



REGULAR TOWN COUNCIL MEETING

Tuesday, October 20, 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 (remotely), and Town Attorney Laurie L. Hohe.

COMMENCEMENT

Mayor Gilbert called the meeting to order and read a statement on diversity and inclusion related to religion. He talked about unity in Apex, encouraging all citizens to continue to work together. Mayor Gilbert led the Pledge of Allegiance.

PRESENTATIONS

PR1 Mayor Jacques K. Gilbert

Proclamation declaring October 22, 2020 as Arbor Day in the Town of Apex
The entire Council shared in the reading of the Proclamation.

PR2 Jacques K. Gilbert, Mayor

Breast Cancer Awareness Month Proclamation
The entire Council shared in the reading of the Proclamation.

CONSENT AGENDA

CN1 Donna Hosch, Town Clerk

Minutes of the September 15, 2020 Regular Council Meeting

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 October 6, 2020.

CN3 Shelly Mayo, Planner II

Statement of the Town Council for Rezoning Case #19CZ21 Heelan PUD, Jason Barron for Morningstar Law Group, petitioner, for the properties located at 8824 & 8829 New Hope Farm Road, 3108 & 3120 Olive Farm Road, and 0 Humie Olive Road

CN4 Liz Loftin, Senior Planner

Statement of the Town Council and Ordinance for Rezoning Case #20CZ04, Kobra Tracts PUD, WithersRavenel, petitioner, for the property located at 7500 Green Level Church Road & 7501 Jenks Road

CN5 Lauren Staudenmaier, Planner I

Statement of the Town Council and Ordinance for Rezoning Case #20CZ07, Jeff Roach, Peak Engineering/Rich Levert petitioners, for the property located on 2309 Old US 1 Highway

CN6 Shelly Mayo, Planner II

Statement of the Town Council and Ordinance for Rezoning Case #20CZ08 Apex Friendship Elementary School. Betty Parker for Wake County Public School System, petitioner, for the property located at 7901 Humie Olive Road

CN7 Amanda Bunce, Current Planning Manager

Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for November 4, 2020 on the Question of Annexation – Apex Town Council's intent to annex Lecter Marie Atwater, Donna M. Atwater and Jerome Kenneth Atwater HEIRS (Kings Grant) property containing 11.275 acres located at 2504, 2508, 2512, 2516 and 2600 Mt. Zion Church Road, Annexation #693, into the Town's corporate limits

CN8 Colleen Merays, Downtown & Small Business Development Coordinator

Special Event Permit and Town Co-Sponsorship request for the 2020 Chanukah Festival on Sunday, December 13, 2020, from 5:00 PM to 7:00 PM in the Apex Depot Parking Lot and Patio

CN9 Colleen Merays, Downtown & Small Business Development Coordinator

Amendment to Special Event Permit for the American Legion Fall Car Show originally scheduled for Saturday, November 3 to Saturday, November 7, 2020 from 8:00 AM to 2:00 PM in the Town Hall Parking Lot

CN10 Michael Deaton

Amendment to the Conservation Easement Ruth Holleman Property and authorization for the Town Manager to sign all related documents on behalf of the Town

CN11 Jose Martinez, Director

Approval and authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and property owners, Joshua R. Klatt

and Elizabeth T. Klatt (Grantees), regarding Wake County, NC PIN#0732-70-6379, 104 Gullane Court, as recorded in Book of Maps 2003, Page 00812, Wake County Register of Deeds

- CN12 Mary Beth Manville, Human Resources Director
Three (3) year contract with CCS Medical to administer the "Living Connected" Diabetes Management Program for Town employees covered under the Town's health insurance plan. At the end of the 3 year term, the contract will auto-renew for periods of one (1) year.
- CN13 John M. Brown, Parks and Recreation Director
Ordinance amendment to add Salem Pond Park to section (a) (1) of Section 15-6 of the Town of Apex Code of Ordinances and set its hours of operation
- CN14 John M. Brown, Parks and Recreation Director
Extending summer park operating hours through February 28, 2021

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Stallings made the motion; Council Member Killingsworth seconded the motion.
The motion carried by a 5-0 vote.

REGULAR MEETING AGENDA

Mayor Gilbert stated he wished to move the Work Session to the November 4, 2020 Regular Council Meeting.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to adopt the Regular Meeting Agenda with the requested modification;
Council Member Gantt seconded the motion.
The motion carried by a 5-0 vote.

PUBLIC FORUM

Nadia Howard spoke about the allowance of goats in the Town, pointing to the Town Ordinance. She explained why she felt goats would be appropriate and presented facts related to goats and why they make great pets and how they bring joy to their owners.

PUBLIC HEARINGS

PH1 Lauren Staudenmaier, Planner I
Ordinance on the Question of Annexation – Apex Town Council's intent to annex Powell Property Holdings, LLC (The Upchurch) property containing 5.5021 acres located at 7213 Roberts Road, Annexation #698, into the Town's corporate limits
Staff oriented Council to the site. Staff recommended approval.

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. Council Member Stallings made the motion to adopt the Ordinance; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

PH2 Amanda Bunce, Current Planning Manager
Rezoning Application #20CZ10 109 Holleman Street. The applicants, Charles Duane Taylor, Jr. and Sherry Bailey Taylor, sought to rezone approximately 0.24 acre located at 109 Holleman Street (PIN 0742305576) from Office and Institutional (O&I) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).

Staff oriented Council to the rezoning. The property contains an historic home. Planning staff and the Planning Board recommended approval.

Responding to Council, staff stated they were able to help the property owner with the rezoning, noting that this situation has not come up with any frequency.

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. Council Member Dozier made the motion to approve the rezoning; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

OLD BUSINESS

OB1 Colleen Merays, Downtown and Small Business Development Coordinator
Extending the current Parking-to-Dining Program layout adopted by Town Council on September 15, 2020 until November 1, 2020 to allow for extended outdoor dining and alcohol consumption as permitted by ABC Law or regulations, and to extend the ordinance temporarily modifying Town Code Sections 14-14 and 18-11 as they relate

to sidewalk dining and alcohol consumption on public streets and sidewalks through November 1, 2020.

Staff stated this was an extension recommended by ADBA. As requested by Council, staff surveyed businesses, 70% of the them stating they wished for the extension. 23% did not. Comments received from the businesses were presented.

Responding to Council, staff clarified the survey was to extend to November 1. She has not heard anything from ADBA about extending, but a good number of the impacted businesses would like for the date to be extended. Staff stated that maybe when the holidays are over, we could revisit this concept.

Council stated if we extend just to November 1, it would be the end of the program which would be prior to the next Council meeting. Extending further would give Council a chance to re-evaluate at the next Council meeting. The program has been successful, and he was worried what will happen to the businesses afterwards during the winter months.

Council stated she also thought about the November 1 date. Any certainty we could provide would be helpful; she wanted to see extension to the end of the November 1 week. She also wanted to do what we can to help support businesses during the winter months.

Responding to Council, staff spoke about restaurants and what could be done to shelter during the winter months. She explained that the heaters are loud and could hinder one's dining experience. She spoke about what else businesses could do to help bring in customers.

Council asked what other colder states are doing. Staff stated Chicago is doing a competition to address the issue, D.C. is doing grants, and N.Y. folks are putting on layers and sitting outside and rushing through their meals. No one has any solid answers as no one thought we would be looking at this issue through the winter.

Council stated our role is to be supportive to our businesses and to find a way to do so. We should not expect businesses to purchase heaters, for example, if this is a viable option. We should take advantage of the good weather and extend the program until the weather turns.

Council stated parking would be important to businesses during the holiday rushes, i.e., Small Business Saturday. However, he supported extending the date.

Council stated the Town Manager suggested extending to November 8. Conversation ensued along the lines of an extend-to date, and business wanting to keep the program in place as long as possible.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to extend the program to November 8; Council Member Mahaffey seconded the motion.

The motion carried by a 5-0 vote.

UNFINISHED BUSINESS

UB1 Mike Deaton, Water Resources Director

Reduction of the Civil Penalty that was assessed to the Center Street Pharmacy property owner on March 19, 2020, from \$4,700 to \$2,000

Staff recapped the situation with the assessment, recommending a reduction to \$2,000. Staff explained the criteria used for this assessment. He stated staff will develop amendments to the UDO to further clarify this process. The requestor did not respond as to whether or not he would be in attendance at this meeting [he was not].

Council stated appreciation for the logic of developing a sensible number.

Council stated making this reduction would be muddling the process and that he could not support this.

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

Council Members Killingsworth, Stallings, and Mahaffey voted in the affirmative;

Council Members Gantt and Dozier voted in the negative.

The motion carried by a 3-2 vote.

NEW BUSINESS

NB1 Nicole Dozier, Mayor Pro Tem

Town of Apex Living Wage resolution and an amendment to the Personnel Policies Manual to include a Living Wage policy

Council gave background on why she wished to do this, noting she is Chair and has been a member of the Personnel Committee. She operates on centering people and recognized what our people have been doing even in the midst of a pandemic. It was time to let the public know of our recognition of staff with the living wage. Also, they should understand the values the Committee shares. Council read the Resolution.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to approve the Resolution and amendment; Council Member Killingsworth seconded the motion.

Responding to Council, the Mayor Pro Tem stated why this was important to put into the budget. The Mayor stated seeing as he was a retired staff member, this was a strong message. He appreciated management's support in moving this forward.

Council stated this shows where Council's values are and she strongly supported this because Town employees are worth it. The sentiment was echoed by Council.

Responding to Council, Mayor Pro Tem spoke about other businesses which have adopted the living wage. Staff clarified those municipalities which have adopted such a policy and stated that we could talk to other counterparts about doing the same.

Council thanked his colleagues for pushing this issue, which has been worked on for a few years.

Mayor Pro Tem thanked staff for pushing this along and making sure it was supported by the budget.

The motion carried by a 5-0 vote.

NB2 Shannon Cox, Long Range Planning Manager with Shawn Purvis, Assistant Town Manager

Implementation of the proposed Apex Cares Housing Rehabilitation Program with an annual funding allocation from the Affordable Housing Fund

Staff stated she would be outlining a possible new program. We are still working on the affordable housing plan; this would be an early implementation item. She outlined what the Steering Committee has been working on. Because of NC laws, there is not much we can do about tenant rights.

The program would provide assistance to homeowners with needed repairs. Staff went over several of the highlights of the guidelines. The Town currently has a \$1 million annual allocation to the Affordable Housing Fund. The recommendation here was to allocate \$250,000 annually to the new program, Apex Cares, the details being presented. Wake County has similar programs with a few differences. None of the County's programs have been utilized in Apex because citizens are not aware of them. Staff spoke to Council questions about advocacy for awareness building.

Staff stated we have connected with Dan Sargent, Executive Director, Rebuilding Together of the Triangle, to roll in with his program. Mr. Sargent explained how they service the County with the work that they do. There is need even in places one would not expect. They have a waiting list which includes a few Apex residents. Mr. Sargent spoke about their having an opportunity to address the utility piece.

Responding to Council, Mr. Sargent spoke about the challenge in finding people who need help. He spoke to means testing. They have explored having a cap on the value of homes in order to balance the home worth with income and funding. Staff stated we don't have this qualifier and would have to feel it out. Mr. Sargent stated their program is built around the value of the home and what the owner's goals are. They do not want to improve for resale.

Responding to Council, Mr. Sargent spoke to how people in Apex may benefit from the program. They currently know of seven or eight homeowners here, and he believed there would be more.

Staff spoke to how they arrived at the dollars. We wanted to make sure we cover the needed cost, and several factors were used in coming up with a round number. We have not yet finalized any agreement – we were waiting to see in which direction Council wanted to go. Mr. Sargent explained how they balance the funds on their end with the municipalities with whom they are working.

Responding to Council, staff spoke more about advocacy which is emerging. Tools will need to be paired with education and public engagement. She explained the information they received from the public input, stating that most respondents didn't think such a program was needed in Apex. She explained the strategies of the Steering Committee. Apex Cares is in their top three priorities.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the Program and allocation; Council Member Stallings seconded the motion.

Council stated the more people learn and understand, the more they may be empathetic to such a program, especially in the midst of COVID. Staff stated there will be opportunities to share information with the public.

Council stated this was a fantastic program and wanted the public to recognize that the program is about helping people to stay in their homes. This gives them an option and

addresses a dimension of affordable housing. Council was in agreement, and she provided examples of what situations may arise which would cause a need for this program.

Council stated affordable housing looks different in each area. She exemplified another municipality's efforts in addressing affordable housing. Rehabilitation was one way to keep affordable housing from leaving. The program may get more interest than we think. This is a great first step, and she couldn't wait to see what happens.

Council thanked staff and the Steering Committee for their efforts. We have a lot of disparity in Apex, and she was concerned about the condition of housing. She hoped this program could help some of our neighbors in difficult housing situations.

The motion carried by a 5-0 vote.

NB3 Audra Killingsworth, Council Member

Amendment of Section 4.3 of the Town of Apex Code of Ordinances to allow the keeping of dwarf/pygmy goats within the town limits

Council stated we added miniature pigs to the Ordinance a while ago. Looking through the slide show during Public Forum, pygmy goats are adorable. They are smaller than some dogs, and they are taken care of like a dog or a cat. As far as noise, Council stated she has received complaints about dogs. She did not believe the goats would be as big of a problem. Nancy Howard contacted neighbors and received good feedback. Council recommended to follow the Ordinance similar to that for pigs.

Council stated the presentation brought a lot of joy.

Council asked if the Town has the authority to pre-empt an HOA Covenant on this. The Town Attorney stated 'no' and explained why. Council asked if there would be a maximum number per dwelling, Council responding it would be what people could take care of and house reasonably, adding that breeding was a consideration for the number of pigs.

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

The motion carried by a 5-0 vote.

NB4 Cheryl Stallings, Council Member

Discussion regarding recent amendments to the Transportation Plan Map and direction to staff to begin the process to re-examine two changes to allow for additional public input

Council stated there were five amendments, three having consistent recommendation from staff and the Planning Board. The two which did not, Council struggled with. After further reflection, Council was concerned. She wanted to create more opportunities for public input because of the potential impact on homes and businesses.

Council stated maybe we could do a social media push on the two items and go through the process again to the Planning Board and Council.

Council also had trouble with the two items, along with the one related to the church. He wanted to engage with the church community for them to get more information from us. He wondered if there was a way to engage more citizens when it comes down to Council making a decision.

Council asked staff to weigh in on this. Staff stated this was a difficult question. Amendments came from the study, and there was public engagement. A lot of amendments don't have this level of engagement, and she stated the various avenues of public input. Staff had conversations with the church and explained this may or may not happen, but they were still concerned. Staff explained It will become difficult if we start to target areas around transportation amendments. She was not sure what additional information we would get if we redid the public notice. Staff was hesitant to do target mailing around specific projects.

Council stated there was more concern for those amendments for which staff had no recommendations. Council echoed this sentiment. Staff stated we can use Council feedback to make recommendations in the future. Responding to Council, staff stated that if we go through process once more, it would be the same public notice as was previously posted. She spoke about what would happen if a development came in one of the corridors.

Council stated it would be better to get more information in writing and this would make her feel better about the long range plan. Council was in agreement.

Staff stated they could think about the staff report and provide more information that way.

Council stated Council should be making the call. He asked the Town Attorney could a motion to reconsider be made. The answer was 'no', and the Town Attorney explained why. Council stated maybe a FaceBook page could be created for all public hearings as is done for rezonings.

Council agreed that any way to get public comment is good.

Council agreed Council should be making the decision. He didn't think hearing any negative comments would impact his vote. He thought reposting would confuse the information without new information being provided.

Council stated she had no problems making tough decisions. But, it was harder to assess, for example, a roadway going from two to six lanes.

Council stated it was a good idea to have public input even if Council would have to go through this twice.

The Town Attorney clarified that staff would bring back the two amendments after going through the process again.

Mayor Gilbert called for a motion. Council Member Stallings made the motion to bring back the two amendments after going through the process again;

Council Member Mahaffey seconded the motion.

Council Members Stallings, Mahaffey, Killingsworth, and Dozier voted in the affirmative; Council Member Gantt voted in the negative.

The motion carried by a 4-1 vote.

Council clarified for staff to expand all public hearing posts on FB and not just rezonings. Conversation ensued around doing so. Council stated it would be better to err on the side of more conversation rather than less.

CLOSED SESSION

CS1 Jacques K. Gilbert, Mayor
Closed Session to discuss a personnel matter

Mayor Gilbert called for a motion to go into Closed Session. Council Member Killingsworth made the motion; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

Mayor Gilbert called for a motion to return to Open Session. Council Member Killingsworth made the motion; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

WORK SESSION

WS1 Shannon Cox, Russell Dalton, Vance Holloman, Shawn Purvis

Receive information regarding cost and timing of transportation projects and existing debt capacity in order to consider possible financing options to fund transportation projects

Council voted to move this item to the November 4, 2020 Regular Meeting.

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