 (Promenade at Beaver Creek PUD), to rezone 11.587 acres located at 1275 Haddon Hall Drive from Neighborhood Business (B-1) to Planned Unit Development - Conditional Zoning (PUD-CZ)

Staff oriented Council to the site, stating Land Use Map specifications were met. Two adjustments were made to the buffers; staff explained the adjustments. The applicant agreed to requests during the Planning Board meeting regarding construction traffic and road utilization. The Parks and Recreation Commission recommended a fee in lieu, the rezone met the requirements of the Land Use Map, Transportation Plan, and UDO. Staff and the Planning Board recommended approval.

Mayor Sutton declared the Public Hearing open.

Speaking in favor, Glenda Topp, Glenda S. Topp Associates, spoke on behalf of the property owner. She complimented staff on their excellent presentation of the request and spoke briefly on several details of the application.

Speaking in favor, John Powell, resident of Cary, stated he was representing property owners Sandy Culpepper and George Simms. They are in favor of the project but were concerned about increased traffic. He complimented the developers on their solution to this. Mr. Powell stated this was a great opportunity to add quality density that would provide housing for those who might work in the retail establishments at Beaver Creek. Council expressed also wanting entry level employees to be able to afford this housing. Mr. Powell felt more commercial-type product was needed in order to have a truly live/work environment.

Beverly Keith, representing DDR Developers Diversified, spoke on the work/live/play concept. Residential is the most logical option for these six acres. Ms. Keith explained why the property has sat vacant for so long.

Mayor Sutton declared the Public Hearing closed.

Council stated it could be a decent thing to have residential at this site, but across the street is mixed use. There was concern that on the south side we would end up with almost all residential. This needs to be looked at for the long term.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REZONE AND LOOK AT THE SOUTH SIDE AS A POSSIBLE CHANGE IN THE LAND USE PLAN; COUNCIL MEMBER DOZIER SECONDED THE MOTION. THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 04 : Brendie Vega, Principal Planner

Public Hearing and Rezone #14CZ30 Newton Property (0 Ten Ten Road), 25 acres located north of Classic Road and West of Reliance Avenue from Residential Agricultural (RA) to Tech/Flex Conditional Zoning (TF-CZ)

Staff oriented Council to the site. A neighborhood meeting was held, the request is consistent with the Land Use Plan, and architectural conditions were added. The Planning Board and staff recommended approval.

Mayor Sutton declared the Public Hearing open.

Speaking in favor, Glenda Topp, Glenda S. Topp Associates on behalf of the applicant, briefly added to the information provided by staff.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE
THE REZONE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Public Hearing 05 : Lauren Simmons, Planner II

Public Hearing and Rezone #14CZ32 (Lake Castleberry Recreation Site) from Rural Residential (RR) and Low Density-Conditional Zoning (LD-CZ) to Density-Conditional Zoning (LD-CZ). The subject property is approximately 1.95 located north of Castleberry Road and south of Green Level West Road

Staff oriented Council to the site, which is consistent with the Lake Castleberry zoning. Staff recommended approval. Council thanked Ms. Simmons for her service to Apex. This was her last meeting as she is moving to Colorado.

Mayor Sutton declared the Public Hearing open.

Speaking in favor, Craig Dewer, Withers & Ravenel, made brief additions to the staff presentation.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE
THE REZONE; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Closed Session 01

Closed Session to receive legal advice from the Town Attorney regarding train issues

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

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER JENSEN MADE THE MOTION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

OLD BUSINESS

Old Business 01 : Mayor Bill Sutton

Discussion of the train issues in and around the central business district

The Mayor stated the Council would discuss ways that might mitigate the noise created by the trains. Staff stated that the previous night PD measured the noise levels and gave the average decibal level. This level was above the Town ordinance noise level of 60 decibals during the day and 55 at night.

As a result of concerns raised and discussions in the past, it has been determined that the cost associated with erecting quiet zones would be \$280,000/intersection. Staff gave the details and cost of these to the Town. Even with quiet zones, there would continue to be noise with idling, disconnecting and connecting, and trains coming through. Staff stated that a local CSX representative informed us that Apex CSX employees are trained, and he doesn't know why they are not using the auxiliary units. It was pointed out that we cannot disrupt their normal operation. Staff was contacted by Mr. Dillard, CSX liaison, who offered to meet with the Mayor to discuss this issue. Council stated it wanted to see others besides the Mayor and Manager join in this meeting. The Mayor stated that the Town will get with CSX as soon as possible and get the quiet zone done, which will run through central downtown.

Police Department staff stated they contacted the CSX legal department, and a paralegal stated locomotives are not supposed to be running at night. They suggested a few ways to resolve the problem: (1) having citizens call CSX to complain which would cause an investigation; or (2) the Town or PD could call and CSX would address the issue. Staff stated that our hands are somewhat tied in this matter. A conductor could be charged if found to willfully be running the locomotives, but there is nothing we can do if the conductor is doing so per a higher authority. Council stated CSX has been contacted by numerous residents. We've received a letter stating they would correct the idling problem, but they have not.

Marshall Barnes of S. Salem Street stated he had been working to gather signatures for a quiet zone which he'd intended to present at the next meeting. He now has over 500 signatures. These were gathered because of the previous decision not to install the quiet zone.

COUNCIL MEMBER DOZIER MADE A MOTION TO AUTHORIZE THE MANAGER TO GET WHATEVER BIDS NECESSARY TO GET THE QUIET ZONE INSTALLED; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Conversation among Council ensued on the breakdown of the cost involved, staff stating that this cost was provided to us by CSX. Council stated it wished a breakdown of cost from CSX for us to review. Council stated it does not take spending taxpayer monies lightly. Even though the train operation was there when houses were bought, the problem has gotten worse over the past year as CSX has increased its operation. This is an increased burden on a larger area than that inside the Peakway.

COUNCIL MEMBER LASSITER MADE A MOTION THAT IF THERE ARE ANY FINES COLLECTED FROM CSX THAT THOSE FUNDS WOULD GO SPECIFICALLY TOWARDS PAYING FOR THE QUIET ZONE; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

COUNCIL MEMBER JENSEN MADE A MOTION THAT IN THE INTERIM THE TOWN LOOK INTO POSSIBLY PASSING AN ORDINANCE TO LIMIT THE IDLING DURATION FOR UNATTENDED VEHICLES IN GENERAL IN APEX AND ASSESSING A CIVIL PENALTY ASSOCIATED WITH SUCH (WORDING BELOW); COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

SUGGESTED WORDING FOR THE ORDINANCE

WITHIN 1,000 FEET OF A RESIDENCE, NO VEHICLE'S PRIMARY ENGINE MAY BE LEFT IDLING AND UNATTENDED FOR MORE THAN 30 MINUTES PER DAY. THE PENALTY FOR EACH OFFENCE SHALL BE (*DECIDED LATER*).

Council stated it wished to place a civil penalty on this so that any monies collected could be used to pay for the quiet zone. In addition, Council wished the Attorney to place an amount as large as law permits on this civil penalty.

Old Business 02 : Council Member Lassiter

Discussion regarding the requiring of private recreation open space within residential developments

Council stated this was discussed by Council and sent to the Parks and Recreation Commission for their opinion.

Greg Coley, Chair of the Parks and Rec Commission, stated they had ample information to make a decision on this. He asked staff how our rates compared to other municipalities. For as long as he's been on the Commission, they have always asked for open space from the developers. As land has gotten more expensive, however, changes have been made and it's tougher to get the open space. The

Commission felt it would be adding an extra burden on the developers to move forward with this requirement.

Council asked how many Commission members were involved with developers and did they recuse themselves. Jeff Roach, Vice Chair of the Commission, stated that he and Charles Wilkins were appointed because they know about development. After speaking with Mr. Coley, they did not recuse themselves because they did not see a conflict as they were considering private open space. Council stated it was troubled with the fee in lieu and developers sitting on a board that decides matters that include developers.

Council stated there was concern about more than just these two members. Council was reminded that the Parks and Rec Commission is not the final decision-making board. Mr. Coley spoke about what would happen moving forward if there was no more development. Studies have been done for open space and they are inconclusive as to how much open space is used and the benefits and advantages vs. cost and future projects. Apex does a great macro job on park activities. Council discussed pocket parks, their benefit, and how much land could be utilized for such. Council distributed percentage graphs and explained these. The Town Attorney confirmed that the proposal of mini parks in a subdivision would need to go through Planning as an amendment to the UDO.

Council asked if this could be done on a case-by-case basis, but Council replied that the developer with whom he spoke wished clarity on the matter. Suggested was that discussion with staff take place to present to the Planning Board to craft something to present to developers of 4% on the high end of a non-linear curve. Staff clarified how this type of recommendation could be made and the fact that there would need to be standards defined. Staff stated this is a planning issue and wished to see this go through the Planning Committee.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO SEND THIS ISSUE TO THE PLANNING COMMITTEE; COUNCIL MEMBER DOZIER SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, DOZIER, AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER LASSITER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 3-1 VOTE.

NEW BUSINESS

New Business 01 : Lauren Simmons, Planner II

Arcadia Ridge East - Master Subdivision Plan - for the property located at 2533 and 2605 Olive Chapel Road containing 18.50 acres and 50 lots

Staff oriented Council to the site, stating this property has had two previous rezonings. Staff has been reviewing this for the past year and recommend approval with conditions. A neighborhood meeting was held, the Parks and Rec Commission recommended payment of fee in lieu, and the request met the conditions of the Transportation Plan and UDO. The Planning Board recommended approval.

Stuart Jones, Jones and Crossen Engineering, answered questions regarding water drainage into the ponds, stating that they have improved the pond's function to the best of their ability. He clarified they met in 2014 with DOT, and DOT had no questions.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE SUBDIVISION PLAN; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

New Business 02 : Mayor Bill Sutton

Appointment of J. Michael Wilson to the Apex Board of Adjustment

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE
THE APPOINTMENT; COUNCIL MEMBER SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

New Business 03 : Bruce Radford, Town Manager

Discussion of the Town of Apex's Legislative Agenda for 2015

The Mayor explained some of the items were from last year and some were added for this year. Council wished to discuss 14 and 15. Regarding number 14, eminent domain, Council did not wish to see other municipalities force this for private development. The Town Attorney read verbiage, stating this refers to adding a new section that "private property shall not be taken by eminent domain except for a public use." The Town Attorney further clarified this for Council.

COUNCIL MEMBER LASSITER MADE A MOTION TO REMOVE NUMBER 14 FROM THE LEGISLATIVE
AGENDA; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 4-0 VOTE.

Regarding number 15, Council stated it did not agree with this as it refers to light rail. Staff stated this was included as a request from Council, Council stating he hoped this would be through existing highway funding. After further Council discussion, alternate language was suggested to which Council did not agree.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE NUMBER 15 OF THE LEGISLATIVE AGENDA AS PRESENTED; COUNCIL MEMBER JENSEN SECONDED THE MOTION. COUNCIL MEMBERS JENSEN, DOZIER, AND LASSITER VOTED IN THE AFFIRMATIVE; MAYOR PRO TEM SCHULZE VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 3-1 VOTE.

Council requested the addition of an item regarding residents who are in crisis in Apex: "We encourage policies and legislative efforts that provide support to residents who earn low to moderate incomes." Council was in agreement with this addition.

Staff requested an additional item: "The Town opposes any and all efforts to reallocate or amend the current sales tax distribution method." Council was in agreement with this addition.

CLOSED SESSION

Added Closed Session 02

Closed Session to discuss a personnel matter

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED SESSION. COUNCIL MEMBER LASSITER MADE A MOTION. THE MOTION CARRIED BY A 4-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. COUNCIL MEMBER DOZIER MADE A MOTION. THE MOTION CARRIED BY A 4-0 VOTE.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business, MAYOR SUTTON ADJOURNED THE MEETING.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton
Mayor