



REGULAR TOWN COUNCIL MEETING

Tuesday, July 21, 2020 at 6:00 PM

Council Chamber at Apex Town Hall, 73 Hunter Street

Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier

Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey

Town Manager: Drew Havens | Assistant Town Managers: Shawn Purvis and Marty Stone

Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

In attendance were Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members Brett D. Gantt, Audra M. Killingsworth, Cheryl F. Stallings, and Terry Mahaffey. 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 Gilbert called the meeting to order. He read a statement of diversity and inclusion related to religion and asked for a private moment of silence, after which he gave the Invocation and led the Pledge of Allegiance.

PRESENTATIONS

There were no Presentations to be made.

CONSENT AGENDA

CN1 Donna Hosch, Town Clerk

Minutes of the June 2, 2020 and June 16, 2020 Regular Council Meetings

CN2 Amanda Bunce, Current Planning Manager

Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of June 16, 2020

CN3 Sarah Van Every, Senior Planner

Statement of the Town Council for Rezoning Case #19CZ22 Wolfe Properties PUD, Josh Swindell, Envision Homes, LLC/Tony Streeter & Timothy V. Karr, Billy Ray Wolfe, Sarah W. Ronk, Willie T. Jr and Donna G. Wolfe, William D. II and Gaile E. Bunce, and John Terry

Paton for the property located on 1405, 1409, 1209 & 1401 Wimberly Road and 1012 & 1000 Double Helix Road

CN4 Sarah Van Every, Senior Planner

Statement of the Town Council and Ordinance for Rezoning Case #19CZ23 2524 & 2604 Kelly Road, Brian Griffith petitioner, for the properties located on 2524 & 2604 Kelly Road

CN5 Lauren Staudenmaier, Planner I

Statement of the Town Council and Ordinance for Rezoning Case #20CZ03, Patrick Kiernan, Jones & Crossen Engineering, PLLC./Cathleen & Kenneth Watson petitioners, for the property located on 1200 James Street

CN6 Dianne Khin, Director

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 Charles and Annette Herndon and J Dallas Herndon Heirs (Tullamore) property containing 10.1869 acres located at 1745 and 1805 Holt Road, Annexation #686 into the Town's corporate limits

CN7 Dianne Khin, Director

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 Faithwill Homes, LLC (Ananda at Bella Casa) property containing 2.0058 acres located at 2708 Blazing Trail Drive, Annexation #691 into the Town's corporate limits

CN8 Dianne Khin, Director

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 Construction Masters, LLC (Humie Olive Place) property containing 2 acres located at 7904 Humie Olive Road, Annexation #694 into the Town's corporate limits

CN9 Marty Stone, Assistant Town Manager

Authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owner, Tri Pointe Homes, Inc. regarding Wake County, NC PIN#0742-68-5065, 816 Amley Place, as recorded in Book of Maps 2020, Page 205, Wake County Register of Deeds

CN10 Marty Stone, Assistant Town Manager

Authorization for the Town Manager to execute the same for and Encroachment Agreement between the Town and property owner, Tri Pointe Homes, Inc. regarding Wake County, NC PIN#0742-68-5061, 820 Amley Place, as recorded in Book of Maps 2020, Page 205, Wake County Register of Deeds

CN11 Marty Stone, Assistant Town Manager

- Authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owners, James T. Macdonell and wife Katharine G. Macdonell regarding Wake County, NC PIN#0722-64-5123, 2671 Timken Forest Drive, as recorded in Book of Maps 2008, Page 34, Wake County Register of Deeds
- CN12 Marty Stone, Assistant Town Manager
Authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owner, Pulte Home Company, LLC., regarding Greenmoor Phase 1B Subdivision as shown on the plat recorded in Book of Maps 2017, Pages 1027-1031, Wake County Register of Deeds
- CN13 David Wood, Halle Cultural Arts Center Manager
Resolution designating Apex, North Carolina as a BEE CITY USA® affiliate
- CN14 Amanda Bunce, Current Planning Manager
Resolution reaffirming Sarah Van Every as a Wake County Review Officer subsequent to her changing her name from Sarah M. Rayfield to Sarah Van Every. She is already recognized as a Wake County Review Officer in order to certify that each map and plat presented to the Wake County Register of Deeds for recording satisfies the statutory requirements for recording.
- CN15 Russell Dalton, Senior Transportation Engineer
Resolution to Support Vision Zero Apex
- CN16 Drew Havens, Town Manager
Amendment to the current Apex Farmers Market Special Event Permit to allow for drive-thru pickup along Seaboard Street on each Saturday, beginning July 11, 2020 and ending April 24, 2021, to close marked parking spaces along the east side of Seaboard Street from 8:00 a.m. until 1:00 p.m. these days, and rescind the prior approval to close the Depot parking lot for the Farmer's Market
- CN17 John Letteney, Chief of Police
Contract for Off-Duty Police Officer Services provided to the Wake County Public School System (WCPSS) and authorization for the Chief of Police to execute the contract
- CN18 John Letteney, Chief of Police
NC Governor's Highway Safety Program Local Government Resolution
- CN19 Dennis Brown, Construction Project Manager
Renewal of lease with NC SECU and authorization for the Town Manager to sign lease for new ATM to be located in the new Mason Street parking lot near the Community Center
- CN20 Eric Neumann

Authorization for the Town Manager to execute the same for an Encroachment Agreement and a Utility Relocation Agreement between the Town and NCDOT. Remove overhead fiber line and relocate to underground.

CN21 Drew Havens, Town Manager

Ordinance to amend the Apex Town Code Chapter 20 related to Towing

CN22 Donna B. Hosch, Town Clerk

Apex Tax Report

Town Manager Havens stated there was a requested add on item: Resolution supporting clean water and the continued monitoring, testing, and removal of regulated contaminants to ensure Apex's drinking water remains safe.

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Mahaffey made the motion with the addition of the stated Resolution;

Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

REGULAR MEETING AGENDA

Mayor Gilbert called for a motion to adopt the Regular Meeting Agenda. Council Member Killingsworth made the motion; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

PUBLIC FORUM

Larry Harris, Sr., representing the Friendship community, made a presentation to Mayor Pro Tem Nicole Dozier for her efforts in recognizing Juneteenth as a Town holiday. He expressed his appreciation to the entire Council for their recognition of the holiday and the significance of this action. Mr. Harris stated we are moving from protest to policy, and he wants to see us continue to do the good things that change our lives and redeem those who have suffered the oppression of slavery.

Mr. Harris stated his gratitude to MPT Dozier for pushing this action forward. He stated the community's gratitude and presented her with the gift of a Juneteenth tee shirt, which she wore for the remainder of the meeting. MTP Dozier thanked Mr. Harris and the community.

PUBLIC HEARINGS

PH1 Sarah Van Every, Senior Planner

Rezoning Application #20CZ05 West Village PUD Amendment. The applicant, Josh Decker, McAdams Company, seeks to rezone approximately 35.36 acres located at 2412 Kelly Road (PIN 0731331798) from Planned Unit Development-Conditional Zoning (PUD-CZ #15CZ33) to Planned Unit Development-Conditional Zoning (PUD-CZ)

Staff oriented Council to the rezoning specifics. A neighborhood meeting was held. An email from neighbors Mr. and Mrs. Tim Donnelly was read in support of the request. Planning Board and staff recommended approval with conditions offered by the applicant.

Responding to Council, staff answered questions about the 40-foot buffer. Josh Decker, representing McAdams Company, explained the situation with the buffer, stating that their action was to the satisfaction of one of the neighbors.

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

Mayor Gilbert called for a motion to approve the rezoning. Council Member Mahaffey made the motion; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

PH2 Shelly Mayo, Planner II

Quasi-Judicial - Revised Major Site Plan for 540 Flex and Business Park located at 1600 Olive Chapel Road. The subject properties are identified on Wake County Tax Maps as PINs 0732235461 & 0732234710.

Mayor Gilbert read a statement outlining the process of the Quasi-Judicial Hearing.

Mayor Gilbert declared the Public Hearing open. All those wishing to speak were sworn in by the Town Clerk.

All Council Members stated they had no communication with the applicant, there were no financial conflicts, and that they could all decide the matter impartially. None had viewed the site.

OPENING STATEMENT BY STAFF: Staff member Shelly Mayo stated her credentials and employment history.

She then oriented Council to the site. A portion of the plan which needed to be adjusted would be discussed this evening. A virtual neighborhood meeting was held. The project complied with all UDO standards.

OPENING STATEMENT BY APPLICANT: David Godfrey, Savage & Godfrey, representing the applicant, stated staff eloquently and accurately reflected the reasons for this request.

CROSS EXAMINATION OF STAFF BY COUNCIL: Council asked about the loss of canopy cover and if this had been discussed with the applicant, staff stating it had not. However, a zoning condition added in 2018 did address tree screening. Responding to Council, staff stated there may be options for additional plantings on the property, but it would be the applicant's job to agree or disagree to doing so.

Responding to Council, staff addressed questions related to RCA.

CROSS EXAMINATION OF STAFF BY APPLICANT: Mr. Godfrey posed several questions to staff regarding the amendment.

There was no non-repetitive rebuttal from staff or the applicant.

TESTIMONY BY APPLICANT: Peter Cnossen, Jones Cnossen Engineering, stated his credentials and professional background and was presented as an expert witness.

Responding to Mr. Godfrey, Mr. Cnossen distributed to Council and into the record Exhibit A and Exhibit B which showed the area of interest. Mr. Cnossen further explained the details of the request and provided background as to why the request was being made. He stated all Standards and Requirements had been met or exceeded.

Mr. Cnossen confirmed to Mr. Godfrey that no tress had been removed in a particular area.

CROSS EXAMINATION OF APPLICANT: None.

REBUTTAL BY STAFF: None.

CLOSING ARGUMENTS BY STAFF: None.

CLOSING ARGUMENTS BY APPLICANT: None.

There were no questions or statements from Council related to the Checklist.

Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion to approve the revised Plan. Council Member Mahaffey made the motion; Council Member Dozier seconded the motion.

The motion carried by a 5-0 vote.

PH3 Shannon Cox, Long Range Planning Manager

Amendments to the Transit Plan map and the Thoroughfare and Collector Street Plan map of the Comprehensive Transportation Plan

Staff oriented Council to the amendments related to rail and bus transit centers. Staff talked about the spacing of the stations and how this related to densities. Design constraints were viewed. Planning Board and staff recommended approval. The Transit Advisory Committee had not had an opportunity to formulate a recommendation; the amendment had been shared with them.

Responding to Council, staff answered questions related to bus stops.

Staff presented and detailed Scenarios 1 and 2 related to changes which would be further addressed in Public Hearing 4 related to the thoroughfare and collector maps. Staff outlined the similarities and differences between the two scenarios. There had been substantial public interaction. Staff recommended approval of Scenario 1 as did the Planning Board.

Staff responded to Council questions related to changes staff wished to see in Scenario 2. However, staff reminded Council it did not recommend this scenario. Because of that, if we were to move forward with this scenario, we would need to look at and evaluate any further any changes. Staff responded to questions related to the possible underestimate of traffic flow and impact.

and

PH4 Amanda Bunce, Current Planning Manager

Amendment to the 2045 Land Use Map and Rezoning Application #20CZ01 Depot 499 PUD. The applicant, Stephen Dorn, Lennar, sought to amend the 2045 Land Use Map classification of approximately 5.41 acres, a portion of 0 Apex Barbecue Road (PIN 0731761944), from Office Employment to High Density Residential and to rezone approximately 200.8 acres located at 0 Kelly Road; 1216, 1300, 1330, 1420, 1525, and 1604 S. Salem Street; 0 and 6401 Apex Barbecue Road from Residential Agricultural (RA) and Neighborhood Business-Conditional Zoning (B1-CZ #09CZ01) to Planned Unit Development-Conditional Zoning (PUD-CZ).

Staff oriented Council to the amendment and rezoning request. Two neighborhood meetings were held. An affordable housing zoning condition was offered by the applicant. The Parks, Recreation, and Cultural Resources Commission recommended a fee in lieu. Planning staff recommended approval of the amendment but not the rezoning unless changes were made by the applicant, those changes being identified. Planning Board did not recommend approval of the amendment or the rezoning and reasons why were stated.

Responding to Council, staff addressed questions about the design of the crossing presented by the applicant as well as the traffic impact analysis. Looking at the latter, staff recommended an alternative to the presented analysis to which the applicant agreed. Staff explained possible future concerns about widening of the bridge and other roadways. Staff recommendations were presented to the applicant.

Jamie Schweder, Parker Poe, representing the applicant, covered the key aspects of the development. She urged Council to approve Scenario 2.

Ronald Stevenson, Rainey Kemp and Associates, covered the two transportation pieces of this plan which were not necessarily exclusive of each other.

Betty Parker, Senior Director of Real Estate Services for the Wake County Board of Education, spoke about the need for schools in relation to the PUD. She spoke about their looking for sites for schools and the collaboration from the community to accommodate student capacity in the area. Ms. Parker spoke about the explosive growth in Apex and how this relates to their future build plans.

Responding to Council, Ms. Parker answered questions related to affordable housing, the prioritization of a pre-K and other types of centers, and getting the maximum use out of land space.

Mayor Gilbert called for ten-minute recess.

Upon returning to the meeting, Mayor Gilbert declared the Public Hearings open.

Emmett Haywood, attorney from Raleigh, accompanied by land owner Pam Utlely, gave background on Ms. Utlely's property which she agreed to sell for a new school. Also accompanying Ms. Haywood was property owner Cary Hunter whose land has been in his family since the 1700's. In 2010, DOT took most of Mr. Hunter's property, the remaining acreage now being landlocked. Mr. Hunter agreed to the selling a portion of his property to the school board. Both land owners asked for the rezoning to be approved, allowing

non-residential uses on their properties. Ms. Haywood talked about the grade separation bridge that would have a negative effect for the property owners.

Doug Poe, spoke about the farm where he lives, bought by his grandfather in 1930 because of the reputation of the school system. He spoke a bit about the Town back then and how the businesses met the needs of the people. Mr. Poe likes how Apex has planned for change. He thanked Lennar for their project and stated he supported the rezoning.

Responding to Council, Bob Zimmalt with McAdams, stated the new condition that they worked on with staff regarding grade separated crossings. He explained what a tower might look like and how it would function. Staff stated if this condition was approved, it would need to come back to Council for a bicycle and pedestrian systems plan map update amendment. Council questions were answered related to turn lanes. Responding to Council, staff spoke to the impact on traffic flow in the surrounding area resulting from the transportation improvements being offered. Ms. Schweder elaborated a bit more about intersections and the right of way of which DOT did not mandate approval.

Council heard recorded comment from Karen Davis related to the proposed amendments to the thoroughfare and street plan maps. She reiterated her concern for a reduction in the speed limit on a portion of the road and the resulting benefits to the residents.

Council heard recorded comment from Kathleen Freer related to the rezoning and her opposition to high density. She did not want the land use changed. The school system in itself should have been enough to deny the rezoning.

Mayor Gilbert declared the Public Hearings closed.

Responding to Council, staff spoke about the 35-mph speed limit and how it may not affect safety because of the road being a major collector street which would then go into a residential area. A speed study could be done if there were perceived problems in the future.

Council presented development figures for projects that are approved or pending.

Council was glad to see this type of mixed use and recognized that there is a high need for a school in this area.

Council stated he approved of the affordable housing aspect, tree canopy replacement, and infrastructure improvements. While there was not agreement on both sides for

everything, for a project this size, there was significant agreement on a lot of things. We are almost in a school crisis, and this project would solve that dilemma now and going into the future.

Council agreed with the uniqueness of the project. She was attracted to the affordable housing piece, tree preservation, aesthetic and cultural aspects, and the school and its varying centers.

Council stated this was not the original plan from 2004, but this was in the spirit of the plan. He was excited about the project and felt his neighborhood will benefit from the project, especially from the amenities that will be within walking distance. He hoped the commercial part would be a success.

Council stated she has enjoyed seeing the evolution of the project, her having met with the developers three times. The developers have done their utmost to comply with her requests, except for the transportation piece for which there was not total agreement. However, she was excited about the project.

Council Member Gantt made the motion to approve Scenario 2 from Public Hearing 03, with the thoroughfare and collector street plan map grouping and transit plan map amendments; Council Member Killingsworth seconded the motion.

Council stated he was appreciative of the dedication of staff and the Planning Board in defending the transit maps, and that he respected their judgments. We were about to make a trade off because of the need of a school. We were about to go in a different direction, and this was not a criticism of anything previously done.

Council stated he was disappointed with the transit portion. However, things needed to come together in order to get the commuter aspect going.

The motion carried by a 5-0 vote.

Mayor Gilbert called for a motion for Public Hearing 04. Council Member Killingsworth made the motion to approve the request with the Land Use Map amendment and the rezoning with the additional condition;

Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

Various amendments to the Unified Development Ordinance

Staff oriented Council to the amendments. Responding to Council, staff stated the UDO does not have a definition of affordable housing right now, but that this is being worked on. Once completed, amendments to the UDO will come before Council. Planning Board recommended approval.

Council briefly mentioned he was interested in community gardens in neighborhoods.

Staff continued orienting Council to the amendments. The remaining three amendments proposed by Planning staff were outlined, the Planning Board recommending approval. Responding to the Mayor, staff stated there have been complaints in the past about parking at the high schools.

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

Mayor Gilbert called for a motion to approve the amendments. Council Member Mahaffey made the motion; Council Member Dozier seconded the motion.

Council spoke about his and additional Council being on the Planning Committee and things moving in the right direction through incremental changes.

The motion carried by a 5-0 vote.

OLD BUSINESS

There were no Old Business items for consideration.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

NB1 Nicole Dozier, Mayor Pro-Tem

Amendment of the Town's Personnel Policies to include June 19, Juneteenth, as a paid Town Holiday for employees

Council stated the current paid holidays. As chair of the Personnel Committee, Council stated Juneteenth is the oldest nationally-celebrated commemoration of the end of slavery in the United States. She presented the history of slavery leading to Juneteenth and stated that the Personnel Committee recommended approval of the request.

Council Member Dozier made the motion to amend Town policies to include June 19, Juneteenth, as a paid holiday for Town employees; Council Member Mahaffey seconded the motion; Council Member Stallings made a third to the motion.

Council asked if there was consideration for this day to be a replacement for a revenue neutral switch and possibly looking at programs which would benefit the community with the revenue. Council stated she did not think about this because the cost to the budget as provided by the Town Manager would be minimal. She thought about the cost of people wanting to celebrate or be proud of June 19th, and she spoke more about her reasons for this. Council stated she would be happy to call a Personnel Committee meeting to discuss this further, but that she would much rather give people more than less because we tend to get better productivity this way. Council spoke about how the current holidays are not questioned regarding the revenue factor.

Council talked about possibly using one of the Christmas holidays for Juneteenth. He spoke about his advocacy for the neighborhood grant program and how it would be a high impact for a high number of people at a relatively low cost. Further conversation ensued concerning not taking holidays away from people as the down time is needed.

Council stated there is a floating holiday available for different faith traditions.

Council thanked MPT Dozier for bringing this to Council. He additionally thanked Wake County Commissioner Holmes and Raleigh Mayor Baldwin for bringing forth this issue. Celebrating this holiday is one of the most effective ways to raise awareness.

The Mayor also thanked MPT Dozier for her leadership, as this was something she had been passionate about. He stated two young people planned a Juneteenth event downtown this year and how important this was to them. It is important that we take care of the youth in the future.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business and without objection from Council, Mayor Gilbert adjourned the Meeting.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor