

APEX TOWN COUNCIL

SPECIAL MEETING

January 11, 2011

MINUTES AND GENERAL ACCOUNT

Mayor Keith Weatherly called to order a Special Meeting of the Apex Town Council at 7:02 P.M. on Tuesday, January 11, 2011, in the Council Chambers of the Apex Town Hall. The Special Meeting had been called for the purpose of entering a Closed Session to discuss, receive legal advice, and potentially take action with respect to pending litigation entitled: New Hill Community Association v. North Carolina Department of Environment & Natural Resources, et. al., 10 HER 5616 [the "Contested Case"]. Along with the Mayor, all Council Members were present. Town Manager Bruce Radford, Town Attorney Henry Fordham, Jr., Assistant Town Manager Mike Wilson and Glen Dunn, an attorney with the firm of Poyner & Spruill and representing the Town in the aforementioned litigation, were in attendance for the Special Meeting.

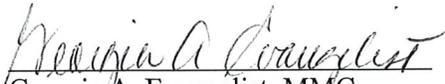
The Mayor began the meeting by asking for a motion to enter into Closed Session. Council Member Jones made a motion, seconded by Council Member Schulze, to enter into a Closed Session to discuss, receive legal advice, and potentially take action with respect to pending litigation entitled: New Hill Community Association v. North Carolina Department of Environment & Natural Resources, et. al., 10 HER 5616 [the "Contested Case"]. The motion passed.

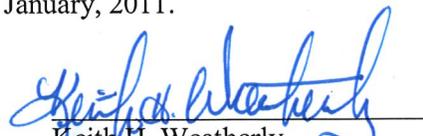
Following the Closed Session, Council Member Jones made a motion, seconded by Council Member Schulze, to return the Special Meeting to Open Session. The motion passed.

With all business complete, a motion was made by Council Member Gossage and seconded by Council Member Jones to adjourn. The motion passed and the Special Meeting was adjourned at 7:45 P.M.

Submitted by:
J. Michael Wilson
Assistant Town Manager

The above minutes were approved on the 18th day of January, 2011.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for January 18, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, January 18, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Pro tempore Bryan Gossage presided over the meeting in the absence of the Mayor.
All Council Members were present.

Mayor:
Keith H. Weatherly



<http://www.apexnc.org/>

Council:
Bryan Gossage,
Mayor Pro tempore
Bill Jensen
Mike Jones
Lance Olive
Gene Schulze

COMMENCEMENT

Mayor Pro tempore Gossage called the meeting to order, led the pledge of Allegiance, and extended a welcome to those in attendance. Special welcome to Scout Troops #208 and #315, all working on their Merit Badges. Council Member Schulze gave the Invocation.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Pro tempore Gossage presented the Consent Agenda to be set prior to taking action on the following items. There were no amendments to the Consent Agenda. **Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 5-0.

1. Minutes for December 21, 2010 Council Meeting.
2. Minutes for January 11, 2011 Council Special Meeting and the Minutes of Closed Session (separate cover).
3. Amend Sec. 9-1 Apex Code of Ordinances concerning hazardous materials storage boxes.
4. Approve Service Contract between Town and Burford's Tree Inc., to retain same for purpose of providing land clearing services, tree trimming and tree removal for Town of Apex.
5. Amend Ellington Place phasing plan to allow thirty single family residential certificates of occupancy prior to completion of required Laura Duncan Road frontage widening and sidewalks; staff supports request from Lennar Homes.
6. Approve Tax Report for Town of Apex, approved and accepted by the Wake County Board of Commissioners in their regular session January 3, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Pro tempore Gossage presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the agenda and it was set as presented.

PUBLIC HEARINGS

Public Hearing 1

Fiscal Year 2011-2012 Annual Budget: the Pre-Budget Public Hearing was held to receive citizen input regarding formulation of Fiscal Year 2011-2012 Annual Budget. The public hearing was opened at 7:05 p.m. and with no one addressing the budget, the public hearing was closed. The public hearing on the proposed budget is scheduled for June 7, 2011. No action was taken.

Public Hearing 2

Public Hearing Rezone #09CZ07 Veridea: Lookout Ventures, Inc., petitioner, seeking to 1) make amendments to the Unified Development Ordinance, 2) rezone 1,011 acres from Planned Unit Development Conditional Zoning, Rural Residential and Light Industrial to Sustainable Development Conditional Zoning with Sustainable Development Plan, and 3) amend 2025 Land Use Plan; rezone area is bound by US1, E. Williams Street (NC55) and the future NC540 Corridor; Principal Planner Brendie Vega stated the Planning Board met January 13, 2011 and voted unanimously for approval as presented with addendums from the applicant.

Staff presented outstanding issues and concerns related to the Veridea project and SD Plan, and are incorporated as a part of the minutes and referred to by reference; Council comments and discussion followed regarding same.

Planning Department: SD Plan: maximum square footage in sustainable zones, Transportation Demand Management Plan, and a 30 year reserved transit corridor to coincide with CAMPO 2035 plan; staff sought direction how best to address them. Council addressed items as they were identified.

Construction Management: SD Plan: areas alley design and maintenance, phasing of traffic infrastructure, mass fixed rail, Transportation Impact Analysis and trip capture (30/40%), and build-out thresholds (balance in ranges within infrastructure planning) for each land use type and scenarios possible under proposed thresholds (Council agreed: text provided supported by table to provide clarity/tracking during build out to assure true mixed use development), average jobs living/working.

Fire & EMS: use of reclaimed water to fight fires (joint effort with agencies to make this work and concern with cross connection and possible contamination and whether border municipalities would continue to assist). Developer Agreement concerns: public safety facility, location, and inadequacy of the acreage offered (up to one acre would not accommodate same), service levels provisions/needs, costs for equipment and staff, and financial concerns and parameters within the developer agreement, when they need to be in place to provide adequate public safety; putting out money for a public safety center and not having necessary tax and revenue to pay for it; enforcement powers.

Attorney Fordham advised when considering regulatory aspects of the potential rezone and SD Plan, recommends not at this meeting, Council consider all financial issues between developer and town (developer agreement) and is opportunity to place conditions on the project related to infrastructure and allocating financial responsibility to pay for those, before the rezone of the property; as far as authority to require conditions, the developer can decide whether to agree to the conditions, however Council does not have to rezone the property unless conditions are met, and views this opportunity for parties to work together to work out issues.

Drafted developer agreement was not included, however as drafted, does not propose to place construction of various infrastructure discussed, TIA, public safety/fire facilities needed and is not proposed that the developer pay for them at this point. Mayor Pro tempore Gossage clarified it wise to work out any disagreements within the developer agreement prior to rezone of the property. Attorney Fordham agreed.

Discussion assuring financing would be in place for the town to be responsible for such, led Manager Radford to comment on the finance plan proposed by developer for in-ground infrastructure; have looked at anticipated growth patterns and under current economic conditions there was no way to forecast such; concerns have been heard, and mandate to provide of equal levels of services to Veridea that is being provided throughout other parts of town; anticipated additional needs to provide these levels of services were expressed and is based on current number of employees; primary concern is that the town would be caught short and whether there were proper revenues to fund infrastructure prior to vertical construction, and financial impacts to the town, something they would want prior to, offering scenarios to match trends.

Police: protection of town citizens and density within Veridea and uncertainty as to how the project will unfold, parking impact plan, transportation plan, traffic volumes and connections, levels of service to be provided, and a method to trigger police expansion as additional staff demands and equipment are needed early into the project before retail and residences, and relative to the developer agreement, the request for public financing of a public safety (shared) facility and the in-adequate space and location offered for public safety concerning the density, and the significant issue of expenses to tax payers.

Public Works: Town controlled Wastewater Master Plan, keeping in consideration current sewer capacity options and finances, supporting re-use water and the idea to reduce load on Middle Creek with an interim system in place or pump station in Veridea, prior to pumping wastewater to the regional plant; watershed protection for the 1000 acres, exemptions only by mechanism in place to do so; no staff support for mass grading and the necessary RCA requirements to mitigate secondary/cumulative impacts to the environment supporting a reduction of 20%; electric utilities/non-standard service facilities and possible rate restructure that would be distributed to all customers; adoption of facility plan, concerns to watch carefully the developer agreement, economics relative to finances, road infrastructure, maintenance, staffing, traffic signalization, concession with capacity fees and not negotiate this revenue stream; supports working with acreage fees and fee credits that fit towns facilities plan, and associated pump station and sewer lines.

After a brief recess Mayor Pro tempore Gossage continued the staff presentations.

Parks and Recreation: all issues have been resolved for parks and recreation; proposes and supports a Town controlled and approved Parks and Recreation Master Plan for the entire site being triggered by 1000 units primarily for the citizens in Veridea; recommended land dedication to build facilities, traditional needs for and provided in the agreement, a community center, ball fields, tennis courts, and park triggered by 2000 units; abiding by existing UDO for payments of fees; subsequent payment of fee in lieu to enable developer to build facilities to serve residents where specified and platted; recreation areas will be located within the Veridea project (one-third total acreage approximately 75 acres); contract letting was discussed, and part of the requirement, the town would follow the public bid laws, working with developer on design, and under the town's direction, also discussed, the efficiency of space, and flexibility in use.

Tom Hendrickson, Lookout Ventures, gave an overview of work efforts to current, and presented: Veridea: "True Green Ideas", a proposed sustainable mixed use development, a live, work, shop, play community, that would double the town's tax base, improve quality of life, adding 1000 acres to the town's corporate limits, adding 8000 residential units (1.72 person per unit), townhomes and condos, retail and office space with build-out projection 2035 (form base code fundamental design, sustainable development plan - zones/map). Stated an economic impact analysis determination of investments, labor yields and permanent jobs, revenue generation, net income, tax base, and associated impacts of the development; additional work will follow with the budget: massive amounts of revenues will be generated over time. There's no commitment to electric utilities; believe they have worked to find solutions to every major issue, incorporating lots of ideas embedded in the plan, and feels they have presented a solid Veridea project plan, and was a good step towards Apex future, asking approval, having accounted for density, housing units, building, acreage, and land uses, within the Veridea plan and TIA, further acknowledging there is not an abundance of available sewer supply, however noted tools in place to go further into development of Veridea, based on their tool, rules worked through with staff and specific documentation for every out conveyance of Veridea. The Veridea team was present.

The public hearing was open at 9:20 p.m.

Kim Crawford, Apex Chamber of Commerce, spoke in support of the Veridea project, noting its potential to bring 30,000 jobs to Apex; 3.5 million sq. feet mixed use retail/commercial space and significantly expand economic development opportunities, attracting diverse mix of businesses and residents from all over the world.

Tom McHuston a small business owner in Apex spoke in support of the Veridea project, in that it is a great opportunity for Apex, would build Apex tax base, provide jobs, and keeps money in town.

Loretta Gazaro, resident addressed education/school location for Veridea.

With no one else addressing the Veridea project, Mayor Pro tempore Gossage turned to Attorney Fordham to present legal and policy decision matters, all defined and incorporated in the minutes and referred to by reference, and presented by the Veridea proposal, and almost all related to the SD Plan; he offered key points relative to Zoning/Regulatory, contained in his memorandum, giving his best legal opinion, noting additional discussion needed on some matters, and where key changes in wording should be determined; with Infrastructure Facilities and Dedications advised: conditions can be placed on a project and must be related to the impact of the development, and can be a part of the SD Plan or Developer Agreement that can also allow projects to be grandfathered, and also to negotiate infrastructure and financial commitments.

Tom Hendrickson presented follow-up Veridea response and status to the attorney's comments, noting many modifications were already addressed, some not, and included in an addendum, included and covered by Planning Board, to the SD Plan dtd. 01/18/2011, all defined and incorporated in the minutes and referred to by reference. He continued ultimately the final product would be one where they re-integrate the addendum items into a revised and restated version of the SD Plan. Attorney Fordham agreed the addendum was a good mechanism without review of the entire plan.

Hendrickson noted goals, and guiding principles and standards in place, assuring the development of Veridea, a form based code, needing flexibility among uses to ensure an economic viable project, and giving more detail to text-table to ensure they say the same thing, and define a true mixed-use development and haven't come up with the table however wanted something that is enforceable and come away with the same conclusion.

Key points: With the TIA, Mike Horne, Kimley Horne noted no significant impact and minor generation of traffic associated with density/lodging. Changes have been made and agreements reached to alleviate concerns, with some issues still to be discussed; commitments are being made over a significant period of time and significant amount of land and that the rules stay in place; thresholds designed to maintain diversity of the mixed use; to the text supported by tables: table was removed from SD Plan, and offering a revised text designed to create and maintain a mix of uses as build-out of Veridea occurs, that would be applicable to the development unless otherwise provided by Council. Minor table edits were noted. Traffic measurements: it was not their intent to grandfather any public health and safety rules. SD plan: provides for education/schools approved specific to and by Wake County School Systems, with a final determination by their plans and needs.

Mayor Pro tempore Gossage noted the presentations complete, new materials offered for review, and asked Council if there were questions: Council Member Schulze expressed concern relative to: the responsible party, and internal traffic measurements (40%),

Action: Council Member Jones noted the volume of questions and decisions to be made, made the motion to continue the Public Hearing for this item to the February 1, 2011 Council meeting. Council Member Olive made the second to the motion. Motion carried unanimously (5-0).

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

New Business 1

Presenter: Town Manager Bruce Radford

Annual Town Council Retreat for 2011: Manager Radford asked Town Council to set their annual Planning Retreat for Friday, February 25, 2011, to be held in-town and suggested Council offer topics to be discussed. Council by consensus agreed and set the retreat date February 25, 2011.

End of New Business

CLOSED SESSION

Mayor Pro tempore Gossage asked for a motion to move into Closed Session to discuss potential litigation. **Action:** Council Member Jones made the motion to move into Closed Session at 10:30 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0). Minutes of Closed Session are recorded separately. **Action:** Council Member Olive made the motion to move back into Regular Session at 10:43 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0).

WORK SESSION

No Work Session was scheduled.

ADJOURNMENT

With no further business to come before the Council, Mayor Pro tempore Gossage called for a motion to adjourn. **Action:** Council Member Schulze made the motion to adjourn at 10:45 p.m. Council Member Olive made the second to the motion. Motion carried unanimously (5-0).

The January 18, 2011 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the February 1, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk, Apex, North Carolina



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 1, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 1, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.
Council Members present: Gossage, Jensen, Olive and Schulze
Council Member absent: Jones

Mayor:
Keith H. Weatherly



Council:
Bryan Gossage,
Mayor pro tempore
Bill Jensen
Mike Jones
Lance Olive
Gene Schulze

<http://www.apexnc.org/>

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Majority Leader of the NC House of Representatives Paul Stam was present and stated during legislative season he will be looking at proposed local bills and local revenue sources and asked there be no requests for money because there was none and would be working on a proposed budget that doesn't push costs down to Local Government.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action on the following items.

Action: Council Member Schulze made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously.

1. Minutes for January 18, 2011 Council meeting; and Closed Session (separate cover).
2. Request from Rev. Dr. Jane C. Pan to transfer Lot 260 Plot E and F in the Apex Town Cemetery to K.C. and Tammy Chao.
3. Set Public Hearing February 15, 2011 Town Council meeting regarding MCI Enterprises, LLC Land Use Amendment and Rezone #11CZ01.
4. Set Public Hearing February 15, 2011 Town Council Meeting regarding McClamb Rezone #11CZ02.
5. Award construction contract for SR-5000B & SR-5001B NC Department of Transportation Safe Routes to School Demonstration Project, pending concurrence with award by NCDOT, to Barrett, Irvin and Jordan Contractors, Inc. for a total bid of \$94,984.15: Resolution No. 2011-0201-01.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.

Action: Council Member Gossage made the motion to amend the regular meeting agenda, to hear New Business 2 and hold Public Forum prior to Public Hearing 1 due to the anticipated lengthiness of the hearing. Council Member Schulze made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously (Items will remain in their correct order in the minutes).

PUBLIC HEARINGS

Public Hearing 1

Principal Planner Brendie Vega; Planning Board met January 13, 2011 and voted unanimously for approval as presented with addendums from the applicant; Town Council met January 18, 2011 and voted unanimously to continue the Public Hearing to February 1, 2011.

Continuation of Public Hearing for Rezone #09CZ07 Veridea: Lookout Ventures, Inc., petitioner, seeks to (1) Make amendments to the Unified Development Ordinance; and (2) Rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) with a Sustainable Development Plan; and (3) Amend the 2025 Land Use Plan; this rezoning area is generally bound by US 1 Hwy, East Williams Street, and the future NC540 corridor; and (4) Lookout Ventures will make a presentation regarding the financing proposal for the development and request participation from the Town of Apex.

With the public hearing having been continued from the January 18, 2011 meeting and remaining open, Jeff Hastings, Apex Chamber of Commerce, spoke in support to rezone the land slated for Veridea noting the economic long term benefit for Apex. Mayor Weatherly stated unresolved issues were discussed at the last meeting and Tom Hendrickson would present a financing proposal. Tom Hendrickson, Lookout Ventures stated Attorney Reeves was absent from his team; noted progress had been made on some unresolved issues. Asked to defer the presentation of the financing proposal to allow further discussion with staff and the professional consultants and would meet as quickly as possible. Mayor Weatherly expressed urgency to proceed with the finance plan, seeking direction from the Manager how best to proceed. Manager Radford responded staff was prepared to discuss the financing; had met with Mr. Hendrickson and felt he had ample time to be prepared; if Council chose to defer, staff would be prepared to discuss it at the appropriate time. Mayor Weatherly stated Council could discuss rezone issues. Mr. Hendrickson added it had been a two year process and owns a large tract of Apex land that needs to be zoned; he concurred there needs to be a finance discussion, however given the amount of land involved and the amount of investments, requests action on the zoning as submitted be as soon as possible.

Attorney Fordham advised with respect to a memo of a year or more, his recommendation had been Council not make a decision on the Veridea zoning until they were satisfied with the finance issues; the only time Council has legal authority to require conditions related to ameliorating impacts of the development was during the zoning process, and explained the initial part of the process was to create a UDO amendment that would allow consideration of the request to rezone the 1000 acres to a conditional zone; during the conditional zoning process, law allows Council to impose conditions that mitigate impacts of the development, and should Council proceed past that point, that would not have resolved the finance issues or resolved what will be in the developer agreement which often deals with finance issues, then Council would lose ability to require conditions related to finance matters. Mayor Weatherly suggested Council proceed with the rezone request after they see what's being expected from the Town as far as finance participation, however still owes a decision on the zoning and SD Plan. Mr. Hendrickson stated the developer agreement was recommended by Planning and the financing plan was a component to that, however noted critical elements in order legally were for the adoption of the UDO Amendment, zoning of the property, the SD Plan, and concurrence of the developer agreement. He expected to move forward more quickly on the developer agreement that sets the context for any finance plan and agrees it needs to move along.

Attorney Fordham disagreed advising if Council were going to impose conditions dealing with mitigation, it should be a part of the zoning process, explaining if there was an agreement related to financing it would be reflected within the developer agreement but the point at which Council has regulatory authority to require conditions that relate to impacts whether they be dedications, monetary compensations dealing with impacts, or facilities, those typically would be conditions of the rezoning. Mayor Weatherly added although they knew conceptually where they need to be, at some point need to get to these issues, and if substantive that they can't reach a common ground, may want to address those in the zoning proposal. Mayor Weatherly suggested Council ask Mr. Hendrickson to provide a comprehensive thorough financing proposal before moving further into the underlying issues.

Council Member Gossage added staff was seeking direction on certain issues and asked Attorney Fordham if he was comfortable moving forward with discussion on the unresolved zoning issues. Attorney Fordham responded he was not asking they not deal with any specific issues. Council Member Gossage restated he was hearing from staff that they would like direction in certain areas of the unresolved issues and asking was there any item the Attorney did not feel they would lose leverage on by doing so, prior to the developer agreement, and felt it may be a way to proceed at this time. Mr. Hendrickson stated progress had been made on some of the unresolved issues and was prepared to discuss those. Attorney Fordham advised Council could move forward with discussion of the unresolved issues.

Principal Planner Vega presented Planning unresolved issues and are incorporated into the minutes and referred to by reference: 1) Transit Corridor Reservation 2035 and recommended a 10 year extension. Transportation Planner Reed Huegerich expanded on the fixed Guideway transit corridor and CAMPO 2035 corridor reservation and request for the extension. Mike Horn, Kimley Horn and Veridea stated there was provision for a 15% reduction in development until mass transit was available and if the transit plan was not in place, could not build the last 15% and more prudent for them to find a way to make it work; noted after 20 years things change and would allow for future technology. Council discussed flexibility for future councils to allow buildout if there was no transit corridor or to extend beyond this. Mr. Hendrickson felt 20 years was reasonable and if locked in for 30 years, would not have leverage to gain prioritization with TTA even though they say transit should serve such as Veridea, can only plan for rooftops in place, hoping the line comes south to Cary and preserves the option to Apex. Mayor Weatherly informed TTA had done a cost benefit analysis to bring the Raleigh line to Apex and north to Wake Forest and in neither case, did not find benefit to justify costs; understands planning but in reality, doesn't see this happening in this timeframe. Council chose to take the following position on the corridor reservation.

Action: Council Member Gossage made a motion stating the Town's position: to reserve the 2035 Transit Corridor. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously.

2) Mix of Land Uses: staff wants to see the developer proposal to track mix of uses and recommends tracking by building permit or certificate of occupancy and sought direction. Council discussed no use of buildings until receipt of certificate of occupancy, larger percentage of buildout near the front and lowering near the end. Mr. Hendrickson presented responses and addendums reflecting modifications to SD Plan and proposed by Planning Board and a proposal for tracking development thresholds, and having reduced 4000 residential units to 3000 units, and incorporated in the tables, all defined and incorporated in the minutes and referred to by reference. Staff felt the tracking format was workable.

Council moved to the legal unresolved issues and received Veridea responses, all defined and incorporated in the minutes and referred to by reference. 1) General standards stated in the proposal to require Veridea to comply with standards, purposes, principles, goals, and framework, and are too subjective to be used as mandatory requirements and enforceability of same. Attorney Fordham wanted Council to be clear on enforceable language vs. non-enforceable general language and if standards were sufficient. Mr. Hendrickson felt language used in SD Plan, SD Tables, and UDO sets forth sufficient standards, guiding principles and subjective sustainability goals to guide development of Veridea. Mr. Hendrickson added they and staff had been through the UDO and doesn't think there were any standards left out and supports existing language. Council was ok with the language as long as there were sufficient standards in place for enforceability. Vega noted staff had asked for guiding principles, this is creation of an SD Plan district and why create a district vs. doing a PUD; staff felt there was enough language in the SD Plan and the UDO amendments to be sufficient.

2 and 3) Square footage allocations among retail, office and industrial uses: allows responsible party to reallocate; there are no mandatory square footages among those; tables and thresholds now adequately reflect this. Mr. Hendrickson noted early discussions of no reallocation between uses but moving between non-residential uses; regulations are in place. Council expressed concern whether there was sufficient language to mandate minimums for all uses, and whether tables were sufficient to carry weight over reallocations. Attorney Fordham had no opinion whether to enforce mixed use or not, and no opinion whether thresholds were sufficient; noted enforceable thresholds within the tables, and whether they are adequate or not was a policy decision. Vega noted a table in the form base code summary that has minimum acreage for each zone and the number of acres that will be non-residential; there are minimums for all the zones. Attorney Fordham noted with acreage minimums, there are a huge variety of uses that are permitted in each of the zones so it was not a direct coalition between the ultimate uses to have a zone acreage minimum. Mr. Hendrickson referred to the chart developed by the Town's Transportation Engineer Russ Dalton, and reducing the 4000 to 3000 that ties residential to retail and office separately and not together; at one point were together and at staff's request split those apart; the chart would prevent a wholesale reallocation from one use to the other. Council wanted assurance from staff regardless what the numbers were, there was enough language and pieces in place to assure certain minimums are provided that would prevent excessive reallocation, still allowing work on the numbers. Vega stated reallocation can't happen between residential and non-residential; reallocation can happen from office, institutional, commercial. Attorney Fordham advised Council if tables were adopted, they would be enforceable. Mr. Hendrickson explained the residential control chart requires retail and office at certain levels or couldn't build residential. Council wanted assurance the named charts in the language does control and prevent excessive or unlimited reallocation of non-residential use, believing so, wanted to hear it said by the Town Attorney or staff, either yes or no. Attorney Fordham responded it looks like it matches the table; they look as if they are enforceable thresholds, however would like to read it through before giving a final opinion on whether or not it's an enforceable threshold.

No discussion: 4) Sustainable Zone and Non-Residential Acreage Minimums; 5) Concept Map - Location of Sustainable zones within Veridea and 6) Density

7) 250 Acre Designation by responsible person for, 1) 100 acres RCA, 2) sufficient acreage to cover mandatory recreation land dedication requirements, 3) 150 acres less acreage for 2 for accommodating open space, public space and civic space: (buildings dedicated to government, transit, and parking are not counted toward 150 acres of RCA). Lookout proposes open space and civic space to count as partial credit towards RCA).

8) Grandfathering of Veridea: Lookout seeks grandfathering for 20 years through a developer agreement (General Statute provides a mechanism for developer to obtain grandfathering for up to 20 years and for the town to obtain integration of and commitments for infrastructure for long term build-out through a developer agreement); Town should assure fee schedules, standard specifications and details are not grandfathered. Lookout agrees public health and safety regulations are not subject to grandfathering. Lookout believes grandfathering provides certainty for Town and Veridea; and grandfathering or vested right to develop Veridea in accordance with current zoning and development regulations, including SD Plan is absolute essential to maintain unprecedented equity investment in Veridea and to secure long term public or private loans to build its infrastructure and fund other costs of development. Staff agrees Veridea could follow the UDO (specific parts were named: parking, lighting, signs) until they submit their traffic and parking plan, and any alternative plans including their sign ordinance; SD Plan would be different from the UDO and gives them more flexibility. Mr. Hendrickson added on those things that could not be determined would follow the UDO until they bring alternative standards to Council for consideration, and until Council approves differently. Sec. 3.3.4 addresses this. Vega stated staff is satisfied.

No discussion: 9) UDO Track for Development.

10) Site Plan and Subdivision Plan Review – SD Plan specifies higher thresholds than the UDO; exempts Veridea from 3 year accumulation rule that the UDO applies to projects that are on the same or adjacent property and owned by the same entity; most would fall under major site plan review or 100,000 square feet. Mr. Hendrickson stated the 3 year accumulation rule was no big issue, however addressed thresholds and accumulation rule, reduction in time to allow flexibility and deferred to Council's judgment. Staff was in agreement with the 100,000 square feet and 200 residential.

Action: Council Member Gossage made the motion to leave the 3 year accumulation rule and that it would apply to the SD Plan. Council Member Schulze made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously.

11) Environmental Standards: provides UDO 6.1 Watershed Protection Overlay District - shall not apply to Veridea and provides state mandatory 30' riparian setback for built upon areas may be varied by Council vs. Board of Adjustment; Attorney Fordham stated language should be enforceable. Veridea proposes to have a mandatory environmental enhancement plan of all the environmental rules, as the mechanism to provide substitute environmental regulations for the UDO; can't proceed with development of Veridea until standards are in place. Attorney Fordham was comfortable with this and felt Director of Public Works would want to give input. Mayor Weatherly stated all the environmental standards will be presented at one time.

12) Civic Buildings: civic space can count towards open space and open space can be more than an open field. Council expressed concern with the language and if it were specific enough to be enforceable. Mr. Hendrickson explained the intent. Staff was fine with this however noted PR&CR Director had trouble with this, even though it was not necessarily open space, it was PR&CR. Mr. Hendrickson noted buildings dedicated to cultural or educational or social activities are included in this acreage, however buildings dedicated to government use, transit and parking shall not be counted toward the 250 acres Veridea is required to provide. Attorney Fordham added its still counted as open space; civic uses are not counted in density maximums and restated open space would not be traditional - what was thought to be open space. After discussing density restrictions, Council would like to see a more inclusive list and tighter language of what qualifies as civic space; the list is in the tables. Mr. Hendrickson stated this to be more comprehensive than the UDO list. Attorney Fordham stated with direction from Council, he would do what was asked, stating the latest language, and sounded like the primary objective was, that they didn't want any ambiguity in what's permitted or not within the density calculations, what's outside the density restrictions and who makes the final call. Mr. Hendrickson expressed willingness to look at this as well, and would take direction from the Attorney.

No discussion: 13) Impermeable service.

14) School sites: a requisite number of school sites will be determined, thinking it was the developers call, however intended to be enforceable, was a good faith effort with the school system, but not extensive enough to make it enforceable. Mr. Hendrickson responded he was agreeable with enhancement of the language; as currently written was provided and approved by WC Public School System (Betty Parker), and asked not to change the language as it fits the school system policy and would discuss it further at some point; school system has 10 years to act on the reservations of the school site and facility or it goes away. Council discussed demands for a school as residential units unfold and for an appropriate trigger point to set aside space for school, an attempt to assure appropriate space for a school, perhaps multi-story, perhaps a trigger point at 1000 residential units, and noted it was the town's obligation to ensure a school happens, and tied to units and not the SD Plan. Mike Horn noted the school was not part of the internal traffic trip generations; Transportation Engineer Dalton in doing the traffic model had requested the school be taken out, and may have had a higher capture if they had been allowed to use the school. Council wanted assurance given that Veridea will provide adequate space for schools, discussed the 10 year reservation from date of adoption of the SD Plan, and would like to see it tied to units, as 10 year reservation would go away. Mr. Hendrickson stated the WCPSS did not commit to a school at this point, but did commit to an urban prototype, wanting the school, arguing he'd like to see it tied to 1000 units beyond the 10 year span for the WCPSS to act; felt it was too far out and would lose leverage with the school system to make the site a priority, and had to fit it within the WCPSS plan. Strategy was to move forward with this critical and significant school piece to Veridea, not specific at this point.

No discussion: 15) Open space - RCA (public right of way is not part of the RCA).
16) Sidewalks; 17) Encroachments (traditionally approved by Council) 18) Open Space

19) Administrative Deviations of 15% with respect to any standard, density, design, quantified in the SD Plan or additional sustainable standards: Mr. Hendrickson made comments with respect to this. After Council discussion, their preference was that the Planning Director be authorized to approve deviations up to 10% to be comparable to the UDO and deviations of other developments as the UDO says deviations up to 10%.
Action: Council Member Jensen made the motion to reduce 15% to 10% to be consistent with the UDO requirements. Council Member Gossage made the second to the motion. Motion carried unanimously.

20) Development Thresholds (relates to required mix of uses). Mr. Hendrickson concurs and has no disagreement with development thresholds brought forth by the Town's Engineer, lifted from the master TIA into the SD Plan. This will come back to Council.

No discussion: 21) Building locations in open spaces; 22) Communication towers; 23) Compact Parking Spaces, and II. Infrastructure, Facilities and Dedications.

Mr. Hendrickson stated it important to proceed with the zoning of the land and with the finance plan and the developer agreement, which was not discussed at Planning Board, but felt it could come directly to Council; Planning Board passed the SD Plan and asked to deal with the developer agreement between staff and Council, however would follow Council's direction. Looks forward to working with staff and the professional team and getting together as soon as possible to assure the information that is brought forth is accurate and fairly reviewed; still trying to get data together and trying to reach a consensus, with the goal to return to Council two weeks from tonight. Manager Radford will work with Mr. Hendrickson to get the materials together and to bring this back to Council on time. He stated the Town had employed Warren and Associates, Charlotte, N.C. to prepare an impact analysis for a total of all resources of the Town during the period of Veridea and look at the metrics involved to determine how the expenses and ratios associated with the finance proposal will impact the town. He advised Council Member Olive was the primary Council Member involved with this. Manager Radford stated he would give feedback and seek Council's response to the study and would be able to compare costs to benefit and to reiterate the finance plan will come back in two weeks - February 15, 2011.

Mayor Weatherly called for a motion to continue the public hearing to February 15, 2011.

Action: Council Member Schulze made the motion to continue the public hearing to February 15, 2011 to hear the financing plan. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.

Jeff Wotus, Program Director Salem Middle School, asked the Town rethink its policies, reduce field rental fees and waive residency requirements; noted Apex fees are unreasonably expensive and unjustified. Mayor Weatherly responded staff would take this under advisement, with Manager Radford responding best to refer to PR&CR Advisory Board and the PR&CR Director for review and recommendation.

End of Public Forum

NEW BUSINESS

New Business 1

Director of Finance Lee Smiley gave a review of the 2nd Quarter FY 2010-11 finance summary. Benchmark for the 2nd quarter financial performance is 50% for revenues and expenditures. Significant variances were noted. Council accepted the report as presented.

End of New Business 1

New Business 2

Attorney Hank Fordham presented the following request with Police Chief Jack Lewis speaking in support of the adoption of a Resolution and related Transportation Plan within a Contract between Wake Med and Lankford Transportation Services, to designate under GS122C-251 the personnel of Lankford Protective Services, Inc. to provide transportation services, required by involuntary commitment proceedings from WakeMed Apex, asking Council adopt Resolution No. 2011-0201-02 with the Transportation Plan described in the contract, and noting services will be paid by Wake Med, no costs to the Town, and noted the benefit the Town will receive, having police officers available to provide Town services.

Action: Council Member Schulze made the motion to adopt Resolution No. 2011-0201-01 approving Lankford Transportation Services and related Transportation Plan. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously.

End of New Business 2

CLOSED SESSION

There were no Closed Session items to be considered.

WORK SESSION

There was no scheduled Work Session.

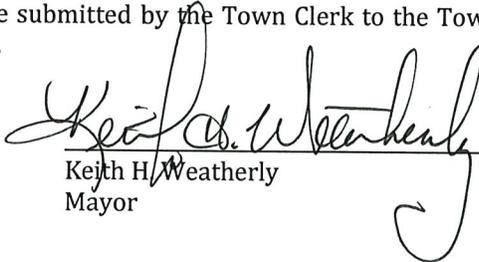
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn.

Action: Council Member Schulze made the motion to adjourn at 10:00 p.m. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried unanimously.

The February 1, 2011 Council meeting minutes were submitted by the Town Clerk to the Town Council for their approval during the February 15, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk, Apex, North Carolina


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 15, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 15, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting.
All Council Members were present.

Mayor:
Keith H. Weatherly



<http://www.apexnc.org>

Council:
Bryan Gossage,
Mayor pro tempore
Bill Jensen
Mike Jones
Lance Olive
Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Jones gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action on the following. There were no amendments to the Consent Agenda.

Action: Council Member Gossage made the motion to approve the Consent Agenda. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

1. Minutes for February 1, 2011 Council meeting.
2. Annexation #457, Standard Pacific of the Carolinas, LLC petitioning to annex 50.99 acres - Salem Village Phase 1 into the Town's corporate limits and located west of Tingen Road: 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for March 1, 2011.
3. Annexation #458, CJS Apex Assemblage, LLC petitioning to annex 4.53 acres -Salem Village Phase 1 Pump Station, into the Town's corporate limits and located between south Salem Street and Tingen Road; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for March 1, 2011.
4. Adopt Resolution No. 2011-0215- 02 Declaring Surplus Property to be Awarded to Retiring Fire and EMS personnel Assistant Chief Nicky Winstead.
5. Agreement: Town of Apex and Wake County Board of Elections whereby the Board conducts all elections for Town.
6. Motion to adopt Resolution No. 2011-0215-03 Accepting Offer of Dedication of 90' Public Right-of-Way for the Apex Peakway in and near Vineyard Station Shopping Center.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action, asking to amend by adding Closed Session to receive legal advice from the Town Attorney to preserve Attorney Client privilege. **Action:** Council Member Jones made the motion to amend the agenda as requested. Council Member Schulze made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing 01 (Continued to March 1, 2011)

Planning Board on January 13, 2011 voted unanimously for approval as presented with addendums from the applicant. Town Council on January 18, 2011, February 1, 2011 and February 15, 2011 voted to continue the public hearing.

Continuation of Public Hearing for Rezone #09CZ07 Veridea, Lookout Ventures Inc., owner/applicant

Lookout Ventures, Inc., petitioner, seeks to (1) amend the Unified Development Ordinance; and (2) Rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) with a Sustainable Development Plan; and (3) amend the 2025 Land Use Plan; rezone area is generally bound by US 1 Hwy, East Williams Street, and the future NC540 corridor; and (4) Lookout Ventures will make presentation regarding the financing proposal for the development and request participation from Town of Apex. Mayor Weatherly advised the public hearing for #09RZ07 Veridea should be continued to the March 1, 2011 Council meeting to hear the financing plan and called for a motion to continue the public hearing.

Action: Council Member Olive made the motion to continue the public hearing. Council Member Gossage made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

Public Hearing 01 continued to March 1, 2011

Public Hearing 02

Senior Planner June Cowles: Planning Board met February 14, 2011 and voted for approval with conditions proposed.

Rezone #11CZ01 and 2025 Land Use Plan Amendment: MCI Enterprises, LLC, owner / Jones & Cnossen Engineering PLLC, applicant: Public Hearing and possible motion regarding applicant's proposal for 2025 Land Use classification amendment from Office to Industrial and application to rezone 5.1 acres containing four parcels, located south of Eddie Creek Drive and west of Reunion Creek Parkway from Neighborhood Business Conditional Zoning and Rural Residential to Light Industrial Conditional Zoning, as an expansion to an already industrial zoned business. Staff presented the planning report which is incorporated as a part of the minutes and referred to by reference. Permitted uses and restrictions/conditions proposed by applicant were noted. Staff recommends approval with conditions proposed by applicant as uses are compatible with the existing area and proposed land uses; consistent with 2025 Land Use Plan and Apex Transportation Plan. Applicant has restricted industrial uses allowed on the project site and included conditions to the uses. Planning Board met February 14, 2011 and recommended approval with conditions proposed. Mayor Weatherly opened the public hearing at 7:10 p.m. Speaking in favor: Stuart Jones, Jones and Cnossen Engineering noted this was the old 84 Lumber site; application for rezone to continue the business park idea to the back of the site; no one spoke in opposition. Mayor Weatherly closed the public hearing and referred the matter to Council. With no discussion the following action was taken.

Action: Council Member Jones made the motion to approve Rezone #11CZ01 and 2025 Land Use Plan Amendment as presented. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Public Hearing 02

Public Hearing 03 (continued to March 15, 2011)

Senior Planner June Cowles: Planning Board met February 14, 2011 and voted 7-1 for approval.

Rezone #11CZ02: Lindsey McClamb Jr., owner/applicant: Public Hearing and possible motion to zone 2.63 acres located at 2705 Evans Road, from no zoning classification to Medium Density Conditional Zoning. Staff requested the hearing be continued to March 15, 2011 meeting. Mayor Weatherly called for a motion to continue the hearing.

Action: Council Member Gossage made the motion to continue the public hearing for Rezone #11CZ02 to the March 15, 2011 Council meeting. Council Member Olive made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

Public Hearing 03 continued to March 15, 2011

Public Hearing 04

Planning Major Site Plan Motiva Enterprises, LLC, owner/applicant: Quasi-Judicial Public Hearing and possible motion for Motiva site plan: Motiva Enterprises, LLC requests approval for addition of a new fuel storage tank at the Motiva 10.302 acre site located at 2300 Ten-Ten Road in the Town of Apex ETJ.

Quasi-judicial Hearing process specified under North Carolina GS§160A-393: Mayor Weatherly stated parameters/restrictions in communications and testimonies where testifiers expert in the subject matter provides credentials and gives sworn competent testimonial facts limited to the major site plan and provides documented/authenticated evidence to support the facts; noted prohibition of personal opinion or hear-say evidence; after hearing competent testimony by applicant that the proposed use regarding the major site plan is in the public interest, Council decision must be based on Unified Development Ordinance (UDO) compatibility standards and evidence presented. Council must dispose contacts made prior to the hearing and display that their decision on the case can be made solely on competent evidence presented during the hearing. Mayor Weatherly opened the hearing at 7:25 p.m. Oaths were administered to testifiers by the Town Clerk: Exhibit A.

Proponent opening statement: Attorney Lacy Reaves, 150 Fayetteville Street, Raleigh, NC, represented Motiva Enterprises, Houston Texas, and joint owned by Shell Oil Company and Saudi Refining Incorporated and are wholesale distribution of gasoline and fuel products. UDO criteria must be satisfied for site plan approval for tank addition SR1010 facility, and with evidence provided will prove the major site plan meets criteria; noted one exception relative to definition in compatibility with surrounding land uses; will prove the site plan is in the public interest.

Council disclosed contacts: Mayor Weatherly disclosed contacts made prior to applicant submittal; had not visited the site other than driving by on SR1010; could make decision based on evidence presented. Council Members Lance Olive (submitted to clerk), Gene Schulze, Mike Jones, Bryan Gossage (submitted to clerk), and Bill Jensen: all disclosed contacts made by phone, email or otherwise, not having visited the site and stated they could base their decision solely on evidence presented.

Presentation of evidence by staff: Brendie Vega, Principal Planner/Town of Apex, stated credentials and presented the Planning report which is incorporated into the minutes and referred to by reference Exhibit C for Motiva LLC / Agent Harris Group & BBM Assoc; background: location Apex ETJ- 2300 Ten-Ten Road; noted border uses with Cary; report contains project description, site conditions; project data covers: site plan, elevations, resource conservation area 25%, landscape and buffers, access and circulation – site plan addition did not require a traffic impact analysis, light plan - applicant does not meet UDO requirement and will resubmit new plan, utilities, stormwater, public safety, neighborhood meeting: 21 attended. Proposed is consistent with 2025 Land Use Plan, Apex Transportation Plan, and UDO.

Mark Haraway, Chief of Fire and EMS/Town of Apex stated credentials; met with Motiva and are aware of state and local government compliance guidelines; fire fighters will be on site during construction; new storage tank will have fire suppression system; Apex Station 4 houses an industrial firefighting foam unit to suppress flames; Motiva fire plan is in place with model standards and guidelines reported per survey.

Planning Board: Vega stated Planning Board quasi-judicial hearing was held February 14, 2011; vote 5-3 to approve proposed with conditions: 1) applicant meets UDO requirements except for lighting, no longer asks for special approval of floodlights (will submit new light plan); 2) monitor innovative BMP required to verify system's performance, and alternative BMP be designed should innovative system fail to meet UDO stormwater requirements; and 3) applicant submit arborist report at time of construction plan review for any possible danger to trees in RCA area 3 and document additional plantings that may be required to meet RCA requirements of areas identified as RCA. Staff recommends approval of Motiva major site plan with same conditions given by Planning Board.

Cross examination by Council: Planner Vega responded: Applicant agrees with all conditions; Planning Board members voting in opposition expressed concern regarding compatibility with surrounding neighborhood even thou developed after Motiva; trip generations will be addressed by Ramey Kemp Associates. Fire Chief Haraway responded: no fire calls had been received from Motiva; department is kept up to date with changes. Noted tank farm fires in Wilmington and Greensboro; reported on residential garage fires and expanded on Motiva safety measures in place; noted foam chamber within new tank system; he could not speak to a total number of tank fires and could not speak to a number of off-site injuries.

Opponent cross examination: Karen Evanoff, 202 Asbill Court, Cary, NC, representing local community members and residents: Waterford Green, Avalon Peaks, Regency Park, South Chase, Pinnacle Peak Plaza, and Cleaner World. Vega responded: traffic study was requested by staff, submitted and paid by Motiva; Motiva will address the traffic study. Karl Huegerich, Fire Marshall/Town of Apex stated his credentials and reported Motiva has annual fire inspections with no associated costs, only his salary budgeted. Fire Chief reported: Automatic Aid Agreements are in place and during major work fires Apex, Cary and Fairview would respond to this site; fire fighters would not go into containment area to fight fire but use industrial model operating from safe area; there is no access from the back of the area and would approach the site from SR1010; explained the fire fighting plan and evacuation plan. Dr. Albert Everson: Fire Chief responded EQ storage and chemicals with total volume of materials were contained in final report. Daniel Weiss, lay person, was not an expert and did not represent others, stated EPA Data: 30,000 people live within 3 mile radius of the site, may not have been so when original site was built upon. Fire Chief responded he does not see the addition as a greater risk. Jay John: Fire Chief responded to questions regarding distance of residential units to the Wilmington and Greensboro fires. Dr. Joseph Katz: Fire Chief reported inspections will follow the schedule by law, still will be conducted annually unless complaints are received or an incident occurs, even with the addition. Deborah Lanuti: Fire Chief reported proprietor of the facility would take care of any waste clean-up. Vega did not answer to storm events, applicant would respond. Attorney Fordham stated in the burden of proof proposed uses in the public interest is not part of the standard for site plan review.

Applicant and Motiva witnesses gave expert testimony: Presentation Exhibit B. Lacy Reaves, Smith Law: Land Use and Zoning: stated credentials and presented application for proposed and would prove compliance with UDO. Motiva site location: SR1010, 10 acres, 6 fuel tanks, offices and load area and transports fuel to area stations; Apex is the only wholesale storage/distribution facility in multi-county area and branch of pipeline from gulf; stated proximity to multi-lane roads to the 40 year site location zoned light industrial: stated area land uses. SR1010 has 22,609 vehicle trips a day and designated area for industrial uses. Presented report on broadcast tower and structural analysis and fall radius submitted by Michael Gardner, Tower Engineering Exhibit D. Noted location of shopping center; Noted Avalon Peaks Apartments nearest complex 225 feet from Motiva and 450 feet from any proposed fuel tank. Noted 1995 Cary approved South Chase Subdivision was developed 30 years after fuel terminal facility was established; noted restricted 40 foot thickly planted buffer along SR1010 to provide legal protection recorded in plats and demonstrated Ryan Development and Cary provided the buffer and were aware of areas across SR1010 were in Apex jurisdiction and zoned/developed light industrial/commercial use; homes purchased in 1995 and after were with knowledge the area was zoned/developed light industrial, and with the terminal already located there. Noted 35 acre Hare Pipeline was a heavy construction equipment storage and repair; another type further east. Noted from the center of Motiva out 1000 feet, calculates more than 75% of the area zoned for industrial/commercial/non-residential use, same type uses as Motiva facility. 2025 Land Use Plan designates employment and Industrial uses, noting activity center designated for industrial and employment uses.

Alan Maness, President/Civil Engineer/BBM Associates, Inc, 407 Gorman Street, Raleigh: Site Plan/Landscape, stated credentials, and engineer for Motiva: reviewed existing site layout, access, tank locations, containment berm and opaque buffer requirement, noted additional plantings more than required by UDO and dedicated RCA; detailed stormwater run-off and process regarding water containment holding ponds; noted NPDES permit, noted stormwater event requirements and stated post development run off does not exceed pre development run off, and far exceeds UDO Section 2.3 and reported site compliance with all criteria.

Daniel Porras, Motiva Manager Southern Region Distribution, Houston, Texas: Business Purpose, stated credentials, noted 1963 Motiva facility was one distribution center for gulf coast refineries and mid Atlantic region, with Colonial Pipeline delivery routes and where tankers transport fuel products to stations; explaining the transport process noted storage capacity must be sufficient to handle product demand; noted product outages would become worse without additional capacity; stated hours of operation of the Apex facility, and the only terminal in the multi-county area; manned 7 days on site; additional tank would be lower than existing tanks and provide extra inventory expanding on the modified tank design; worked with technical review committee and made modifications to the proposal, advising the tank can't be moved further back on the site; have incorporated significant landscape; fire department modifications are subject to federal security regulations; stated Motiva by Homeland Security is not classified, high risk.

Montell Irvin, President/CEO/Traffic Engineer/Ramey Kemp and Associates, Raleigh: Traffic Exhibit E, stated credentials and summarized traffic statistics, study methodology, and trip generation statistics with 56 daily trips with tank addition and 0.25% net increase in total daily traffic on SR1010; peak hours 7:00 a.m. and 5:00 p.m., site peak 11:00 to 12 noon; noted Traffic Impact Analysis was not required based on anticipated future traffic volumes, neither was turn lane improvements or right of way dedication required on SR1010. NCDOT accident data revealed 71 accidents for a 1 mile study area with no fatalities, no trucks involved and no major injuries. Bridge Inspection report 2008 and 2010: fair condition and acceptable to handle additional traffic. Motiva will go through a NCDOT driveway permit modification process and recommendation will be made. He has not observed truck stacking, however, noted an unpaved dirt area constructed by cleaners could be extended for truck use if they had trouble getting into drive; with NCDOT approval Motiva is willing to make the road improvement.

Neil Gustafson, Civil Engineer/Appraiser/Worth, Wachtel, Inc, Raleigh: Land Values: Report Exhibit F, stated credentials and advised, it is in his professional opinion the development proposed in the site plan and its general location will not adversely impact the value of surrounding properties, including parcels in the South Chase subdivision.

Rob Ferry, Civil Engineer/TGB Partnership, Hillsborough: Tank Design and Safety, stated credentials and reviewed the aluminum fixed roof design for Apex tank; noted internal floating roofs reduce evaporation of vapors in the head space, with multiple safeguards against overflow; noted emissions reduction device and regulations for storage tanks by US Environmental Protection Agency as well as NC Department of Environment and Natural Resources; benefits and costs of regulatory requirements; safety device to reduce vapors enhance safety; routine visual inspections required. Motiva has multiple measures to prevent incidents, there have been no major incidences – plan exceeds local requirements. Environmental and safety factors have been addressed for compatibility of the tank project with surrounding land uses.

Attorney Reaves stated this concluded the testimonies, there may be rebuttal and asked to make closing remarks.

Council cross examination and Motiva expert responses: Porras reported: Internal floating roofs decrease storage volume; all existing storage tanks have internal floating roofs; low levels of vapor are fully vented into the atmosphere and for an event to happen there must be a certain ratio and can avoid same explaining ratio limits. Irvin reported: Potential road SR1010 improvements would require NCDOT approval and with additional 56 trips for trucks, was noted an internal fueling lane had been added to help with dispersing, observed adequate storage in front of the gate. Irvin expanded on peak trips: 7 in a.m. 2 in p.m.; large percentage of trucks turn right in and left out – a little longer getting out; site generates 178 and with addition 234 total trips per day, compared to neighborhood South Chase house generates 10 trips per day – 200 houses, may double, generating 2000 a significant more impact on SR1010 than this; trucks operate differently than cars: all vehicles are trips; accident data was with cars and not trucks; his professional opinion looking at traffic volume and impact, accident data, bridge over US1, sees no significant impact. Manase reported: additional plants will be added to existing trees. Porras reported it necessary to expand this facility, and to place one somewhere else would require complete new facility.

Opponents cross examination and Motiva expert responses: Albert Everson addressed EQ event, but ruled out of order. Question: Motiva air pollutants released or contacted by NC DENR with notice of violation: Ferry reported: vapors .5 benzene in gas vapors; no violations reported, administrative violation occurred, annual requirements must be met; no OSHA site accidents in 7 years with 8 OSHA reportable incidents overall 27 terminals over 7 states, had been years at the Apex facility. Had no knowledge of the Delaware incident, as it's a refinery dealing with chemicals, different operation, and was not qualified to comment on this. Question: year Motiva was formed and if they were aware of residential. Reaves responded: Motiva site owned by Texaco, Starr, Saudi Refining and was newly formed 1998; verified awareness of residential. Question: 81000 barrels to gallons: Porras: 3.4 million. Charlie Brooks Shell/Motiva, Security: stated credentials and reported Homeland Security classifies Motiva not high risk; stated Homeland Security (HS) designation follows after process CFATS, responsible for submittals, expanding on submittals; HS letter says Motiva is not considered high risk based on information submitted to them; will resubmit additional volume and determination following NPDES guidelines. Question: vehicle weight of loaded truck: Irvin response: he didn't know.

Daniel Weiss: Question: number of tank designs in operation. Ferry response: cable suspended designs since late 70's; multiple advantages; lower emissions state of art design. Evanoff: Question: site manned Monday – Friday: Porras response: weekdays 14 hours and 10 hours weekends; off-hour operators do random checks – manned by humans.

Jay John: South Chase berm unique, Reaves had insinuated use was a buffer against accidents. Reaves responded he didn't use unique, no, the context was not for safety, but esthetics and referred to as opaque and blocks the views; he would have to speculate on other berms. Question: in the 75% area how many include toxic chemicals. Reaves responded he didn't know with John stating no-body knows, and was ruled out of order. Question regarding sale of real estate. Gustafson responded he doesn't sale single family homes. Question: in determining real estate prices in South Chase, would the proposed additional tank at this facility impact the value of surrounding properties. Gustafson responded 6 tanks exist and was not the issue he was discussing, was not what the site plan is about, what's relevant is will the 7th tank have an adverse impact on surrounding properties. Reaves objected to John's remarks and Attorney Fordham asked John to limit himself to questions. Question regarding additional paving at the entrance. Irvin responded: it was a suggestion to pave soil at drive to provide additional storage if need to. Question: how hard would it would be for trucks to turn. Irvin response: soil is NCDOT right of way and must be approved by NCDOT and would be NCDOT decision and Motiva would pay to do it; pavement there now is not for turning but probably required when the site was developed and basically unused and wouldn't harm but basically benefit. Question: 15,804 barrels are being dispersed, says on sign 33% increase doesn't add up. Irvin response: he didn't say that; but was on the slide. Porras response: explained limit of space in tank on top that's not used; talked safety, increase and capacity and purpose. Question regarding barrels. Irvin response: provided 3500 to 5000 barrels and chose 5000 a conservative calculation.

Dianna Braun, Realty/Real Estate Broker, residential and commercial Ammons, stated her credentials; is not a licensed appraiser; represents buyers and sellers, has a real estate license. She was overruled when she began to express concern, with Mayor Weatherly stating she must speak to values. She could not give appraised values, but hired to do a comparison market analysis, and is within her license guidelines. Question: study done, when, shows property here and times traffic is mind-boggling. Attorney Reaves objected, as she was not a qualified traffic specialist. Attorney Fordham noted the testimony vague and should state specific facts, no opinions on the traffic impact or safety without credentials for that subject matter. Braun asked questions about the bridge inspection: Irvin responded: 12-6-2010 reference to wearing as critical. Attorney Reaves objected. Braun noted it public information. Attorney Fordham noted the purpose of this part of the hearing was to ask questions. Braun continued if they look at traffic in Apex, people buy and is a way to come to the area, with Mayor Weatherly informing, she was using the process and asked her to ask questions. Braun continued asking when the traffic study was done, time of day and season. Attorney Fordham asked she be more specific in asking questions. Braun asked Irvin when the report was done. Attorney Fordham asked she describe the report. Braun stated the bridge report by NCDOT says wearing surface is critical. Attorney Fordham asked if this report was part of Irvin's testimony; Braun responded he made reference to it. The report was not admitted as evidence. Irvin responded: NCDOT listed on report, evaluates all sorts of things reporting wearing service was not critical and didn't change structural integrity one way or other no bearing; classified as fair condition and if poor would have noted it, from 2008 to 2010 if there was a significant problem. Braun wanted clarity asking as an agent, are there things going on in the community, and if she knows that she must disclose it. Question: how were homeowners notified of the meeting in September, understands 300 letters were sent to homeowners, within 300 foot radius, noted a high density area and not representative of the true community with 21 at the meeting. Manase responded: he provided list and those notified within 300' of Motiva, less right of way of SR1010 and provided to Planning Department. Question: Tax records, Motiva pays \$7,282.79 burden is placed on the fire department. Mayor Weatherly didn't understand the relevancy of this statement, noting Motiva pays the same tax rate as others. Braun responded it is when homeowners are looking at the tax base.

Deborah Lanuti: Question: what happens when you are over the 25 year storm event? Manase responded on the berm containment and storage, than water drains to holding pond; double storage of any other pond; if physical flood, water would run over top of the pond into the other retention pond. Question: Has Motiva had any gas tank explosions or injuries. Porras responded: not at Motiva, no tank explosion, and he has not been involved in a fire within his 30 years in the nine state area. Lanuti said she got 42,000 hits; Attorney Reeves objected. Attorney Fordham advised they need to stay in proper forum and not interrupt each other. Lanuti: Have there been any cases of gas leaks and contamination of soil. Porras responded: might have seal pump or gasket leaks; do ground water monitoring; NCDENR requirements are in record.

Mayor Weatherly stated this concludes testimonies and cross examination of applicant, and called a 10-minute recess of the Council at 10:35 p.m. Council reconvened at 10:45 p.m.

Opponent evidence and rebuttal evidence: Karen Evanoff, stated credentials and expressed concern with increased truck traffic and SR1010 congestion. Attorney Reaves objected as she was expressing opinion. Attorney Fordham presented GS 160-393b3 in that Evanoff was not an expert to express opinion on traffic. Evanoff noted 18 WC school buses and drop offs and within the school location, there are risks for potential accidents adding additional tank and potential increase of traffic is beyond terrifying and negligent. Stated Motiva did not participate and support community programs and Motiva expansion was incompatible.

Joseph Katz asked if he needed to state credentials. Attorney Fordham responded those that show he has knowledge or expertise on the matter. Katz stated credentials: stated 3 day period for traffic study was not representative of average and can't draw conclusion. Attorney Reaves objected in that he had no expertise in traffic studies. Mayor Weatherly stated he could only speak in areas of his expertise. Katz had no experience in traffic, but addressed mathematics used to conduct the traffic study. Attorney Fordham asked if he had experience on how the mathematics applied to traffic studies. Katz said no. Katz stated credentials: stated 3 day period for traffic study was not representative of average and can't draw conclusion. Mayor Weatherly said they would sustain and ask he not continue.

Dr. Albert Everson stated credentials asking what if the worse possible happens, have to live with consequences and the production facility within 22% area from Motiva, is residential; no one can say nothing will happen. Attorney Reaves objected, noting this shear speculation. Mayor Weatherly noted it not relevant and sustained. Everson as does the community has concern with safety and risks from this facility of this size, within 300' of his home; would have to live with consequences of the decision made.

Melba Walker, Avalon Peaks, not an expert, observed for 10 years: load bay added on, lights at night, hears trucks in early morning hours with motors running waiting to get in gate, hears air brakes, horns, and concerned with noise pollution; will repeat same with new project, the continuous noise noting families, babies, retirees are concerned with safety and traffic; will hear continuous equipment backup alarms; with gas shortage or war there's more and more trucks going in those gates. EQ disaster: doesn't want to be close to another disaster. Automotive Industry tries to have cars with alternative fuels, why grant permit to support petroleum industry.

Jacqueline Reisberg, Avalon Peaks 12 years, respects Motiva presentation; can't get in/out of Avalon Peaks with one entrance one exit; if they have to evacuate how do you get out? What is this doing to community: if Motiva wins they should become a member of the community; agrees with alternative cars; don't have to have Motiva and can have an event. With South Chase and Avalon Peaks should think about the community, citizens rights should take precedent over corporate America gobbling up what they want at any cost; asked to say no; makes her want to move; make better environment noting fumes come from there.

Elizabeth Mazurik: noted in Fairfax County, the 1991 Colonial tank farm pipeline spill; 250,000 gallons went under neighborhoods and couldn't give them away. Tank farm was bought at cheapest price and employees lived there. Fire or explosive, leaks, valve can cause leaks.

Mayor Weatherly noted this concludes evidence by opponents/rebuttal. Attorney Reaves offered no rebuttal.

Private citizen: Paul Stephenson: homeowner Apex and Cary: Motiva would benefit the community; there have been great shortages in fuel supply and stands behind Motiva.

Closing Arguments: Karen Evanoff expressed thanks for opportunity to address the Motiva site plan and asked Council keep serious concerns in mine.

Attorney Reaves stated they had established from factual perspective, all criteria specified in the UDO was satisfied with respect to the proposed; focus was on criteria compatible evidence to nature of uses surrounding Motiva. Established 75% land surrounding 1000' radius is industrial/commercial/non-residential; proposed addition for single fuel tank related to inadequacy of capacity of existing facility; population growth and other factors outstripped capacity in multi-county area; tank design was of professional state of art standards and described designed with floating roof and fire suppression system; traffic engineering margin noted marginally insignificant impact on existing SR1010 traffic with no adverse affect on property values; established proposal is compatible with surrounding land uses; decisions regarding to development of South Chase homes –home ownership reflects thought process on decision of people involved that neighborhood existed compatibly with south side on SR1010. Motiva is compatible with surrounding land uses: South side is Light Industrial allows wholesale distribution of fuel and consistent with UDO and 2025 Land Use Plan. Use proposed and existing use are allowed in the zoning district and consistent with comprehensive plan established as a matter of law that the facility is consistent with surrounding land uses. Creates a presumption under NC Law of that compatibility, and submits, notwithstanding, that presumption will stand unless refuted by substantial, material, and competent evidence, and didn't believe Council had heard that; had established all criteria of the major site plan and asked Council vote to approve major site plan.

Mayor Weatherly closed the public hearing at 11:20 p.m. and referred the matter to Council. Attorney Fordham stated UDO standards that must be considered by Council when reviewing a site plan and are incorporated into the minutes by reference and outlined in the planning report. Mayor Weatherly opened the floor for a motion. Council Member Gossage asked if the tank size would be relevant to compatibility. Attorney Fordham offered legal advice could be given in closed session. Council Member Gossage asked if Council could move into closed session to receive legal advice from the Town Attorney. Attorney Fordham advised yes.

Action: Council Member Gossage made the motion to move into closed session to receive general legal advice at 11:25 p.m. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried. Minutes of Closed Session are recorded separately.

Action: Council Member Gossage made the motion to move out of Closed Session and into Regular Session at 11:30 p.m. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. Mayor Weatherly asked Council Member Gossage to restate his question. Council Member Gossage restated the question: whether or not tank size speaks to compatibility of the use. Attorney Fordham responded it could but only if evidence submitted during this hearing supports that conclusion. With no further clarification, Mayor Weatherly asked if there were a motion.

Council Member Schulze stated his support having heard the concerns with compatibility and safety and was convinced by evidence and safe tank technology; there had been no truck accidents coming in and out of the facility with small percentage of increased traffic and if any, coming west of the plant and hard to blame this facility on increased traffic; is confident Apex fire department is prepared if incident occurs, having proper training and proper resources in place; site is part of an industrial park and been there a long time, and to say 6 tanks is compatible and the point, a 7th. tank doesn't make it automatically incompatible; site exceeds state statutes regarding storm water run-off, and other requirements for these type facilities, and there's no evidence presented of an accident on site, as every industrial site can have run-off type incidences, felt it safe and site appropriate. In regard to truck traffic can make an argument it's safer having trucks travel a shorter distance to Apex vs. driving to Greensboro and Selma to pick up a load; it's a shorter trip, may be the impact in the immediate area, overall, is a safe situation. Council Member Schulze stated his support and made the following motion.

Action: Council Member Schulze made the motion to approve the major site plan; he amended his motion to include conditions submitted. Council Member Jones made the second to the motion with the conditions submitted. Council Member Jensen reminded regarding pavement of the shoulder west, with Mayor Weatherly including as long as it's approved by NCDOT, they accept that condition, and would add that as a condition. Action restated: Council Member Schulze restated his full motion, to approve the major site plan as submitted with conditions, with the additional stipulation that the shoulder of the driveway be paved pending NCDOT approval. Council Member Jones restated his second to the motion.

Council Member Jones stated he had heard the evidence and concerns, and was concerned with traffic on SR1010, the safety concerns with another tank, a 7th tank on site, paying close attention to compatibility; wanted to say it was not compatible, but adding one tank to 6 on an existing site that's been there 47 years, and from the evidence heard, and if indeed 75% of the surrounding area is commercial, industrial, light industrial, it's hard to say a 7th tank on site is incompatible with the surrounding uses. Had heard from the Fire Chief, and has a lot of confidence in, says it will be as safe as it is now if not safer because of this tank, maybe the other six tanks want be safer, but that one will be. Have heard traffic will be increased, but also heard 22,000 cars a day on SR1010 and yes something needs to be done with SR1010 to improve that traffic flow but this is not going to have a significant impact based on the evidence heard. Have to make a decision based on evidence heard tonight, and based on that evidence, can't say it's incompatible and can't say he has safety concerns about it, and the evidence demonstrates it meets all the other requirements of the UDO.

Council Member Jensen expressed it was safe to say the issues have been addressed and concurs with what he has heard tonight, this is a very safe tank, especially with the monitoring. He couldn't bring himself to second, or propose this, as the compatibility issue still is in his mind. He didn't know how he would vote, not the traffic issue too much, does weigh in adding 20% for trucks coming out on high load zone periods, 9 trucks per hour, 1 ever 7 minutes. In terms of compatibility, if this site was bare would he be voting to put this site there, considering there are apartments and other people living across the street, when it went in, even though, which to him says, certainly it can stay there as a static position, he's not sure he's ready to say, add another tank, adding another 20% more trucks, basically with noise and hasn't heard anything to say as how that would be mitigated; he has a lot of problems with diesel trucks sitting and idling/fumes, feels sorry for people across the street and torn on compatibility.

Council Member Gossage stated heartburn with Quasi-judicial, they are stuck; question was asked if traffic was really bad and there's an accident, who responds – answer: fire station 6 Fairview and probably the first, with Fire Chief saying Apex is the only one with foam; do they use that to make their decision, he doesn't think so; doesn't think that has a bearing to the evidence as to whether or not the use is compatible. If this were a legislative decision, it would be different. He will support this.

Council Member Olive thanked staff for their work, noting it a challenge, he has heard lots of good things and no doubt we have great responses and great training and great fire department that can handle these issues. From what he had heard today, all the technical criteria was met, perhaps with the exception of the methods of the traffic study; the traffic analysis in his opinion did not distinguish between personal vehicles and slow moving tanker trucks, and found to be at worst dubious, not saying there's anything wrong and maybe normal traffic analysis practice, he didn't know, but didn't pass the smell test for him, to conveniently not distinguish between the two types of traffic. The question of consistency with surroundings remains part of the question for him: the compatibility in question for him is whether or not increase of storage capacity at the Motiva site, from 130,000 barrels of storage to 211,000 barrels of storage can be accommodated without a negative impact on the surrounding communities. Impact is measured in a lot of ways, light, sound, safety, traffic, as Attorney Reaves stated the UDO does not have a definition for the word surrounding area, and perhaps a good thing; because surrounding area probably depends on what's being looked at; the surrounding area, a small garage add-on is probably different for a surrounding area with something like this. In this case, this is where common sense steps in. It is in his opinion Motiva is well within their rights to continue operating at this current facility; the increased capacity however, doesn't pass his compatibility test, given the current demographics of the area, things have changed in these years, he doesn't see any reason why they should be penalized for being in there first, but trying to grow that site, thinking someone did the math 60% increase, didn't pass his smell test, and he's not going to support this.

Action: Council Member Jensen made the motion to amend to request or require in some manner, that all mitigation possibilities be taken to minimize noise from trucks, could be berms, could be walls, he doesn't know, and manage the trucks such that fumes are minimized, not having diesels sit and burn fuel while waiting which you see all the time. Mayor Weatherly added he was suggesting a condition to accommodate those issues in some good faith manner, not knowing how to quantify that. Council Member Gossage added noise, vapor or fume control. Council Member Jensen wanted to add they work with staff. Mayor Weatherly asked if they would be willing to work with staff as a further condition to mitigate these issues. Porras responded they would do what they can, he understood the concern, was open to suggestions and willing to work with staff. Mayor Weatherly took that as an affirmative; that was the motion to amend and asked if there were a second to this based on their answer to that condition. Council Member Jones made the second to the motion. Vote on the amendment to the motion was 4 and 1 with Council Member Olive voting no, however changed his vote in the affirmative for the amendment. Vote on the motion was 5 and 0. Motion on the amendment carried.

Mayor Weatherly asked if there were any further on the amended motions, with none, called for the vote on the motion. Vote on the original motion to approve the expansion of Motiva was 3 and 2. Motion carried, with Council Member Olive and Council Member Jensen voting no. Mayor Weatherly stated the motion was approved and the major site plan is approved. Mayor Weatherly noted this ends the quasi-judicial hearing.

End of Public Hearing 04

Mayor Weatherly called for 10 minutes recess at 11:45 p.m. Council reconvened at 12:00 p.m.

Public Hearing 05

Quasi-judicial Public Hearing: All persons who spoke during this hearing gave sworn testimony limited to the issues that were related to the special use permit and were administered an Oath by the Town Clerk prior to speaking. Exhibit A.

Special Use Permit #11SUP01 April and Alan Maness, owner/applicant: Quasi-judicial Public Hearing and possible motion regarding request for a Special Use Permit of Assembly Hall for profit (for the Maness single-family residential home located at 6304 Old Jenks Road) to hold up to twelve Temporary Use Permit events under UDO Section 4.6.1(C)(7) *Temporary Use Permits issued under a Special Use Permit*.

Staff Presentation: Principal Planner Brendie Vega stated credentials, and presented planning report which is incorporated as a part of the minutes and referred to by reference; oriented to the 4.73 acres in the Apex ETJ, with applicant requesting a special use permit and exempt site plan. Current zoning is residential agricultural and current use is a single family home and home occupation. Adjacent zoning was noted. Stated special use permit may include more than 12 events; under UDO may apply for 12 temporary use permits per calendar year. If they have the same layout for 4 or 5 events, only have to apply for one temporary use permit. Ex. wedding: same tent, parking, etc.; temporary events are not interchangeable. May include any of the temporary use permits in Section 4.6.1(c) Uses Allowed; limited to number and consecutive days established in the individual special use permit, and reviewed by staff. Tent would be between the house and pond and parking in northwest corner. Not required: RCA, landscape; stormwater management reviewed by staff to determine if requirements are met. Use has no effect on the Transportation Plan; if approved will be consistent with 2025 Land Use Plan; Special Use Permit and Exempt Site Plan meets the requirements of the UDO.

The following conditions are recommended for the Special Use Permit for Temporary Use Permits at this site.

1. There shall be no more than twelve (12) Temporary Use Permits issued for the purpose of Assembly Hall; For-Profit each calendar year.
2. The applicant shall comply with UDO Section 4.6.1(C)(7) *Temporary Use Permits issued under a Special Use Permit*.
3. The hours of operation for each Temporary Use Permit shall be as follows:
Sunday – Thursday 7am – 10pm
Friday and Saturday 7am – 12am
Major Holidays 7am – 12am
4. The applicant shall submit a Temporary Use Permit application for each event or series of events where site conditions will be the same.
5. Each Temporary Use Permit will require the review and approval of a site layout plan to be reviewed and approved by Town of Apex staff including, but not limited to, Planning, Building Inspections, Fire & EMS, Police, Public Works and Engineering.
6. Town of Apex staff may place conditions on each Temporary Use Permit that will ensure that all applicable Ordinances, Codes and Policies are being met; and to ensure the public safety of attendees of the events as well as to ensure that no off-site adverse effects will be caused.
7. The applicant shall meet the requirements of the Town of Apex Noise Ordinance.
8. This Special Use Permit shall expire at the time this property is sold or ownership is transferred.

Note on conditions 7 and 8:

7) Applicant is in ETJ and does not have to meet the Town noise ordinance but the Wake County noise ordinance, however agrees to meet the Town noise ordinance.

8) Normally Special Use Permits expire with land and not owner.

Planning Board and Staff Recommendation for Maness SUP Permit and Exempt Site Plan:

The Planning Board held a quasi-judicial Public Hearing on February 14th, 2011 and unanimously recommended approval of the SUP and Exempt Site Plan with the following condition:

Major Holidays shall be defined as:

New Year's Day	Memorial Day	Thanksgiving
Birthday of MLK Jr	Independence Day	Christmas Eve
Valentine's Day	Labor Day	Christmas
Good Friday	Veteran's Day	New Year's Eve

Planning Staff recommends approval with the condition noted by the Planning Board.

Mayor Weatherly opened the public hearing 12:07 p.m.

Council discloses contacts: Mayor Weatherly asked if Council wanted to disclose any contacts prior to the hearing. Council Member Gossage revealed he had spoken with both Alan and April Maness, but not to the extent it would impact his ability to make impartial decision; he drove by the site, it was dark and unable to see much of anything; he didn't think the project was in the town process when he spoke to them. Council Member Schulze revealed he had spoken to Alan Maness when he first approached the subject with him and early in the stage. Council Member Jones revealed he had visited the site and fished in the pond, however does not have bearing on making a decision. Council Member Olive revealed he had received a phone call from Alan Maness prior to this coming to the Planning Department.

Proponent spoke to the appropriate evidence: Alan Maness, stated credentials, is the homeowner; prepared the plan; he did call the Council prior to application and taking on the process to see if it may be possible; idea grew from his wife's (April) photography business. Brides and others have been to their house for photographs wanting to get married there; said no, then thought why not; he read the ordinance, and tried to get feedback before this undertaking. A couple of months ago, the UDO was amended to allow this use and zoning by special use, and he was here to ask approval of the special use permit. Site plan shows parking on property and erecting a tent for events to be hosted there; a nice setting with lots of interest and a viable business for them. Stressed the primary interest is still their home, their residence and will live there; they are cognizant of their neighbors, good neighbors and talked with all they could get in contact with; most are excited about it. Conditions before them grew from some of the neighbors, they trust them however doesn't know who the next may be and did agree change in ownership would require them to come back for their own special use; this means he can't stick this in an LLC; this is what they want to do, April Maness was present also. There was no one present to oppose.

Council cross examination: Council Member Gossage asked the hours of operation, and need for 7:00 a.m. start time. Alan Maness responded: for a noon wedding there would be people there at 7 a.m. to begin set up; that's the thought. April Maness didn't see breakfast or brunch at 7 a.m. but there would be people coming to the property to set up. Council Member Gossage asked from 7:00 a.m. included breakdown and out by midnight. April Maness stated the goal was to end by 11:00 p.m. so the last hour could pack up and leave.

Council Member Schulze clarified with approval of the special use permit, with more popularity and traffic, should it become an issue, would be controlled by condition 6 off-site adverse effects and would stop approval. Vega responded: yes, some special use permits are for profit and non-profit, police department reviews these and if there's cause by traffic, would need to hire private security or off-duty police to direct traffic. Alan Maness noted majority of traffic would be weekend or week night would be off peak hours and would generate a fraction of Salem School traffic during peak hour; if a problem, there are means to turn down the permit or for Council to withdraw the special use.

Attorney Fordham questioned the relationship to ownership of property being tied into permits: questioned whether there is jurisdiction to use that; wondered if there was an alternative condition or period of years it would expire; he understands the intent, all good. Staff responded the neighbors had asked for this condition. Attorney Fordham questioned jurisdiction over ownership. Vega read the ordinance in that the special use permit would expire within 24 months unless otherwise specified; specified as ownership and expires in 24 months is either/or. Council Member Jensen questioned whether or not this would be imposed with Attorney Fordham could research this further, and questioned authority to do this even if it were a condition the applicant put on it, and unsure Council has jurisdiction over sale of property and may want to consider a time period if applicant agrees so this could be applied. April Maness advised they could book events up to one year in advance. Council Member Jensen asked if applicant could turn the permit in before sale of property. Attorney Fordham stated ownership normally doesn't affect use of a special permit. Vega added they need to have approval of a building permit or establish use within 24 months of obtaining a special use permit. Attorney Fordham noted no expiration if it weren't established. Council Member Gossage asked if it could be revoked it at any point. Attorney Fordham responded if it is approved it could not be revoked.

Dianne Khin, Director of Planning stated credentials and stated if they violate the conditions it can be revoked, but has been tied to business, recalling Montessori school. Attorney Fordham noted expiration of the permit is 24 months unless specified.

Council Member Gossage wanted to know if the applicant would agree to time to research. Alan Maness asked if there were going to be a time imposed, that it be more than two years or five, not wanting to come back every two years for this process, preferring more time; was willing to let this expire with their ownership, and asked if someone were to buy his house, could challenge this. Attorney Fordham referred to a case that says ownership is not within the town's jurisdiction of zoning. Manager Radford asked if Planning was satisfied with five years. Khin responded yes. Alan Maness asked if he had to reapply in five years, if so would go through the entire process again; concern that in booking some events one year in advance, would come up and have to reapply. He noted if they violate a condition, they would come back to a public hearing and the special use could be withdrawn. He asked could he voluntarily give up the special use permit.

Attorney Fordham agreed a person with special use permit could relinquish it, abandon it. Alan Maness asked if this should be a condition that he relinquishes the permit before sell of the property. Council Member Gossage understood it couldn't be tied to ownership of the property. Vega added it could be linked to the business. Attorney Fordham didn't want to weigh in on the time, but noted time is a factor under the UDO, and typical of the condition one would put in and believes it to be lawful. Council Member Gossage asked if the applicant has to offer the condition. Attorney Fordham advised its one that would have to be agreed to. Alan Maness responded that he would offer ten years and with no provision on the sale of the property; he asked that someone help explain that to the neighbor with the concern, he's trying to be the good neighbor, but if it's not legal, he can't. Mayor Weatherly closed the public hearing at 12:20 p.m. and asked if there were a motion to approve for a ten-year duration, and striking the last condition.

Action: Council Member Jones made the motion to approve the ten-year duration and with the conditions as determined. Council Member Jensen made the second. There was no discussion. Vote on the motion was 5 and 0. Motion carried.

End of Public Hearing 05

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
 Mayor Weatherly will recognize those who would like to speak at the appropriate time.
 Large groups are asked to select a representative to speak for the entire group.
 Comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

New Business 01

Manager Bruce Radford offered for consideration a Legislative agenda for the Town of Apex for the 2011 Session of the North Carolina General Assembly. Manager Radford explained each, with Council considering each item separately, some returning from previous years.

1. The Apex Town Council will seek legislation that would change the manner in which Wake County Board of Education members are elected. The Council supports a membership structure where a majority or all of the BOE members would be elected on an at-large basis to staggered terms in November of even-numbered years. Vote 4 and 1 with Council Member Jensen voting no.
2. The Apex Town Council supports legislation that would eliminate or increase the present cap on the number of Charter Schools authorized for the State of North Carolina. Vote 5 and 0.
3. The Apex Town Council will seek legislation that would oppose the transfer of state roads from state maintenance to municipal maintenance. Vote 5 and 0.
4. The Apex Town Council will seek legislation to keep local revenues intact through the upcoming budget session. Vote 5 and 0.
5. The Apex Town Council will seek legislation to retain municipal authority for annexation by supporting the League of Municipalities position. Mayor Weatherly felt this was headed for moratorium, a bad idea; NCLM position would be responsible and would want to ward off the moratorium. Vote 5 and 0.
6. The Apex Town Council will seek legislation to allow municipalities to reduce time frame from 1 year to 6 months for minimum housing enforcement; this pertains to structures. Vote 3 and 2 with Council Member Gossage and Olive voting no.
7. The Apex Town Council will seek legislation to allow municipalities to use the design-build concept for public capital projects. Vote 5 and 0.
8. The Town of Apex requests an amendment to North Carolina General Statutes (NCGS) § 160A-393(b)(3) to remove the requirement for quasi-judicial process in the approval or denial of major site plans with generally-stated standards requiring a discretionary decision. Town is requesting this amendment because the quasi-judicial process requirement prohibiting ex parte communication is problematic. The lack of communication between developers, neighbors, staff, Planning Board, and Town Council prior to the public hearings serves to set up a contentious process. Vote 5 and 0.
9. Remove Water Transfers between "Sub Basins" in the same overall river basin from actions requiring an Interbasin Transfer Certificate. Vote 5 and 0.

Action: Council Member Jones made the motion to adopt all 9 items for legislative consideration. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

Add-on: Unified Development Ordinance

Attorney Fordham asked the Unified Development Ordinance be accepted as codified containing all its amendments since its original adoption, and should be brought before Council once a year for acceptance.

Action: Council Member Gossage made the motion to accept. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney to preserve Attorney Client privilege. **Action:** Council Member Gossage made the motion to move into closed session at 12:35 a.m. Council Member Olive made the second to the motion. Vote on the motion was 5 and 0. Motion carried. Minutes of closed session are recorded separately.

Manager Radford submitted the closing minutes for closed session and adjournment.

Council returned to regular session at 12:38 a.m.

Mayor Weatherly explained Chatham County wants 1) \$500,000.00 for impacts to the County, and 2) a local bill barring Apex and Cary from involuntary annexing into Chatham County without permission, and 3) enter into an Interlocal Agreement to not involuntarily annex into Chatham County for twenty years, and 4) permit Chatham County to access the effluent discharge line; details to be determined. Mayor Weatherly asked if he could get this in the form of a motion.

Council Member Jones made the motion. Council Member Schulze made the second to the motion. Vote on the motion was unanimous (5-0).

End of Regular Session

WORK SESSION

There was no scheduled Work Session.

ADJOURNMENT

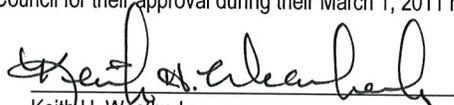
With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 12:47 a.m.

Action: Council Member Gossage made the motion to adjourn. Council Member Olive made the second to the motion. Vote on the motion was 5 and 0. Motion carried.

The minutes for February 15, 2010 were submitted by Town Clerk to the Council for their approval during their March 1, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for February 25, 2011

The Town Council of Apex, North Carolina held its 2011 Annual Retreat on Friday, February 25, 2011, 8:00 a.m. in the Apex Police Department Conference Center, Saunders Street. Mayor Weatherly extended a welcome to Council and staff. Others present: Apex Herald Shawn Daily and N&O Ted Anderson. Manager Radford presented the agenda Exhibit A; supporting documents were presented by staff and incorporated into the minutes referred to by reference. Human Resources Director Green led an opening team building session; was well received by all.

Director of Planning Khin presented population/growth forecast: population projections are based on 3.32% growth rate over a 5 year average 2006-2010; 2010 population 35,507, with approved subdivisions 46,435, and with pending subdivisions 68,294. Tax Base percentages: 77% residential and 23% non-residential.

Director of Construction Management Jackson presented 2011 building/construction forecasts for residential and commercial projects: complete Apex Peakway, street/sidewalk improvements, street repair/resurfacing, various Community Development Grant funded projects, and Water Reclamation Facility; no new major non-residential projects; anticipate new residential building permits similar to 2010; previous approved subdivisions to begin construction; transportation/traffic streets issues: identify/plan for dedicated revenue stream for maintenance, signage, signalization and parking; continued Veridea process.

Director of Finance Smiley projected fund balances for FY2011-12, noted deficit and surplus and projected reserves; noted outstanding bond and non-bond debt; expressed uncertainty of revenue sources, however notes some improvements: briefed on sales tax tracking, distribution and collection. Manager Radford stated the State plans to have their budget by the end of June, and committed not to resolve state problems on the backs of local governments.

Director of Public Works Donnelly gave an update on the regional water reclamation facility noting target milestones, with all projected components operational by July 2014. Director of Finance Smiley reported the Local Government Commission requested a water/sewer rate study Exhibit B: Consultant Utility Advisors' Network. Richard McClung presented results and answered questions; study was based on planned water/sewer capital improvements and customers and meter sizes; projections were noted and recommendations offered to include a phase-in rate increase, implementing a meter-base rate structure, monitor customer growth and demand; make rate adjustments as necessary if capital projects change.

Director of Construction Management Jackson presented results of development process customer survey Exhibit C, suggested by Council Member Gossage having noted the importance of evaluating efficiency of the process and identifying opportunities to enhance and improve the process for overall customer service experience; noted most responses were positive regarding overall process, noted staff had identified ten areas to better the process; discussed inspection scheduling time frames including resources, man-hours, and setting priority; noted: sediment erosion control position remains vacant and operations were inadequate without this position.

Director of Parks and Recreation Brown discussed purchase of additional land for future park properties (E-32 site adjacent to future Scott's Ridge School), with Council Member Jensen offering this an opportune time to purchase larger tracts of land and uncertainty of future economy. Decision to be made by Council: whether to use general funds or bond funds (sold; no funds in place to develop/build park; town delays sale of remaining bonds) to purchase and land-bank property or utilize existing bond funds to construct facilities approved within existing identified parks. Staff identified alternative parks: Seagroves Farm Park, Hunter Street Park, and Salem Pond Park. Staff desires to revisit the park development plan as to what is beneficial and given current limitations, noted reduction in E-32 site size, unknowns regarding purchase, and PR&CR Commission recommended Town forgo purchase of E-32 site, and use \$1.5 million to develop other facilities, and some monies be set aside to update the master plan of 2001. Council having given consideration to each park separately, gave their support to the recommendation to forego purchase of E-32 site and move forward with use of the funds for other facilities: staff will present phasing plan for Seagroves Park and plans for Hunter Street Park and will take this to the PR&CR Advisory Commission and then will be brought back to Council with recommendations (discussion followed regarding use of gravel walking trails and parking areas vs. being paved; it was noted the town follows same plans as developers).

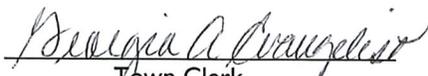
Director of Parks and Recreation Brown presented results of a study prepared by Froehling and Robertson, Inc., in regards to replacement of the valve control of Apex Community Park dam, commissioned by the State Dam Safety recommendation and periodic studies. Director of Public Works Donnelly reported on the 1926 control, unknown conditions noting age, shared concern of protection to downstream interests should an emergency occur, concern with seepage; noted minor recommended repairs were completed; emergency action plan prepared by John R. McAdams Co, is on file with the state; spillway assessment was conducted by Alpha and Omega Group. Council should weigh in on options offered and give direction to staff on how to proceed: Options: monitor actions and continue maintenance; authorize design and delay replacement/construction; authorize design and replace/construct in the next fiscal year. Council discussed secondary valve to reduce pressure on the dam, potential liability, drop lake levels/drainage, seepage, and options presented by staff; wanted assurance on design shelf life and assurance the design could be implemented by someone other than the design company. With funding discussed Council agreed to place this item on the March 15, 2011 agenda, authorizing staff to move forward with the design phase of the control not to exceed \$25,000, authorize start up, and continue monitoring same.

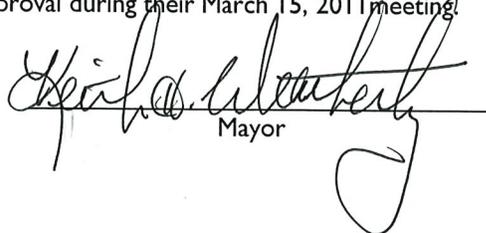
Manager Radford gave a progress report on 2010 Council retreat priorities: continue to move forward with the wastewater facility; keep public works expansion on CIP; commit resources to street maintenance and resurfacing, and sidewalks projects; electronic agenda had been established; Peakway Laura Duncan Road to Salem Street completed this year; need for update to the parks master plan - agreed; funds to purchase ambulance, time to replace police vehicles (3 years: long term expense and mileage; Chief of Police Lewis expanded on vehicle costs and outfit of same), will continue to balance the budget and noted money available in fund balance; PIO position will be filled - 75% PIO duties, 25% economic, and balance for web management; strengthen economic development: 800 Apex packets mailed, no response: effort to do so again, website activity moderate; maintain employee compensation and benefits: unsure of COLA, noted difficult to give merit increases; budget on schedule, and there would be no new money in the fiscal year budget. Human Resources Director Green noted morale issue among employees with having reduced merits and no COLA; noted several key positions vacated having gone to competitors; noted another year of same would cause serious impacts in morale and productivity; noted CPI 4.7% over past two years. Mayor Weatherly stated support for maintaining employee compensation and benefits, without loss in jobs, not taking employees for granted, noting employees a valuable resource in providing services to the town, and noted a great job had been done by town in maintaining the same, while staying revenue neutral and continuing to be mindful of the town's employees, and should be a priority.

Council discussion: revenue stream to cover streets expenses long term. Manager Radford noted 2 cent tax increase brings \$830,000 however tax increase has not received a warm reception, and have not wanted to use money in fund balance. Discussion followed regarding Chamber landscape with plans to complete same with fine monies; Manager Radford will follow up with Council on this discussion. IT Director Lapiana gave a status report on New World and next phases to include finance (payroll), human resources and construction management; noted the town's website contract is with Liaison Design and plans. Director of Public Works Donnelly noted Water Treatment Advisory Committee was working to determine how to mitigate costs, delaying long term the build out of the regional wastewater treatment plant, having it online at the appropriate time. Town Clerk Evangelist noted since recommending the electronic agenda process in the 2010 retreat, noted a cost savings to the Town having moved forward with same; and Council ethics training was also completed.

Mayor Weatherly called the retreat adjourned at 2:50 p.m.

Minutes submitted by the Clerk to the Council for their approval during their March 15, 2011 meeting


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Council Minutes for March 1, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 1, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council present: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those attending.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Manager Radford asked to remove Item 3 from the Consent Agenda to gather additional information. Mayor Weatherly called for a motion to approve the amended agenda.

Action: Council Member Jones made the motion to approve the consent agenda with the exception of Item 3. Council Member Schulze made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

1. Minutes for February 15, 2011 Council meeting; February 15, 2011 Closed Sessions (separate cover).
2. Apex Town Cemetery Lot 96 Plots E & F: Transfer from Robert/Joyce Harris to Charles/Priscilla Benoit.
3. Budget Ordinance amendment for improvements to depot grounds and replace radar trailer (pulled).
4. Resolution No. 2011-0301- _03_ Accepting Clean Water State Revolving Loan from NC Department of Environment and Natural Resources.
5. Findings of Fact and Conclusions of Law regarding Special Use Permit #11SUP01, Alan and April Maness, 6304 Old Jenks Road: approved by Council February 15, 2011.
6. Rezone #11CZ01: MCI Enterprises, LLC: Statement of Council and Ordinance for property located south of Eddie Creek Drive and west of Reunion Creek Parkway: approved by Council February 15, 2011.
7. Addendum to Contract between Town of Apex and Capital Area Preservation, Inc. to re-evaluate portions of the Apex National Register Historic District.
8. Wake County Board of Commissioners Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Mayor Weatherly asked to amend the agenda to add a Closed Session to receive legal advice from the Town Attorney prior to Public Hearing 3. Attorney Fordham asked to add a Closed Session for two items to receive legal advice from the Town Attorney and to discussion potential litigation.

Action: Council Member Jones made the motion to add the closed sessions for the purposes stated. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing 01

Director of Planning Dianne Khin

Annexation #457, Standard Pacific of the Carolinas, LLC: Public hearing and possible motion regarding Annexation #457, Standard Pacific of the Carolinas, LLC petitioning to annex 50.99 acres - Salem Village Phase 1 into the Town's corporate limits and located west of Tingen Road. Staff oriented to the site and recommended approval; noted portion of the Peakway would be constructed. Mayor Weatherly opened the Public Hearing at 7:10 p.m. and with no one addressing the petition, closed the public hearing.

Action: Council Member Schulze made the motion to approve Annexation #457, adopting an ordinance to extend the corporate limits. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Public Hearing 01

Public Hearing 02

Director of Planning Dianne Khin

Annexation #458, CJS Apex Assemblage, LLCL: Public hearing and possible motion regarding Annexation #458, CJS Apex Assemblage, LLC petitioning to annex 4.53 acres -Salem Village Phase 1 Pump Station, into the Town's corporate limits and located between south Salem Street and Tingen Road. Staff oriented to the site and recommended approval; noted pump station is required. Mayor Weatherly opened the Public Hearing at 7:11 p.m. and with no one addressing the petition, closed the public hearing.

Action: Council Member Schulze made the motion to approve Annexation #458, adopting an ordinance to extend the corporate limits. Council Member Olive made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Public Hearing 02

Agenda Add-on: Closed Session prior to Public Hearing 3: Mayor Weatherly called for a motion to move into Closed Session at 7:12 p.m. to receive legal advice from the Town Attorney.

Action: Council Member Jensen made the motion to move into closed session as stated. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. Minutes of Closed Session are recorded separately.

Action: Council Member Jensen made the motion to move from closed session back into regular session. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Closed Session

Public Hearing 03

Planning Board met January 13, 2011 and voted unanimously for approval as presented with addendums from the applicant. Town Council on January 18, February 1 and February 15, 2011 voted to continue the public hearing.

Continuation of Public Hearing for Rezone #09CZ07 Veridea, Lookout Ventures Inc., owner/applicant: Presentation of the financing proposal: Lookout Ventures, Inc., petitioner, seeks to (1) Make amendments to the Unified Development Ordinance; and (2) Rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) with a Sustainable Development Plan; and (3) Amend the 2025 Land Use Plan; this rezoning area is generally bound by US 1 Hwy, East Williams Street, and the future NC540 corridor; and **(4) Lookout Ventures will make a presentation regarding the financing proposal for the development and request participation from the Town of Apex.**

Mayor Weatherly stated the public hearing remained open from the previous meeting. Manager Radford referred to Tom Hendrickson, Lookout Ventures, Veridea, for presentation of the financing proposal for Veridea and request of participation from Town of Apex.

Tom Hendrickson, Lookout Ventures, presented Veridea finance proposal Exhibit A and B, incorporated into the minutes and referred to by reference. Highlights: increased revenues, proposes special assessment bond finance plan to fund public infrastructure. Request: Apex impose a special assessment or extra tax to pay for bond financing that only property owners in Veridea would pay on property within Veridea, noted positive fiscal impacts from taxes, fees, jobs, sales, quality of life with additional growth, diversification of tax base, and request to use a portion of increased tax revenues generated by Veridea over and above costs of services for Veridea for annual economic development grants. Explanation: special assessment bonds are revenue payable solely from special assessments that pays debt service on bonds and are in addition to property tax paid to the town (appraised Veridea land value \$75 million); requested Apex agree to issue revenue bonds (\$29 million) and impose special assessment on Veridea property to pay for needed public infrastructure (stated investment in infrastructure would generate additional revenues). Stated Apex would not incur financial risk in issuance of the bonds, and if special assessments were not paid, the property would be sold to pay off the bond debt (single family lots must be paid in full upon sale to first occupant). Noted: land value is more than enough to support the first phase of bonds and within Local Government Commission (LGC) guidelines. Projections: annual revenues at buildout of Veridea: \$21 million annually; over 30 years: \$356 million property tax, \$14.7 million sales tax, \$50 million annually water/sewer revenues. Veridea commitment: parks and recreation; construction and contribution to town; donation of land and build Apex Public Safety Center; provide necessary services to maintain low tax rate. David Jones explained the management process: special assessments, payments, and obligations of Town to enforce lien and retire bond debt should the payments not be made, with risk on Veridea, and with Hendrickson assuring SD Plan and management is to assure this would not happen, and not put property at risk. Jones noted no other government in North Carolina has partnered with developer, this was the first; examples given in Virginia.

Manager Radford referred to Director of Finance Lee Smiley: Exhibit C contains bond attorney's comments to Veridea proposal; stated the project is different than any other; as proposed is legal, and received approval with LGC guidelines, and assures this does not affect the general obligation bond rate; revenue bond payments must be paid with assessment payments, town is not allowed to use any other source or revenue to make payments and has no obligation, no legal risk to the town, and if not paid, would foreclose on the property. He noted with potential of default, the town's name would be involved and would be a long process to deal with; he didn't know if there would be any affect on the town's ability to issue other revenue bonds; was hard for him to say a 45% split back of net increases in tax levy to create economic development grants was a good idea; noted there was a long list of needs, and hard to recommend adopting a plan to write checks for millions of dollars ten years down the road, and to act on this type proposal sets precedent for similar requests.

Counsel Bond Attorney Paul Billow noted considerations that should be given to such financing requests and risks regarding the proposal, based on the materials provided and stated certain legal, economic and policy considerations as they relate to the proposed financing plan for Veridea, Exhibit D, incorporated into the minutes and referred to by reference.

Highlights:

Legal consideration:

- no risks to town doesn't mean no risk to the bond; bonds are subject to voter approval;
- these type bonds go in default often and town would be part of the process;
- a third party is necessary to implement special assessment program;
- bond will be Town of Apex limited obligation bond;
- special assessments benefit the property and unclear whether all Veridea property will receive a benefit that will permit special assessments to be levied on such property;
- new legislation for imposing special assessments; but must bear relationship to the amount of benefit that accrues to the assessed property;
- no NC precedent for providing economic development grants direct to developers; assure grants are rendered legal; noted the multi-family component is not excluded, where single-family is excluded
- bond counsel has not approved proposed finance structure; concern: town's obligation to reimburse developer for payment of special assessment from incremental tax revenues; counsel would have to analyze all facts/circumstances surrounding finance plan to render legal opinion to support issuance of bonds.

Economic consideration:

- assurances infrastructure and economic impact will result prior to issuance of bonds; are they legal binding; role town plays if developer fails in his commitment;
- has private financing been fully explored; as proposed the financing will sunset;
- town is not directly obligated to pay debt service on the bonds from any funds other than special assessments levied and collected with respect to the project; some increased costs may not be reimbursable; even though town's general obligation debt rating would probably not be impacted by a default on the bonds, there could be reputational risks associated with a default of bonds of the town; additional risks and costs associated with this type financing should be evaluated, as such risks cannot be eliminated – town would be involved with resolve of same; such financing carries a higher interest cost than traditional financing;
- consider whether 45% reimbursement is appropriate; plan to reinvest in community; evaluate if 55% would cover general costs related to project;

Policy/Other:

- plan proposes 20 year agreement with developer to govern use of reimbursements; would they be deemed already earned by developer;
- plan doesn't suggest participation by county; not certain of economic viability if county does not participate;
- if town implements financing plan; how will treat future developers with similar requests;
- consider policy to surrender rights to receive any increased tax revenues from the project; could be used to reduce future tax increases, build fund balance, provide capital improvements;
- consider other less costly financing methods such as revenue bonds or installment financing to finance public infrastructure projects;
- keep debt service costs as low as possible.

Mayor Weatherly called for a recess at 9:00 p.m. and Council reconvened at 9:10 p.m.

Davenport & Associates: Ted Cole added town would have to implement special assessment program requiring additional staff. Lucy Gallows, Managing Principal, commented on approved LGC guidelines in place to shield the town should they implement this program. Cole continued bond financing was unused in North Carolina, and could be positive to promote growth, however noted Virginia cases that has not worked well; noted potential risks the town would have to deal with should the proposed fail; noted this type financing solely paid by assessments, and noted the presuming, should the town give access to this funding tool, was presuming there was financing available elsewhere. Marion Russ, Bond Counsel Veridea noted they may respond or phrase answers differently, noted LGC involvement, long detailed process, buyers for these bonds are involved lenders; assures vertical commitment would be in place; development pays assessments be paid once levied stretches time to become viable. David Jones, Kennel Gates, addressed the 45/55 mix and noted goal was not to incur additional costs without paying for will get it right; have policy in place required by LGC; sets bar high to deserve worthy consideration for funding; noted impacts giving SC data, noting reputation risks - the defaults/location was not developed like this; noted this was a way to finance public infrastructure without putting debt on the books; expanded on the development grant, and County participation. Perry Savan, addressed how the money would be delivered, in conversation with County Manger, Commissioners were open-minded to participation, having kept them informed; expanded on how economic development works, with a funding agreement between town and county. Hendrickson noted the county motivation was the area becomes a target location for high end economic development.

Mayor Weatherly expressed hope that the proposed vision could come true in Apex; noted hours of staff time and official meetings held. He asked if there were a plan B should this proposal fail. Hendrickson could not respond at this time, however expressed the zoning was needed, had put the best proposal forward, having been conservative, would allow the town ability to grow, keeping low tax rate and providing services, and was open to continue to work on the proposed. Mayor Weatherly added Warren & Associates response for a fiscal impact analysis of Veridea plan would be presented March 15, 2011 with Manager Radford anticipating a council response on that date. Hendrickson added the county at some point was interested in conversing with Apex Council regarding participation in the project. Manger Radford noted regular communication with the county manager and would suggest such if the proposal gains traction.

Mayor Weatherly called for a motion to continue the public hearing to March 15, 2011 meeting.

Action: Council Member Gossage made the motion to continue the hearing as requested. Council Member Schulze made the second to the motion. Motion carried unanimously.

Public Hearing 03 continued to March 15, 2011

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

There were no New Business items to be considered.

CLOSED SESSION

Mayor Weatherly called for a Closed Session to receive legal advice from the Town Attorney and to discuss potential litigation. **Action:** Council Member Gossage made the motion to move into closed session at 9:45 p.m. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move from Closed Session back into Regular Session at 10:10 p.m. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. With Council back in Regular Session, the following action was taken: **Action:** Council Member Jones made the motion to approve a conflict of waiver related to Chatham County Attorney Jeff Rose, with Poyner and Spruill. Council Member Gossage made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

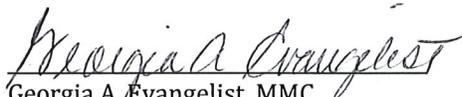
WORK SESSION

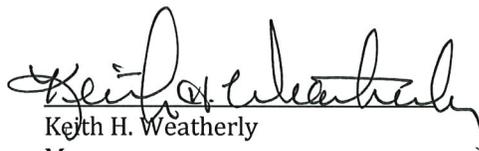
There was no scheduled Work Session.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 10:11 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried.

The minutes for February 15, 2010 were submitted by Town Clerk to the Council for their approval during their March 1, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for March 15, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 15, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org>

Mayor Keith Weatherly presided over the meeting with all Council members present.
Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance and extended a welcome to those in attendance. Special guests: School group studying government. Council Member Olive gave the Invocation.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments.

Action: Council Member Gossage made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

1. Minutes for March 1, 2011 Council meeting; March 1, 2011 Closed Sessions (separate cover).
2. Minutes for February 25, 2011 Council Retreat.
3. Annexation Petition #459: Jack L. Skaggs, Jr., 1.01 acres (non-contiguous to Town's corporate limits), and located at 3521 Old US1 Hwy (request for public water connection); 1) Resolution directing Clerk investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing April 5, 2011.
4. Budget Ordinance Amendment No. 8: replace a radar trailer.
5. Budget Ordinance Amendment No. 9: design valve replacement at Apex Community Park Lake dam and authorization for Town Manager to proceed with execution of design contract and authorize start of design work up to the \$25,000 amount.
6. Street closures: Peak Fest (Sat. May 7, 2011) and Old Fashioned 4th of July Celebration (Mon July 4, 2011).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. He asked to amend the Agenda to allow Public Forum comments prior to the Public Hearings. **Action:** Council Member Olive made the motion to amend the Agenda as requested. Council Member Gossage made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. The Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing 01

Senior Planner June Cowles; Planning Board met February 14, 2011 and voted 7-1 for approval; staff recommended approval with conditions proposed by applicant. Town Council voted to continue the hearing to this meeting.

Continuation of Public Hearing for Rezone #11CZ02: Lindsey McClamb Jr., owner/applicant: request to zone 2.63 acres located at 2705 Evans Road, from no current zoning classification to Medium Density Conditional Zoning. Staff oriented to the site and stated request for zoning; presented the staff report which is incorporated as a part of the minutes and referred to by reference. After Planning Board approval, the applicant offered conditions on the rezone. Staff recommended approval with conditions. Mayor Weatherly opened the public hearing at 7:28 p.m. and with no one speaking, closed the public hearing and referred the matter to Council. Clarification: opposed vote of Planning Board expressed concern with uses; applicant reduced uses and stated by staff. **Action:** Council Member Gossage made the motion to approve Rezone #11CZ02 with conditions. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Public Hearing 01

Public Hearing 02

Manager Bruce Radford; Planning Board met January 13, 2011 and voted unanimously for approval as presented with addendums from the applicant. Town Council on January 18, February 1 and 15, and March 1, 2011 voted to continue the public hearing to this meeting for the presentation of Warren & Associates Fiscal Impact Analysis of the Veridea development.

Continuation of Public Hearing for Rezone #09CZ07 Veridea, Lookout Ventures Inc., owner/applicant: seeks to (1) Amend the Unified Development Ordinance; (2) Rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) with a Sustainable Development Plan; (3) Amend 2025 Land Use Plan; this rezoning area is generally bound by US 1 Hwy, East Williams Street, and future NC540 corridor; and (4) *Warren and Associates, Charlotte, NC will make a presentation of the Fiscal Impact Analysis of Veridea.*

Frank Warren presented an executive summary and gave clarity to the methodology of the fiscal impact analysis of Veridea 2011-2039. Summary is incorporated as a part of the minutes and referred to by reference Exhibit A. Note: full document forecasts municipal revenues and expenditures attributable to Veridea through build-out; full report will be made available within the week; market analysis was not a part of the assignment; information was provided by the development team and town staff. Highlights: Project description was given; forecasts population projections; general fund revenues does not include tax increase, and based on \$0.34 per \$100 assessed value; cumulative gross revenues were categorized, with 85.6% total revenue attributable to Veridea as ad valorem tax and could total \$320 million by build-out; other taxes 14.4%:\$53.9 million. Jessica Rossi: presented general fund expenditures categorized by department for staffing and equipment, with Police, Fire, Planning and Construction Management having largest share of cumulative expenditures of \$111,427,791; notable increases in 2020 with operational Community Center and Public Safety Center. Net revenues: Veridea is expected to generate positive net revenue in every year throughout construction and expected to reach \$15 million in the first fiscal year after build-out in 2039. Enterprise Funds based on future use and rates: gross revenues calculated for water/sewer could gross \$9.1 million in revenue the first fiscal year after build-out (could help pay off regional wastewater plant debt) and through build-out \$151 million. Veridea could generate \$23 million in gross electric fund revenues that could gross \$490 million through build-out (rates could be adjusted if a surplus occurs). Capital Reserves: will be added to existing funds and would have a separate revenue and expenditure stream: transportation, recreation and water/sewer. Warren stated there was no standard formulas as all towns are different, and provided a resource metrics and explained methodology, looking at new employees, equipment and capital costs; noted this magnitude of project has never been asked of them before. Signalization: Town would likely assume some level of responsibility, based on growth and number of signals and miles of streets triggering need for municipal maintenance; lacks information. Schools: no input received from Wake County; lacks necessary feedback. End of presentation.

Clarity: cumulative net revenues \$256 million; explained breakdown and methodology for percentages for office, retail and institutional (appendix table); how to budget and make adjustments, given variables in uses and depending on market, flexibility/balance with build-out: Warren assumption: no one would take on a project of this scope/size and build out with nothing but residential first (investment upfront); magnitude would not be enough to change on any given year, if data is available, model (software and charts) could adjust to any kind of change in build-out schedules.

Tom Hendrickson, Lookout Ventures expressed pleasure with Warren analysis and Veridea product by Lucy Gallo; noted comparisons of net benefits show a difference; presented project highlights over 30-year buildout: incorporated as a part of the minutes and referred to by reference Exhibit B; stated steps for special assessment bond financing plan to fund infrastructure; request Apex agree to issue revenue bonds and impose special assessment tax on Veridea property that would retire bond debt and pay for needed public infrastructure, giving assurance Apex would incur no risk in issuance of these bonds; stated reservations to set aside open, public, civic, and school space, greenways and multi-use trails, with land donation for recreation and donation to construct recreation facilities. Conclusive: increased revenue and services for Town with Town owned infrastructure; Veridea taxes would pay bond debt, would generate surplus funds with Veridea bearing the risk. Request Council hold open the matter of economic grants and continue discussion with town and county. End of presentation.

Mayor Weatherly stated the Veridea request was to allow for the start of the bond process; he sought how Council would structure a motion to conditionally approve issuance of bonds. Hendrickson advised there would be an official petition. Mayor Weatherly questioned whether the bonds would be revocable at some point? David Jones, Hunt and Williams responded: a formal petition is required, not at this stage. As part of the zoning process they were asked to bring financing information and now asks Council to authorize staff to work with them toward something they could bring back for approval; it's revocable because Council would not have to approve it; noted this would not actually approve issuance of bonds. Hendrickson stated he would move forward with a draft developer agreement, seeking Council's guidance and tone would move forward with the zoning case, to bring Veridea to reality.

Mayor Weatherly asked Council if there was additional information needed to raise their comfort level. Manager Radford reminded the public hearing remained open in the event others wanted to speak. With no one addressing the Veridea proposal, Mayor Weatherly closed the public hearing.

Council Member Schulze began discussion: the point at which there could be no turning back in the process for issuing bonds. Hunt responded after LGC approves and Council gives final approval the formal vote would be the end of the process to issue the bonds and before the bonds were sold; process time about one year. Hendrickson shared time schedule for necessary documents informing Council they could not start until zoning is in place; cost estimate takes time.

Mayor Weatherly asked Council if they needed additional information, as they need to get to a decision quickly. Council Member Schulze had unanswered questions and stated if his concerns weren't addressed he would not vote for approval; his concern was they were "going down a hole and can't get out of it"; another concern tax revenues \$67 million that would go back to Veridea vs. the town; wanted tax payers to have the same as if they went with traditional financing, Hendrickson responded: if inclusive of grants and other items in the bond program that would change the size; for now discuss basic assessment bonds within Local Government Commission rules; they need to move forward with special assessment bonds; ask they set grants aside and return in three weeks with developer agreement so they could move along and could revisit grants if appropriate.

Mayor Weatherly asked Council what was necessary for them and when they would entertain action. Council Member Gossage stated he had issues related to the level of service pertaining to schools, impacts from developer, as well as sizing of bonds; he would not be prepared to move forward until they have the full Warren report. Hendrickson responded SD Plan language is straight from the schools representative and have a separate study from the County; looking at school financing is significant. Mayor Weatherly agreed the school system had to agree to the site and doesn't have money for land banking. Hendrickson responded: once there's density the school system would talk about it but are not interested in doing so now. Council Member Gossage expressed: he had other issues, however wanted the full Warren report and time to review it. Warren stated there was no school analysis in the report; it was cut to move forward; with repeated attempts and the Manager's help, there had been no contact. Warren report could be received within the next week however, does not include schools. Council Member Jensen reminded the Town doesn't build schools.

Council Member Jones noted as far as special assessments bonds, \$29 million doesn't include building schools and wanted to remove it from the table. He was at the point of trying to separate components the best he could and knew there were steps to get through and they had asked it to be that way; had asked for financing information, costs to the town for the development to happen before they ever get to vote on zoning. He noted they were being asked now to give either a go or no go on special assessment bonds as a way to finance infrastructure; next would look at the rest of this report as to what the expenditures would be; wants to look at worse case scenario's should only half the development happen in the first six years, how much the town is spending, does the town have that net revenue if nothing develops the way they want; he has questions regarding the zoning request and SD plan which they need to circle back to; they have to "get something off the plate or will never finish the meal."

Council Member Olive asked do we? He recalled when first hearing about Veridea, they would do pieces at a time; guidance seemed to be to have things in order and together in a bundle: zoning, SD plan that was being developed; then questions referenced a developer agreement and needed to get all of this in sink; this was the message, not remembering where it was coming from, seemed pervasive at the time; for a year and a half have been pulling everything together, context is everything and the request is context free, very generic: issuing bonds for a project name, no amounts, no time lines, nothing; not saying it's a bad thing, however contrary to where they've been going for the last 20 months. He would be more comfortable making a decision with context; in terms of what's germane to this, how much the bond is to him is a germane question and taking it out makes it tuff. He asked what collateral is being held for said bonds, what's the worth, they don't have a solid answer - they know what's been invested but not what its worth and when the collateral and request for bonds are question-marks, he doesn't know that gives them a lot of context to make a decision.

Council Member Gossage understood what he was saying but doesn't understand how key knowing whether or not there will be an issuance of bonds is to writing a developer agreement. Hendrickson responded, he was told they couldn't proceed on finishing the developer agreement until there was direction as to whether in discussions with Hank, was reasonable. Attorney Fordham stated the draft developer agreement had a lot of financial commitments by the Town, and staff couldn't approve them and needed to know what needs to be in the developer agreement; most importantly the substance of the transaction and staff doesn't know that; they need financial aspects. He had given advice early on that if they want the ability to negotiate a developer agreement that was favorable to the town, should hold the rezoning until the developer agreement was pretty much flushed out. Advised there was no legal requirement to do the developer agreement before, after or whenever, but as soon as the conditional zoning is granted they don't have the ability to exercise the legal right to require conditions of the rezoning that address impacts of the development; and had been his advice for a long time; if that's a consideration, it's contingent advice and not final advice if it's important to Council to address financial impacts of Veridea, the development impacts before the ability to do that is gone, then you need to do those two pieces together.

Council Member Gossage clarified the key pieces of Veridea: rezone, developer agreement, potential participation in financing, and SD plan, asking the best order of those from the town's perspective. Attorney Fordham responded in terms of knowing the financial commitment of the developer and what obligations the town would have: should decide if you want to be involved in a financial partnership with the developer and would need that in a developer agreement; sometimes towns require developer to make certain commitments for infrastructure, sometime towns participate in the process - its business judgment not a legal question. Council Member Gossage had understood it better to work out the zoning prior to and now the opposite. Attorney Fordham advised the law allows you to require conditions in the conditional use zoning proposal and the law specifically allows required conditions that address impacts of the development and have to be related to the development, but once you do that, you lose the ability to require conditions; you can't force conditions on the developer, developer can't force you to approve a rezoning that doesn't address impacts in a way that serves the public interest; a conditional use zoning is a cooperative process. Council Member Gossage asked if we want to have those negotiations worked out prior to approving a developer agreement, with Attorney Fordham responding yes.

Mayor Weatherly thinks the attorney's response is consistent with what was requested tonight: financing agreement, asked they focus on what is needed before the next meeting. Council Member Jones asked the Finance Director as a follow up on Council Member Olive's point, if what they heard at the last meeting, and what they had heard tonight, issuance of these bonds, our sponsorship of these bonds, however you want to describe that is no risk to the town, or minimal risk to the town. Finance Director Smiley responded, no financial risk, with Council Member Jones repeating his response: no financial risk. Council Member Jones continued if this were the fact, did the amount in collateral matter to the Town. Director of Finance responded collateral matters to LGC; they would have to meet LGC requirements to be approved by them; it just matters how much they would pay back to the term of the agreement.

Hendrickson advised he would have a draft developer agreement in place at the next meeting, April 5, acceptable with the Attorney, the SD Plan and zone case. Attorney Fordham noted there was an assumption behind his advice that you needed to have the developer agreement at the time of zoning, that's if the town wants something out of the developer agreement, if there's nothing the town wants out of the developer agreement, you don't need one before you do the zoning; the draft developer agreement did not have any aspects that were things the town would get out of it. Council Member Jones expressed concern to what the town may lose. Attorney Fordham advised it was primarily a vehicle to have the town agree to a financial commitment and partnership, not drafted in terms that were enforceable, but drafted in terms of a commitment to a financial partnership. The other thing the developer wants out of the agreement would be grandfathering for these years. If there's nothing the town is looking for in the developer agreement, could move back to the zoning and depends on what Council's objectives are. Hendrickson stated they would agree the developer agreement needs to be in place; noted a couple versions in draft and had been on the table since last year and hasn't been updated since the LGC ruling; they know it needs to be updated. Attorney Fordham advised they don't know what needs to be updated and difficult to work on it until they know what the transaction is.

Council Member Jensen knew there needed to be an independent person working asking the number of staff needed? Manager Radford responded almost impossible to say, as they didn't know what they were facing, having to give a nebulous answer, has been time consuming having utilized \$25,000 bond attorney, less than half of that for the financial consultant, tremendous amount of Finance Director's time. For the last several months, town staff had tried to give as much sound advice as they could; they had not heard bond counsel, financial consultant, finance director, or his self tell them that to marry Veridea financially for 30 years was a good idea. He stated this was the first bond offering of its kind in this state's history; there are some sunset requirements in two or four years, that very well may preclude the second half of this financing, to be able to be legal under the current law; have worked hard for years to obtain AAA Bond rating; are told the bond rating may not suffer - want suffer from participating under a bond of this nature; marriage to a private development for a 30 year period has potential hazardous pitfalls and was not doing his job, Director of Finance is not doing his, Paul Billow Bond Counsel is not doing his, Ted Cole and Bob High are not doing theirs, if they don't do their best to point out those pitfalls and what they might be. He continued they are setting a precedent to back bonds of a private developer for infrastructure. County has been mentioned on a regular basis and Wake County has told him there is no appetite on their part to participate nor to develop a policy that allows for bonds or bonding for infrastructure purposes; they have a current incentive policy in place and would like to stick to their policy and feels it has served them well. Manager Radford thinks it has served them well and we should be extremely cautious in proceeding with the issuance of bonds for the infrastructure for the Veridea project. Council Member Jensen asked if he were talking about incentives policy. Manager Radford said County policy is not clouded with issuance of bonds in support of private development, eventual hiring of third party administrator that will govern the activity of the town, developer and the private foundation that will administer the grants for economic development; what's being considered enables the town and the developer to participate together in what's before has been private responsibilities. What he has seen and heard demonstrated from this council for a very long time is that has been something they were not interested in. He said again, this is the largest project of its kind; on paper produces tremendous benefits, if it produces tremendous benefits on paper and we can be convinced that its doable, grant the sustainability plan allows zoning to be what it will be; given this the opportunity to work, in the worse economic times that any of us around this table has faced in our lifetimes, it's not a time for the Town to take such a risk.

Hendrickson appreciated the Manager's comments but the fact is its not 30 years, it's a 20 year bond and the fact is that they know there is at least one or two other places, by the time even if they get approval for the zoning case will be others ahead of them with LGC on this very type bond; knowing the amount of work they have ahead of them, he finds it stipulating that they want be first; he knows the amount of work left in front of them to get there; he named David Jones, Lucy Gallo, Lacy Reaves, noting Cary has been in conversation with the County, having other different responses, but they are not here asking the County to talk to them and they are not talking about anything that involves the County here, with special assessment bonds, this has nothing to do with the County, this is all to do with Apex. If they were wanting to talk about the economic grants, yes it would have something to do with them, but that's not what they are talking about, wanting to make sure we separate out the pieces being talked about with the Town. The County gets a tremendous benefit and actually thinks they would be interested in doing something but in terms of this request for the bonds, they are not interested in that because the infrastructure and the revenue generated, actually the enterprise fund revenues generated from this very infrastructure all comes to Apex and none of it goes to Wake County; on the bond side, it is a 20 year bond; have to believe they are setting the framework for future RTP here in Apex. End up with two well respected economic firms coming together, differently but together with numbers that are very similar and very positive and because of the amount of significant non-residential development they believe can happen on this site with the very unique linkage of RTP through the Western Wake Expressway and NC540.

He appreciated the Manager's points, but had brought expert after expert and had gone through the pieces with the Finance Director, saying there is no financial risk, and they would bear the risk on special assessment bonds, pure and simple, it's their property, his partners money that would be jeopardized and they wouldn't be here asking to put a bond on the property that they weren't comfortable with; they would go through the LGC underwriting and you think about the protection of the Town's credit rating that the Manager mentioned, in addition to everything else; you have the LGC which is very conservative underwriters, you have the underwriters themselves that would be in play before the bonds are ever issued, as a matter of fact, they represent the people that would invest their money into Apex that would buy those bonds, and would only be three or four institutional entities, they will come in and evaluate everything about this, and one reason some of this needs to be open; when you talk about underwriting, that's significant, that's not just somebody, that will be the folks who ultimately end up agreeing to purchase bonds and will have additional conditions; conditions by them and conditions by the town, and subject to conditions by the LGC, and wouldn't have started the process unless, they had underwritten it themselves, to make sure nothing they would ever do during that process and everybody else's underwriting would put the investment that his partners had put into this project at risk. They believe in it and believe in Apex, and asked them to believe in it too. He thinks the tremendous upside they see from the town's financial consultant, analysis of this project in something that comes about by being able to bring the development along in some scale. If Veridea was 20 / 50 acre tract instead of 1000 acre tract, he could bring three pump stations and the town might be just putting that in, it would be incremental and would be smaller in vision and would be smaller inability to market and smaller inability to track that kind of corporate national players that they see on this tract here. He asked they not penalize them for trying to think big and bring something they think is significant to Apex, and asked they be in a position whether they go with this now or be in the position three weeks from now to bring a Developer Agreement that they can bring to the table they can contemplate this and then have it all in front of the town at one time and will see where they go. If that helps put it into better context, and he can appreciate that, the problem subject to other peoples underwriting is they know how to deal within the LGC published rules, they know their underwriting, but they do not know ultimately what the underwriters themselves who are going to be the folks that represent the money are going to require in addition to other things that will be required.

Mayor Weatherly assumed there would be no motion to be tonight and advised they need to be ready in three weeks, at least for action on the first part of this, yeah or nay, how do we make sure they would be ready for that. He asked if there were suggestions on what needed to be ready or just work with staff independently.

Council Member Jones noted Hendrickson had said they need to work on the developer agreement, assuming special assessment bonds were a part of that developer agreement, and didn't know if that were a safe assumption. Council Member Gossage maybe there should be a developer agreement that assumes it doesn't as well. Mayor Weatherly added they need three votes, and that's what he's asking for tonight, to start the process for show support for that.

Council Member Jensen asked if they started the process, there's no risk to Town, and may or may not go with bonds; and would starting it tonight or 3 weeks make any difference. Mayor Weather added he would hope they didn't want to give some false start unless they were really serious about approving the process, not just to say they are ok to begin the developer agreement and other things without a firm understanding that is where we want to go. Council Member Gossage added that it sounds as if it already has a great deal of this in it. Attorney Fordham said general description of pursuing public financing for what is defined as a long list of infrastructure, the details are not in there. The developer agreement tracks transactions and is what Council determines. If the town is going to agree to this type financing then developers seeking to get as much commitment as they can in the developer agreement, asking if this were correct, with Hendrickson responding at the time, the developer agreement would be the framework for them to state those issues, not saying anyone was trying to get as much as they could on any particular thing, but rather to have a balanced context, and because it hasn't been timely, will revisit it over the next couple of weeks, regardless, and will have a revised draft and may do with it as ... with Attorney Fordham advising the purpose of the developer agreement is not to state issues but reach an agreement on binding commitments; so the developer agreement shouldn't be used as a vehicle to do the policy analysis, it will take a tremendous amount of work on the part of staff, there's a lot of work to be done in a lot of areas, and a decision needs to be made... the agreement is "the tail, it's not the dog;" drafting the agreement is "the tail." Hendrickson responded they would follow the town's lead, but if they would rather wait and see it all at one time in three weeks. Mayor Weatherly added they had heard the attorney's statement "it's the tail, not the dog". Hendrickson said, it is, but in all fairness had heard several comments from staff on different parts of the developer agreement, were certainly some good comments, and owe the document a redraft and will undertake that to absorb the sense of things that was referred to today; he's trying to help facilitate council having a fair set of documents to make a decision.

Mayor Weatherly stated, let's see where we are now and decided tonight is not the decision night, and asked if anyone wanted to state any other additional needs to have a motion on the floor, the next meeting or three weeks. Council Member Gossage added they didn't know the value of the land, having discussed it with the Manager, not knowing how long this would take. Hendrickson advised there was one commissioned some time ago; Hudson has certain reporting obligations to conduct appraisals at an appropriate institutional grade level, and on a periodic basis and commissioned one sometime ago, and have a final draft that he can share, and confidentially didn't.....with Council Member Gossage adding he understood it was of some time ago. Hendrickson responded it was commissioned in November, and just came in and would share. Manager Radford suggested the commissioning of a new appraisal by someone the town would hire, and ask Veridea to pay for it; he will check on the time it will take to get the appraisal. Council Member Jensen noted then the town will know. Council Member Jensen also noted the town doesn't have a procedure to provide bond assistance to any developer and felt this sets a precedent, and may have others, and wanted to see a procedure developed. Manager Radford asked if they propose to move forward with this one. Council Member Gossage said his thinking was if at the next meeting they would have a developer agreement that includes issuance of bonds, then it would be wise to have one that doesn't otherwise will be additional delay while that's worked on; we can make a decision, but if we go without one that doesn't have the bond then they have to go back and work on that agreement and that's extra time. Council Member Jensen noted the bonds were no risk to the Town, if there's proper data for the property.

Mayor Weatherly stated it could set precedent but would be a very unique situation where the developer would ask for assessments to be placed on the whole property he owns plus the new tenants to pay for the bonds; we're not just talking about issuing bonds that are going to be paid, it's a very unique proposal; he can't imagine anyone else coming to them. Council Member Jones noted it an investment has to go through the LGC process, more than writing a letter and sending an email. Mayor Weatherly added not with what we're use to seeing. Mayor Weatherly asked if they were going to adjourn tonight, and let everyone mull over this, or ask for specific things staff should be ready for three weeks from now.

Council Member Schulze understood the reason they were seeking the bond was so they would have matching county funds, with the county struggling, since they don't match funds with private individuals, and asked what if the county didn't agree? Hendrickson responded that was not quite correct but incorrect; two weeks ago when they made the presentation, he noted two components: Special Assessment Bond and Economic Grant component. He has asked at this stage in order to bring clarity and progress to the situation, was that they set aside any conversation about economic grant; the concept of the economic grant, a part of the surplus revenues to be funded into an economic development authority would have created an opportunity for them to talk to the County and is not on the table tonight; they are talking tonight just about the simple special assessment bonds where they encumber their property; a special assessment is imposed on their property and bonds are floated through that and then creates funds to put in the core infrastructure for the site and is all this conversation is about. The other parts with the County would be a component of the economic grant conversation; it's too complicated and too many issues at this time and asks they not have it on the table. Council Member Schulze asked what if they couldn't come to an agreement on this, then the bonds aren't really worth it, and are probably other financing out there, he's willing to consider this separately; he's not holding it open for part 2.

Council Member Jensen stated part 1 was something to be considered; it's not approving bonds tonight, it didn't bother him to get the process started. Council Member Jones stated it didn't him either, it really doesn't put the town at any risk to authorize them to start the process; it does sorter say yes to something they would want to do and something they would have to consider. Council Member Schulze didn't want them to read too much into this. Council Member Jensen asked if they wanted to start the process. Mayor Weatherly asked if that would be progress or just spinning around in circles again. If they are indeed leaning in that direction, then that would be a good thing to do, but if they are still really at the uncertainty part about where they want to go with this, he was not sure that would be a positive step. Council Member Jensen said they only thing he asked the Manager was it going to cost the town in terms of staff to manage this; he thinks they should know that as well as the value of the property; we can still start the process if it helps to move along, fully understanding it's on the developer's shoulders as to what will take place and we might just well say no at the end. Mayor Weatherly added, they should ask themselves if they are going to know anymore that would be substantive for making a decision on our comfort level 3 weeks from tonight; is there going to be anything added to the body of knowledge relative to special assessments, the first step, thinks they all agreed, the first step down this path based on what the attorney said and Hendrickson has requested. Are we going to know anymore in three weeks than they know tonight or do they want more time to think about it; we've been thinking about it for quite a while.

Action: Council Member Jones stated, given notwithstanding the sobering comments made by our Town Manager and given the input given by bond counsel or partners, that we are at minimal financial risk to undertake this, and given that Veridea is a very unique situation, he moved they approve authorization of staff and Veridea folks to begin the process of special assessment bonds; unsure how else to word it, noted last week they had talked about \$29 million and understands that amount, has to be some fluidity to that because you have to flesh out a lot of the actual site work and site design before you can actually say how much the infrastructure is going to cost. He guessed he was ok for leaving that off at the moment, but given the fact that LGC, underwriters and others are going to have to weigh in on this, and approve it and that they have another opportunity to either approve it or deny it, months down the road, continued the motion and finalized it to say, that they authorize to proceed. Mayor Weatherly stated the motion was on the table as they heard it and asked if there were a second, Council Member Jensen made the second to the motion.

Mayor Weatherly added the floor was open for discussion. Council Member Jones responded he had discussed it enough. Council Member Schulze stated he was going to vote no against this. He takes what Hendrickson had said to hear, he thinks this starts to become a business arrangement for the town and private enterprise, and doesn't like it on those grounds, but is just the surface; he has other underlying issues, truth, he's already spoken about those, but right now, he doesn't like where this is heading and thinks they are going in the wrong direction, so he's going to vote no on this.

Council Member Jensen wanted to get the process started and may well say no; thinks all they are saying tonight, is that we are going to start the process; needs to know infrastructure costs and may get that started; he doesn't mind getting into the financing business with developers at all, at the same time, there needs to be a procedure to say how we are going to do that and before we go very far with this we need the procedure. He thinks they need to look forward and see that possibly others will want to come in on this and we don't want to be become a bank for Apex and is a concern. He doesn't mind moving ahead as long as the developer knows full well he might say no tonight. Mayor Weatherly responded he agreed to what he said and he would urge approval of the motion for that very reason, they are going to have to "get off the dime" eventually, and now it would allow them to take the next step, that maybe will clarify the other issues that are going to reach an ultimate decision, but right now, thinks that's where we are, and would hopefully, at least move in one direction or the other and that might ... based on what they have heard tonight, is a good step for right now.

Council Member Gossage thinks clearly they are going to move in one direction or another tonight in a fairly significant way; thinks we do need to move on very quickly to the question of Veridea itself, SD Plan and Zoning and would like to see those resolved at next meeting. He and Hendrickson have personally worked hard on various aspects of the financial plan; ultimately, he has a great deal of concern about special assessment bonds especially in a very serious economic climate; he still has concerns about public policy implications from tax and expenditure standpoint, issues like concurrency and tax base stability; has concerns there are risks, there are default risks, there are construction risks, there are market absorption risks, for him personally and ultimately the vicarious nature of land backed bonds, that's enough for him to not support the Town's involvement in Veridea financial plan. Council Member Jensen concurred. Council Member Gossage didn't want to give them false hope as the Mayor has suggested and thinks there are a couple of significant pieces of data out there, but if we are going to signal one way or another to them tonight, that's been suggested we do, then he feels incumbent to throw all that out there.

Council Member Jones said once again, he thinks the motion they are proposing is that they start the process to see whether or not this is a viable thing to do as determined by those who will sell the bonds, those who will underwrite them for the buyers and by the LGC; this may not even come back to Council for approval; this may not happen, but there are others who have to make that decision who are very conservative in their makeup and their behavior before it ever gets back to Council.

Council Member Olive stated this was probably the third thing that needed to be voted on to get the ball rolling; he didn't know what to believe in terms of what comes first; SD Plan was first, then rezoning and now agreement to issue bonds for Veridea; he knows three chords on a guitar but he's not going to volunteer to play in a band and just enough to be dangerous, enough to get himself in trouble and thinks in a way this request is similar; if it were a little more generic, it would be something they could talk about as policy with no context; it doesn't have enough context for him to be able to consider it with Veridea; concern is the request just might be enough to be a bit dangerous. Analogy as a parent: son asks for car keys to go out, it's 9 p.m.; asked what he wanted to do; son just wants keys to go out; he's going to ask a few questions to understand the context in order to give him a yes or no. He doesn't mean to trivialize this request in such a way but sometimes helps him to crystallize how he feels about something; context as he said, thinks is fairly key and this request does not have enough context for us to make wise choice; safe choice if he were to answer his son would be to say, no if you're not going to tell me what you are going to do then I'm going to say no; he doesn't always want to make the safe choice because, he's old enough to know what to do, and what the right thing to do is. He would prefer they have more context and whole package in order to make a good wise decision; he doesn't support going forward with this, not necessarily because he has a specific problem with this, he just doesn't think there's enough context.

With no further discussion, Mayor Weatherly called for the vote on the motion. Vote on the motion was 3 voting no, with Council Members Gossage, Schulze, and Olive casting the no votes, and 2 yes, with Council Member Jones and Jensen casting the yes votes. Mayor Weatherly stated the no votes have it; the motion is not agreed to.

Hendrickson stated they had brought this forward as a response to what they thought was getting the developer agreement ready; something they want to put in context and deal with at a later point and certainly willing to do that. They would like to get the SD plan and the UDO amendment approved; they have an in-credibly large tract effectively un-zoned land and believes are Apex's 5th largest taxpayer with un-zoned property and absolute inability to do anything with it for the last two years; they brought this forward thinking they needed guidance in order to get the developer agreement together, so when it was brought back would have context; maybe the cart is gotten before the horse - he's not sure where the horse is at this point; is still one of the elements requested, that they at some time have appropriate context and will be able to address it and have the rest of the stuff in front of them at one time. Mayor Weatherly responded he could work with staff on any order they want and continue the process on agenda at a future time, rework what has been done and propose something different.

Manager Radford volunteered to find the horse; he thinks they should discuss the appraisal of the property, go towards the SD plan, find out about the zoning and the developer agreement; staff will cease all activities regarding the funding of bonds; don't want to see an alternate proposal for that, if that's what they are telling him; don't want to come back two weeks from now with a little bit different twist to the bond proposal; get darn serious about the sustainability plan and the entitlements associated with the zoning, bring those to you as quickly as possible, and enable Lookout and Veridea and Hudson to move forward with standard sort of development they way they would like to see it develop. He asked if that is what he was hearing. Mayor Weatherly responded, he thinks that's what he hears. Manager Radford stated that's what he would do; the horse is in there somewhere.

Hendrickson's comments were: with all respect to the Manager, if they are going to close the door on all that altogether, then the good work by Lucy and the work commissioned to Warren to do, as well as the issue on the appraisal becomes significantly different. Manager Radford interjected, he miss-spoke when he said appraisal, he meant the developer agreement. He understood the Manager didn't want to have it brought back with a different tweak in it in two weeks, but on the other hand, when they have more information he would ask not to close the door on a reconsideration of this financing if they want to see Veridea fulfill the expectations the consultant's have just modeled out for them. Manager Radford added, what he had learned in over two and one-half years is that he can't outtalk this proposal; he can't do it, and what he can do is try to nail these things down one at a time until he can get to a point where its approvable for a development plan, SD plan, and a developer agreement; these other things have been nebulous and have not been able to nail them down, but have gotten one of them, a major one nailed down tonight, and the direction he has is to pursue those things that are still unsolved. Hendrickson added they would be ready with the SD Plan and UDO amendment, and to the extent that if they are able will bring back where they are with the developer agreement, will see what they can have within three weeks time.

Council Member Jensen asked if they are going to bring the UDO amendments back; has asked in the past and is concerned about high density - roughly 7.6 housing units per acre; if there is 7.6 houses per acre and the development also includes businesses and everything else, it's very high with the rest of Apex at 2.4; there should be some mechanism that either the developer makes money on this project or the town gets ad valorem taxes, use a percentage of that to try to buy open space so the average density in Apex stays at a more reasonable number 2.4; it's a quality of life issue; he would like to look at that in the next couple of weeks before he feels good about approving the UDO amendment; it frustrates him, the ultimate high density; an alter to that is if this expands and it gets going, that it does not include additional houses, lower that high density.

End of Public Hearing # 2

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.**

Woody Yates, Trustee and representative of Salem Baptist Church and representing area churches, addressed recent electric rate category change that had a negative impact inflating utility bills for not only Salem Baptist Church but area churches; area church representatives were present and none were supportive of the rate change. Noted: past rates offered to churches; churches fill service gaps within the community; there was no financial justification to signal out churches as town reported 7% increase in electric utility revenue and 14% increase over prior year; and there was no notice of increase within budget; increase of church rates doesn't match intent of the adopted budget; asked relief from the hardship placed on churches, noted timing of notice of rate change in relation to adoption of the church budget; request Town restore the residential electric rate to the churches.

Manager Radford responded the reclassification of church rate was changed from residential to small general service, same for other commercial and though not a rate increase, the result was an increase; the demand is driven by activities and noted churches are not residential in nature; noted Salem under current church rate would have saved \$182 over a year ago under same rate based on the fact they did not have such a high demand; there are no similar cases that might fall under reclassification. Council Member Olive spoke in support of the churches asking to suspend the change having been made in the church rate until staff looks at all churches and perhaps create a category with its own rate. Attorney Fordham advised Council until there's a decision on what to do permanently it was legal to undo their present action. Council Member Gossage noted change had been administrative and could be done administratively. Manager Radford was not aware of other non-profit rate concerns.

Attorney Fordham advised he will look at how the law applies to calculating utility rates and how to take them into account. Council Member Jones asked to look at data for a year and how rate changes would affect usage; was more than kilowatt hours, demand factor, etc. Manager Radford noted church demands drive up the rates and will discuss same with Electricities and perhaps could assist churches in conducting energy audits to help in decreasing usage. Mayor stated the church rate could be abated.

Ed Bowers addressed Town Code Sec. 14-17. Banning use of hunting bows within town; noted with permit could shoot shot gun and noted flaw in ordinance as bows were safer than shot guns and needed to change law; noted specific complaints data received by town could not be provided; noted complaint by a neighbor and within 90 days ordinance was changed; thinks research should be done and with exercise of caution should allow permit for hunting bows. Manager Radford noted no permits had been issued within the past 9 years for firing shotgun within town limits; he received the complaint noted; advised Police Chief has authority to determine what's dangerous within the town and recommends safeguards and made the recommendation; item referred to staff.

Military Officer would like to purchase the gas station property at 400 North Salem and unsure where to start; wants to clean it up, plant grass, add concrete, handicapped accessibility, while keeping the character of the historic area; wants to improve it and not change it; understands zoning does not allow gas station; item referred to staff.

Vickie Kristophen, Crocketts Ridge, and president of HOA, addressed the Nature Park and supports spending tax dollars to benefit the park as downtown parks are not made for Apex as a whole (Hunter and Seagroves); recommend 2004 bonds be used for the Park and move it along; item referred to staff.

End of Public Forum

NEW BUSINESS

There were no New Business items to be considered.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 10:00 p.m. to receive legal advice from the Town Attorney. **Action:** Council Member Olive made the motion to move into Closed Session. Council Member Jones made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move from Closed Session into Regular Session at 10:10 p.m. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously. With Council having moved back in Regular Session, the following action was taken: **Action:** Council Member Gossage made the motion to release Council Closed Session Minutes of February 15, 2011 related to Motiva. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

End of Regular Session

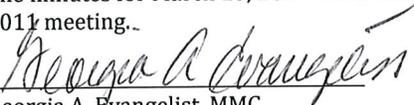
WORK SESSION

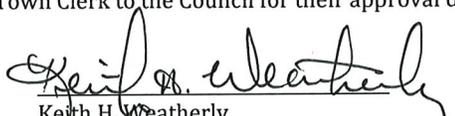
There was no scheduled Work Session.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 10:11 p.m. **Action:** Council Member Jones made the motion to adjourn. Council Member Jensen made the second to the motion. Vote on the motion was 5 and 0. Motion carried.

The minutes for March 15, 2011 were submitted by Town Clerk to the Council for their approval during their April 5, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for April 5, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 5, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

All Council present: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order and extended a welcome to those in attendance.

Council Member Jones gave the Invocation. Pledge of Allegiance and Presentation of Colors was led by Scout Troop 205.

Manager Radford introduced Public Information Officer Stacie Galloway.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Council Member Olive asked CA 14 be pulled and allow two weeks to review the ordinance before a decision is made to adopt same. **Action:** Council Member Olive made the motion to approve the consent agenda with CA 14 removed. Council Member Schulze made the second to the motion. Motion carried unanimously (5-0).

1. Minutes for March 15, 2011 Council meeting; March 15, 2011 Closed Sessions (separate cover).
2. Amend February 15, 2011 Council minutes to reflect action taken during regular session.
3. Contract with Joyce and Company to perform audit for fiscal year ending June 30, 2011.
4. Set public hearing April 19, 2011: Rezone #11CZ03 Traditions at Bella Casa and Master Subdivision Plan: Jones & Cnossen Engineering, PLLC, applicant, seeking to rezone 25 acres from Rural Residential district to Medium Density Conditional Zoning district, located at 2724, 2728, 2800 & 2820 Evans Road and Lazio Lane.
5. Set public hearing April 19, 2011: Rezone #11CZ04 Skaggs: Jack Skaggs, Jr., applicant, seeking to amend 2025 Land Use Plan from Low Density Residential to Commercial and Low Density Residential and rezone 1.01 acres from Wake County district to Neighborhood Business Conditional Zoning and Low Density Conditional Zoning district, located at 3521 Old US 1 Hwy.
6. Set public hearing April 19, 2011: Rezone #11CZ05 924 Center Street: Jones & Cnossen Engineering, PLLC, applicant, seeking to amend the 2025 Land Use Plan from Office and Institutional to Mixed Use, Office, Commercial, High Density and Medium Density Residential and to rezone .28 acres from Office & Institutional Conditional Zoning district to Mixed Office Residential Retail Conditional Zoning, located at 924 Center Street.
7. Set public hearing April 19, 2011: Rezone #11CZ06 Colvin Park: Colvin Park, LLC, applicant, seeking to rezone 69.8 acres from Rural Residential district to Medium Density Conditional Zoning district, located south of Smith Road, west of Stephenson Road and north of Satori Way.
8. Set Quasi-judicial public hearing April 19, 2011: Rezone #11CZ07 Skyway Tower and Special Use Permit: Leslie Cordileone, Skyway Towers, applicant, seeking to rezone 30.03 acres from Rural Residential district to Office & Institutional Conditional Zoning district, located at 3101 Tingen Road.
9. Set public hearing April 19, 2011: Rezone #11CZ08 Town of Apex and Apex First Development, applicants: Town of Apex seeks to rezone .65 acres from Planned Unit Development Conditional Zoning to Office and Institutional district, located off Old Raleigh Road east of Apex Peakway. Apex First Development seeks to rezone .7 acres from Office & Institutional, Neighborhood Business Conditional Use and Planned Unit Development Conditional Use to Planned Unit Development Conditional Zoning district, located off Old Raleigh Road and Apex Peakway.

Consent Agenda continued

10. Ordinance No. 2011-0405-02 to amend Town Code: Chapter 20, Article V. Sec. 20-61 Turn signs, lane markers, etc. to assign turn movements.
11. Wake County Tax Report approved by Wake County Board of Commissioners during their March 21, 2011 meeting.
12. Approval of professional services agreement with Kimley-Horn and Associates, Inc. for planning, design, and engineering services as part of the proposed Lufkin Road Realignment Project STIP No. U-5118AB, and authorize the Town Manager to execute same.
13. Resolution No. 2011-0405-04 approving Agreement with Chatham County securing consent to acquire property interests in Chatham County needed for the Western Wake Regional Wastewater Reclamation Facilities and to approve Resolution No. 2011-0405-05 supporting the local bill described in Term #2 of the Agreement.
14. Ordinance No. 2011-0405-03 to amend Town Code: Chapter 20, Article VIII related to parking. **PULLED**

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action, asking Public Forum be heard ahead of Old Business lengthy item. Attorney Fordham asked to add a Closed Session item: pending litigation, Comstock Holland Road LLC.: Holland Farm Community Association and several defendants including Town of Apex. **Action:** Council Member Jones made the motion to amend the Agenda as requested. Council Member Schulze made the second to the motion. Motion carried unanimously (5-0).

PUBLIC HEARINGS

Public Hearing 01

Town Attorney Hank Fordham

Public Hearing to consider an Annexation Agreement between the Towns of Cary and Apex and Chatham County providing that the Towns of Apex and Cary may not involuntarily annex into Chatham County without the consent of the Chatham County Board of Commissioners; possible motion to adopt the Ordinance No. 2011-0405-04 approving the Agreement.

Attorney Fordham presented as part of procuring Chatham County's consent for the Partners to acquire the property needed for the Western Wake Regional Waste Water Reclamation Facility, Town Council approved the Agreement whereby Chatham County agreed to consent to such acquisitions. Term three of the Agreement giving Chatham County's consent calls for the attached Tri-Party Annexation Agreement. The Tri-party Annexation Agreement provides that Apex and Cary may not annex into Chatham County without consent. The duration of the Agreement is 20 years unless terminated otherwise in accordance with the Agreement or General Statutes. Attorney Fordham advised the Town of Cary had approved same; action requires a public hearing. Mayor Weatherly added this to be some redundant; the House had passed the local bill stating same, and is in hope this moves to the Senate side for approval. Mayor Weatherly opened the public hearing at 7:25 p.m. and with no one addressing this item, the public hearing was closed and matter referred to Council.

Action: Council Member Jones made the motion to adopt Ordinance No. 2011-0405-04 approving the Annexation Agreement between the Towns of Cary, Apex, and Chatham County as presented by Counsel. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0).

End of Public Hearing 01

Public Hearing 02

Director of Planning Dianne Khin

Public Hearing for Annexation Petition #459: Jack L. Skaggs, Jr., 1.01 acres, non-contiguous to the Town's corporate limits and located at 3521 Old US1 Hwy (requests public water connection); possible motion to adopt Ordinance to extend the corporate limits.

Director of Planning oriented to the property location in New Hill, community store, with property owner petitioning for annexation to receive public water connection with staff recommending approval. Mayor Weatherly opened the public hearing at 7:27 p.m. and with no one commenting, the public hearing was closed and matter referred to Council.

Action: Council Member Jensen made the motion to adopt Ordinance No. 0211-0405-459 to extend the corporate limits. Council Member Jones made the second to the motion. Motion carried unanimously (5-0).

End of Public Hearing 02

End of Public Hearings

OLD BUSINESS**Old Business 01**

Principal Planner Brendie Vega: Planning Board met January 13, 2011 and voted unanimously for approval as presented with addendums from the applicant. Council held the public hearing; with the public hearing having been closed, Council voted against authorizing staff to begin the process for special assessment bonds; Council will discuss UDO amendments, SD Plan and Land Use Plan for Veridea.

Rezone #09CZ07 Veridea, Lookout Ventures Inc., owner/applicant: seeks to (1) amend the Unified Development Ordinance; (2) rezone 1011 acres from Planned Unit Development Conditional Zoning (PUD-CZ), Rural Residential (RR), and Light Industrial (LI) to Sustainable Development Conditional Zoning (SD-CZ) with a Sustainable Development Plan; (3) amend the 2025 Land Use Plan; this rezone area is generally bound by US 1 Hwy, East Williams Street and the future NC540 corridor.

Mayor Weatherly stated this item was not for public hearing and referred to staff: Planning: Brendie Vega, Dianne Khin, and Police: Jack Lewis, and Engineering: Russ Dalton, to proceed with review and discuss Veridea Outstanding Issues. Resolve followed, with Town Council, Town Attorney Fordham, Town Manager Radford, Tom Hendrickson of Lookout Ventures, Veridea Counsel Lacey Reeves, and Mike Horn, Kimley Horn giving their position regarding these issues, after having given consideration to professional opinions offered by staff relative to the Unified Development Ordinance and Sustainable Development Plan. After in-depth conversations and concerns addressed by all parties, a resolve was reached by consensus as follows, giving project direction with intent noted:

UDO: 2.3.16.J) Deviation to SD Plan: Council previously proposed a reduction in the deviations to the SD Plan the Planning Director may approve from 15% to 10% to be consistent with current UDO, however, the list of deviations to the SD Plan that the Planning Director can approve should also not reflect an increase in build-out of sizes of land uses, i.e. the word "density" should be deleted from the list and it should be clarified that a matter established or quantified shall not include density; agreed.

SDP: 1.0 Definition of Story height: no structure would be taller than 400' maximum; agreed.

SDP: 5.7.5 Compact Parking: noted current situation: no compact spaces are allowed; Attorneys will provide precise language for both public and private compact parking spaces, with more specific standards directly related to the purpose of TRC review to assure a percentage for total space; 30% cap will be removed; noted appeal mechanism is with approval of site plan; agreed.

SDP: 3.5.1/5.7 Parking: UDO parking standards will be followed until a Parking Management Plan is approved by Council; agreed.

SDP: 3.5.5.g.ii Timing of Connection to US1: agree and support accepted and approved master TIA and its thresholds: 15% of any single land use as identified in the Master TIA for one interchange, and 50% for both interchanges (noted: additional TIA will be required for each major site and major subdivision plan within Veridea); agreed.

SDP: 3.6.2.g and Table 4C Definition Rear Lanes: Minimum width of public rear lane must be 16 feet standard and Powell Bill eligible, but private rear lanes will be 12' and maintained by the Veridea Master Property Owners Association (noted: requires no additional changes to SD Plan); agreed.

SDP: 3.6.3 Capture Rates between Land Uses and Master TIA Document: noted 65,080 external on-road trips estimated by applicant's traffic consultant at build-out; staff agrees with trip capture methodology but cannot verify internal capture rates between land uses assumed by the consultant, which are higher than accepted ITE rates, and cannot address the impact of additional land uses not included in the TIA but allowed in the SD Plan; noted: 40% p.m. overall trip capture rate and 30% a.m. noted as possible outcome given the proposed land uses at build-out but not determined by conventional ITE methods; agreed to the rates assumed in the Master TIA.

SDP: 3.5.3 Levels of Service and TIA: NC55 should not be widened for additional through lanes but endorse traditional signalized intersections given anticipated LOS is a Council decision; agreed.

SDP: 3.5.5 Phasing of Traffic: Council decision to not assign financial responsibility for any transportation improvements as part of the rezone process; agreed.

SDP:4.2.2.b Reallocate Commercial Square Footage: (also legal item 16); reallocate 20% square footage between non-residential uses assumed in the Master TIA without the need for Council approval with the smaller use(s) limiting the reallocation; Attorneys will provide precise language: inclusive that the overall amount of vehicle trips will not increase; noted: additional traffic studies will be conducted for each major site plan and major subdivision plan to serve Veridea; agreed.

SDP: 4.2.2.b.i-iv Identification of Land Uses: gross leasable square feet is the appropriate measure defining retail but O&I will be defined as gross square feet (noted: requires no additional changes to SD Plan); agreed.

SDP: 4.2.4 Development Thresholds: (also legal item 14) proposed text to allow for potential build-out based on text and tables; allow flexibility is a Council decision; agreed.

With this portion of the items resolved, Mayor Weatherly expressed due to the lengthiness of each item discussed, preference was to continue the meeting to a date certain to finalize Public Works Veridea outstanding issues and legal issues.

Mayor Weatherly stated the motion to continue the meeting would be made after the Closed Session.

Old Business continued to April 13, 2011

Mayor Weatherly noted the meeting in session to continue Old Business Veridea discussion; all Council Members were present. Manager Radford stated Tim Donnelly would present outstanding issues related to Public Works and Attorney Fordham would present legal issues. Tom Hendrickson and Lacey Reaves responded for Veridea. Hendrickson advised an Environmental Enhancement Plan will be presented and includes environmental items up for discussion; Veridea presentation responses are attached.

SDP: 3.6.4(a) Portable Water: add text to end of last sentence: "as amended from time to time"; agreed.

SDP: 3.6.4(b) Reclaimed Water: costs could be expensive add text to first sentence: "at the Developer's expense;" agreed; add text to end: "and in accordance with Town of Apex Standards"; agreed.

SDP: Watershed Protection-Riparian Buffers: Unified Development Ordinance 6.1 shall apply until such time the Environmental Enhancement Plan provides for modification and is adopted by Council; agreed.

SDP: Watershed Protection - Mass Grading: will comply with Town's Unified Development Ordinance; agreed.

SDP: 3.4.3 Resource Conservation Area: shall be an interval part of the site plan; also addressed in legal issues; shall comply with Unified Development Ordinance until such time Environmental Enhancement Plan provides for modification and is adopted by Council; agreed

SDP: 3.7 Energy Standards: costs for non-standard service facilities shall be borne by developer and not Town; agreed.

Attorney Fordham presented Legal Issues/Comments related to Veridea as stated in each section.

Tom Hendrickson and Lacey Reaves responded for Veridea.

Apex Legal Comments are listed and followed by both parties agreeing for a resolve of the outstanding issues,

I. ZONING/REGULATORY ISSUES.

1. Cumulation Rule for Site Plans, Sec. 3.3.1.

By way of background on February 1, 2011, Town Council voted to apply the UDO's three year site plan cumulation rule to Veridea. In other words, Town Council deleted out of Sec. 3.3.1 the exemption from the cumulation rule. (The UDO cumulation rule attempts to discourage developers from breaking projects apart to avoid the threshold for Town Council major site plan review. The UDO cumulates site plans for three years for projects that are on the same or adjacent property and owned by the same entity for the purpose of determining whether they are major or minor site plans.)

In the latest version of the SD Plan, Lookout has not taken the exemption from the cumulation rule entirely out. As presently drafted, Sec. 3.3.1 allows the Town Council to exempt site plans from the cumulation rule on an *ad hoc* basis. This proposal is not lawful because it purports to authorize exemptions from the ordinance without any standards to guide when an exemption would be appropriate.

Policy decision of Council was to exempt Veridea from the cumulation rule for site plans Sec.3.3.1; staff preferred to not have the cumulation rule apply to the Veridea 1000 acres, noting it different; this resolve would mute the language.

2. Noncompliance, Sec. 3.3.3.

The part of Sec. 3.3.3 which relates to noncompliance should be re-written to read as follows:

"Any event of non-compliance with any requirement herein or ~~with~~ any other Town standard, that relates solely to a Project within Veridea shall not be attributed to Veridea as a whole, but rather shall be attributed only to that Project, such that any enforcement action taken by the Town shall be limited to the Project at issue.

In addition to any other remedy that the Town has for an event of non-compliance of any requirement herein or any other Town standard that relates to a project or projects within Veridea, the Town may withhold the issuing, approving or granting of building permits, certificates of compliance or occupancy, site plans, subdivision plans or plats and other permits or approvals for the project or projects in issue until the non-compliance is corrected and cured.

With respect to any event of noncompliance with any requirement herein or any other Town standard that applies to Veridea as a whole or that by its nature takes into account more than one project or area within Veridea, the Town shall have the authority to withhold the issuing, approving or granting of building permits, certificates of compliance or occupancy, site plans, subdivision plans or plats and any other permits or approvals throughout Veridea until the non-compliance is corrected and cured."

Attorney's rewrite of Sec. 3.3.3 and inclusive the last two paragraphs was written to be more specific in addressing non-compliance events, as it solely relates to Veridea; an event of non-compliance should be a condition for approval by Town before development can occur.

3. Environmental Standards, Article 3.4 and Sec. 3.4.1 in Particular.

The provisions in Article 3.4 related to environmental standards need to be carefully reviewed in light of staff report comments by the Public Works and Utilities Department. Sec. 3.4.1 provides that UDO 6.1, *Watershed Protection Overlay Districts*, shall not apply to Veridea. Lookout proposes to produce a mandatory environmental enhancement plan (Sec. 3.1.2) as a substitute for the UDO's environmental regulations in UDO 6.1.

Lookout recognizes that the state's statutorily mandated 30' riparian setback for built upon area must apply within Veridea. As allowed by the relevant state statute, Lookout provides in Sec. 3.4.1 that the 30' riparian setback may be reduced by the Town Council under the state mandated variance standard. (See S.L. 2006-246.).

Whether Lookout's approach on UDO 6.1 and the state's 30' riparian setback are in the public interest are policy decisions for the Town Council.

Addressed in Public Works outstanding issues.

4. Definition of Impermeable Surface.

"Impermeable Surface" is defined in Article 1.0. The definition of Impermeable Surface may be problematic in that a surface is considered impermeable only if no water at all can penetrate it. Please also note that Table 14 allows acreage in Open Space to be up to 50% impermeable.

SDP Table 14 addendum has been revised to reduce maximum impermeable surface allowed in Open Space revision: from "up to 50" to "up to 30".

5. School Sites, Sec. 3.4.2.4.

With respect to Sec. 3.4.2.4, how will the "requisite number of school sites" be determined? Does the Town want school thresholds as milestones for further development as per Councilor Olive's comments?

Discussion: Council Member Olive expressed concern: number of schools expected per dwelling unit (8000 proposed) based on housing mix (internal capture was noted as well as incoming and outgoing for students being transported); noted it critical, the point at which the school system should be notified and with provision of supportive data to construct school buildings for build out over 30 years to meet the needs for the number of children; the data provided for the number of high school students that may live in Veridea does not support the plan of a high school within the Veridea project and no land designation has been planned; as site plans are approved and communicated to school system, the final determination to purchase land and to construct schools would be by choice of the Wake County Public Schools (Hendrickson noted SDP text is direct statement from the school system; noted 10 year window for schools to react).

6. Density, Sec. 4.2.2, 4.2.2.b, 5.7.2.e.

Please note the development maximums stated in Sec. 4.2.2 for residential, retail, office and industrial uses do not restrict development for public, civic, utility, recreational and lodging uses. Development for public, civic, utility, recreational and lodging uses is authorized without restriction. As per Article 1.0, "lodging" means premises available for daily and weekly renting of bedrooms. Please also note that Section 4.2.2.b. provides that the Responsible Person may allocate open space, utilities infrastructure, thoroughfares and any other transportation infrastructure to any other area or areas for the purpose of calculating density. Also note Sec. 5.7.2.e. provides that Accessory Units do not factor into density calculations.

Councilor Gossage requested the list of square foot maximums be more inclusive to cover more uses and the language used be tighter (Council Member Gossage did not recall this). Lookout has not suggested additional language.

No comments were made.

7. The 250 Acre Designation in Sec. 3.1.3 – RCA, Recreation, Open Space, Public Space and Civic Space.

SD Plan Sec. 3.1.3 states that 250 acres of Veridea shall be designated by the Responsible Person for the following purposes: (1) 100 acres for RCA as per Sec. 3.4.3.1.c, (2) sufficient acreage to cover the mandatory recreation land dedication requirements in Sec. 3.4.2.2 and (3) 150 acres, less the acreage for #2 above, for accommodating Open Space, Public Space and Civic Space. The ultimate use and public benefit of the acreage to be set aside for Open Space, Public Space and Civic Space is difficult to determine because of the definitions of "Open Space," "Public Space" and "Civic Space" in the SD Plan. "Open Space" includes natural areas, farmland, parks, Civic Uses, RCA, utility corridors, non-street easements, greenways, waterways and water bodies. "Public Space" means "land accessible to the general public through dedication or easement." "Civic Space" includes land containing buildings used primarily for arts, culture, education, recreation, government, transit, parking or other public purposes and primarily operated by public or non-profit entities. (Buildings dedicated to government, transit, and parking are not counted toward the 150 acres).

It should also be noted that Lookout proposes to allow Open Space and Civic Space to count as "partial credit" towards RCA as per Sec. 3.4.3.1.e. Public Works requests that RCA be a 20 % requirement instead of a straight 100 acres, which would yield approximately 200 acres of RCA. It is a policy determination whether 250 acre designation in light of the uses permitted under the relevant definitions accomplishes the Town Council's objectives for the 250 acres.

Staff asked for specific definition, as there is no definition for open space; in discussion RCA standards were defined to protect the environment and Veridea designation of true RCA is about 10% of 1000 acres; rule of definition for open space – green not inclusive buildings being considered as open space; Veridea intent is not to count parking as RCA but are trying to include land/lot in the total RCA, not replacing it; will delete civic buildings from open space zone.

(Note: SDP Table 12 provides comprehensive list of specific functions and uses allowed within open space zone; public/civic uses and recreational uses are identified – in order to clarify the building and any portion of the lot routinely accessible to the public shall be included in the acreage designated pursuant to SDP 3.1.3.c.; SDP 3.1.3.c was revised in most recent submittal "Civic Buildings dedicated to arts, culture, education and social activity and any portion of the respective lot routinely accessible to the public shall be included in the acreage designated pursuant to this subsection. Any privately-owned or operated buildings located in an Open Space zone and any portion of the respective lot not routinely accessible to the public shall not be included in the acreage designated pursuant to this subsection.")

8. Definition of Civic Building, Article 1.

The definition of Civic Building is important because it is embedded in the definition of Civic Space and Civic Space, other than used for government use, transit and parking, can count towards Open Space.

Revision to SDP 3.1.3 and Table 12 modified for clarification as noted with previous legal comment #6; again will delete civic buildings from open space zone.

9. Open Space – RCA, Sec. 3.4.1.e.

In order to avoid ambiguity, if a 50% RCA credit is intended to apply to Open Space, Sec. 3.4.1.e. needs to be revised as follows:

“Not including the land parcels to be dedicated to the Town pursuant to SD Plan 3.4.2.2, both: i) Open Space; and ii) recreation area provided in Public Space or Civic Space within the Development including, but not limited to, open space, pools, tennis courts, tot lots, ball fields, and village greens, shall be allowed to be counted as partial credit toward the RCA requirement. The credit for such Open Space or recreation area shall be 50% of the acreage provided. (For example, 1 acre of recreation area shall count as 0.5 acres of RCA.) In order to qualify as RCA, the Open Space or recreation area must ~~be located on a lot~~constitute an area .5 acre or larger in size.”

Definition of open space within the 250 acres with buildings are not a part of the intent of open space; open space was referenced as “green” space; noted 75 acres encourage more than ordinance space by Veridea; does not want to trade open space - civic for parking lots and revision to SDP 3.4.1.e excludes Civic Buildings (again will delete civic buildings from open space zone).

10. Buildings Located In Open Space Zones, Sec. 5.3.1 and Table 12, and Building Standards in OS Zone, Article 5.0 and Tables 7, 8, 10, 11, 14 and 15.

Please note that the regulations related to the Open Space zone allow a substantial number of buildings in Open Space. Section 5.3.1 states that buildings shall not be allowed in OS zone except as listed in Table 12 and accessory structures. Table 12 permits natatoriums, power facilities, renewable energy facilities, arenas, auditoriums, stadium, recreation facilities, restaurants, retail kiosks.

Additionally, although the text of Article 5.0 of the SD Plan has been revised to provide building standards for Open Space zones, Tables 7, 8, 10, 11, 14 and 15 have not been revised to incorporate these standards and these Tables need to be revised.

SDP Tables 7, 8, 10, 11, 14 and 15 have been revised (tables will be revised as need be); (again will delete civic buildings from open space zone).

11. Accessory Structures in Open Space Zones, Sec. 5.3.

Sec. 5.3 allows “accessory structures” in Open Space zones, but no building standards are provided for accessory structures in the SD Plan. The term “accessory structures” is not defined. Presumably the term “accessory structures” is not within the meaning of “Outbuildings” or “Accessory Buildings” because they are defined as types of dwelling units. Consequently, the building standards for Outbuildings and Accessory Buildings do not appear to cover accessory structures. Additional language needs to be added. See Table 14(h) and (k), Table 8 and Table 15.

Accessory Structures have been added to the SD Plan Tables; will add text where necessary in other parts of the SD Plan: structures or buildings incidental to and appropriate to support a function or use (i.e., ticket booths and storage for outdoor amphitheatres, and dugouts and storage for baseball and softball.)

12. Sidewalk Alternatives.

Sec. 3.5.2 provides that TRC may approve alternatives to requiring sidewalks along all public streets. The relevant language needs to be tweaked as follows: “public sidewalks shall be required along all public streets except when the TRC approves an alternative plan during the site plan and construction plan review process upon its determination that the alternative plan, viewed in the context of surrounding development, adequately accommodates pedestrian connectivity and the alternative plan will perform as well as having sidewalks on the public street would have performed.” This section now provides a standard for TRC to use. Is the stated standard acceptable to Council and TRC?

Text provided to assist TRC with intent noted: “should adequately accommodate pedestrian activity”.

13. Compact Parking Spaces, Sec. 5.7.5.

Please note that Sec. 5.7.5 allows up to 30% of parking spaces in parking lots and decks to be compact spaces under several circumstances including a determination by TRC. The language providing a standard for TRC's determination needs to be more specific by adding wording such as, "approved by TRC upon its determination that approximately 30% or more of the cars utilizing the parking lot or deck are likely to be compact automobiles".

30% cap was removed (resolved previously), and text SDP 5.7.5 has been revised to reflect the consensus of Council to do so on April 5; TRC will not be involved in the first three categories.

14. Mixed Use Issue: Development Thresholds, Sec. 4.2.4.

The development thresholds provided in Sec. 4.2.4 should be reviewed carefully to ensure that they embody the Town Council's policy values related to required mixed use. The text and Table in Sec. 4.2.4 stated simply mean the following:

A. Residential Maximums For levels Of Non-Residential Build Out.

- (1) the Developer may build out 20% (1,600 units) of the dwelling units at 0% Retail and 0% O&I build out;
- (2) the Developer may build out 37.5% (3,000 units) of the dwelling units at 2% Retail and 2% O&I build out;
- (3) the Developer may build out 60% (4,800 units) of the dwelling units at 10% Retail and 5% O&I build out;
- (4) the Developer may build out 80% (6,400 units) of the dwelling units at 25% Retail and 10% O&I build out;
- (5) the Developer may build out 85% (6,800 units) of the dwelling units at 40% Retail and 25% O&I build out; and
- (6) the Developer may build out 100% (8,000 units) of the dwelling units at 50% Retail and 40% O&I build out.

B. Non-Residential Maximums for levels of Residential Build Out.

- (1) the Developer may build out 20% (700,000 s.f.) of the Retail and 10% (1,200,000 s.f.) of the O&I at 0% Residential building permits;
- (2) the Developer may build out 50% (1,750,000 s.f.) of the Retail and 25% (3,000,000 s.f.) of O&I if 1% Residential building permits have been issued;
- (3) the Developer may build out 60% (2,100,000 s.f.) of the Retail and 50% (6,000,000 s.f.) of O&I at 5% (4,000 units) Residential build out;
- (4) the Developer may build out 80% (2,500,000 s.f.) of the Retail and 70% (8,400,000 s.f.) of O&I at 15% (1,200 units) Residential build out;
- (5) the Developer can building out 85% (2,975,000 s.f.) of the Retail and 85% (10,200,000 s.f.) of O&I at 40% Residential build out; and
- (6) the Developer can building out 100% (3,500,000 s.f.) of the Retail and 100% (12,000,000 s.f.) of O&I at 50% (4,000 units) Residential build out.

The impact of Retail development on maximum O&I development and vice versa is shown on the Tables on page 45 of the SD Plan.

Concur with staff direction that the development threshold numbers were an accumulated effort to provide for a true mixed use development.

Veridea believes market will be there to bring forth a balanced mixed use project noting they can't control market; plan allows flexibility but also restricts them and they would have to be comfortable with the tables, noting they have been modified to reflect true mixed use; noted the complicated process but are motivated to move to attract development in Veridea. Council Member Jensen disagreed with the threshold numbers and desires more office and industrial with respect to dwelling units and wants to assure the development balance; noted retail will come and it's easier to build houses if the other two comes; owes this to the people. Note: thresholds were not tied to traffic analysis. Data provided: Jobs per household in Veridea interim stage development.

Action: Council Member Gossage made the motion to support the Development Thresholds Sec. 4.2.4 presented. Council Member Jones made the second to the motion noting factors in place to make this a balanced mixed use development. Vote on the motion was 4-1 with Council Member Jensen voting no. Motion carried; resolve was agreed to.

15. Mixed Use Issue: The Re-allocation of the Square Footage Maximums for Retail, Office and Industrial In Subsections ii-iv of Section 4.2.2.b Of the SD Plan Are Now Limited to 20%.

As per Council direction, text has been added below Subsections ii-iv of Sec. 4.2.2.b to limit reallocations of ii-iv such that no category may be increased above 120% or decreased below 80%.

The square footage numbers stated in i-iv set the maximum for each category of development, except that the Responsible Person may reallocate square feet among the maximums stated in categories ii- iv on a foot-for-foot basis subject to the limitations that 1) no category may be more than 120% nor less than 80% of the amount stated in ii-iv and 2) no reallocation is allowed which would result in a total daily vehicular trip generation that would exceed the maximum daily vehicular trip generation that served as the basis for the Master TIA.

Staff supports Apex Legal comments; SDP 4.2.2.b has been revised to reflect reallocation of square footage maximums (this item was laid aside); Attorneys will work this out.

16. Mixed Use Issue: Section 4.2.2.b of the SD Plan Does Not Set Any Minimums for the Various Types of Development.

To ensure a mix of uses, the Planning Department suggested earlier that there be separate square foot minimums associated with the Retail, Office and Industrial uses addressed in Sec. 4.2.2.b. of the SD Plan. Veridea has not accepted this suggestion.

Whether requiring separate square foot minimums for the non-residential uses (Retail, Office and Industrial) for residential is in the public interest is a policy decision for the Town Council. (Note that Section 4.2.2.b also does not set a minimum number of residential units.)

Point of notification: sets maximums, however doesn't set minimums in this specific section but some minimums are set in other sections.

17. Mixed Use Issue: The Sustainable Zone And Non-Residential Acreage Minimums In Sec. 4.2.1 and Table 14 May Not Be Very Effective.

Do the Sustainable Zone acreage minimums and the Residential, Office and Industrial use acreage minimums stated in Sec. 4.2.1 and Table 14 of the SD Plan meet the Town Council's objectives for mandatory mixed use, if that is in fact an objective?

Sec. 4.2.1 provides for minimum acreage amounts for four of the five Sustainable Zones as follows: NG (75 ac.), NM (50 ac.), VC (215 ac.) and UC (135 ac.). Minimums based on square footages of Retail, Office and Industrial uses are substantially different than minimums based on acreages of sustainable zones. Many Residential, Retail, Office and Industrial uses are permitted in a variety of the sustainable zones. Consequently, requiring zone minimums is not the same as requiring use minimums.

Lookout points to SD Plan Sec 4.3.1 that requires the Sustainable Zones to have the character described in Table 1, which does describe NM, VC and UC as a mixture of residential and non-residential uses. The requirements, however, are very general.

Table 14 provides for a minimum amount of non-residential acreage within four of the Sustainable Zones as follows: NG (3 ac.), NM (7 ac.), VA (120 ac.) and UC (75 ac.). These non-residential acreage minimums do not require any separate minimum amount of Retail, Office or Industrial acreages. Consequently, these minimums do not require any mix of the non-residential uses.

Article 1.0 of the SD Plan defines "Non-residential Uses" to include "Vertically integrated residential and non-residential uses." Consequently, uses containing residential as well as non-residential uses might count toward the non-residential acreage minimums. This should be clarified.

Whether the SD Plan sufficiently specifies a mixture of uses is a policy question for the Town Council.

Tom Hendrickson noted there were no differences and was only a point of notification; Attorney Fordham pointed out Article 1.0 of the SD Plan defines "Non-residential Uses" to include "Vertically integrated residential and non-residential uses," and stated if Planning didn't have a problem with this he didn't have a concern, but wanted to point it out. Planning Director Khin responded she did not have concerns with this definition.

18. Mixed Use Issue: The Concept Map Is Not Binding On Lookout – Location of Sustainable Zones Within Veridea, Sec. 4.2.1 and Table 2.

The Concept Map referenced in Sec. 4.2.1 and depicted as Table 2 merely shows a concept for the development of Veridea. Section 4.2.1 states: "the Sustainable Zones may be located anywhere within Veridea as determined by the Responsible Person." Consequently, the Concept Map is not binding on the Developer. Whether this flexibility is in the public interest is a policy decision for the Town Council.

Have reviewed this previously.

19. Similar Use Determinations, Table 12.

The text just below Table 12 says: "Subject to approval by the Responsible Person, if an application is submitted for a use type that is not listed as a permitted in one or more of the Sustainable Districts, the Planning Director shall be authorized to make a similar use interpretation based on the use categories Listed in Table 12. If the Planning Director determines that the proposed use does not fit any of the use categories, no similar use interpretation shall be made."

This quoted text should be re-written to read: "If an application is submitted for a use type that is not permitted by Table 12 in one or more of the Sustainable Districts and the use type is not one prohibited by the UDO, the Planning Director shall be authorized to make a similar use interpretation based on the use categories Listed in Table 12. If the Planning Director determines that the proposed use does not fit any of the use categories, no similar use interpretation shall be made and the use shall not be permitted."

"Any land uses not specially dealt with in this Table but otherwise permitted by the UDO and not excluded by any provision of this SD Plan are subject to a similar use interpretation by the Planning Director and if found to be similar to a use permitted by this Table shall be allowed within all sustainable zones in which the similar use is allowed."

Table 12 has been revised accordingly.

20. Grandfathering Of Veridea.

Lookout seeks to grandfather Veridea for 20 years through a developer agreement. This subject will be dealt with as part of the proposed Developer Agreement.

II. INFRASTRUCTURE, FACILITIES AND DEDICATIONS.

Lookout has not offered to pay for any public infrastructure in either the SD Plan or the draft Development Agreement that it has forwarded.

The law permits the Town to request a developer to mitigate the impacts of development. Veridea is a conditional use re-zoning which means that the Town may ask for conditions "that address the impacts reasonably expected to be generated by the development or use of the site." The Town cannot require a developer to accept a condition, and the developer cannot require the Town to rezone to a conditional district. Consequently, construction of infrastructure and facilities, dedications of land, and payment of money for public infrastructure and facilities are subject to discussion. Any construction, dedications or payment of money that Town Council determines are appropriate need to be discussed as part of the present re-zoning and SD Plan process.

Will be dealt within the developer agreement; noted factors that limit ability to change things; without consent of the owner or responsible party; with conditional use, you can't create the use and restrict one to it without the two agreeing, however can't count on that; do have the ability to rezone the entire site to a general use category without a developer agreement that would lock this in over a period of years, but would not affect site or subdivision plans already approved; no vested rights have been considered whether they apply or not; doesn't know a case where it's been litigated. Council Member Schulze voiced concern in that future councils should have the ability to address issues and make changes long term, looking after the best interests of the town; uncertain these are the right decisions now. Developer Agreement has not been considered yet.

SDP: 3.3.5B Traffic (responsible party for roadway improvements); there's no specific language addressing same in the Unified Development Ordinance).

Agreed to accept the language of Attorney Reaves and inclusive the last sentence in the Apex Legal Attorney's comments: Per Attorney Reaves: SD Plan does not obligate the Town to make roadway improvements; proposes modified text: the Town of Apex shall have no obligation to provide financial assistance for roadway improvements identified in the Master TIA as listed in Article 3.5.5 (a-g) hereof, Town shall have no obligation to provide funds for planning, design, permitting, right of way acquisition, construction or otherwise for such roadway projects. Last sentence: " In no way does this imply the Town will fund any aspect of any improvements, infrastructure, facilities or activities addressed".

End of the review: All resolves and changes in the SD Plan and UDO will be presented as an addendum and will reflect the intent of the Council. Staff will notify Council when clean documents are available and thoroughly reviewed and also that Attorney Fordham is in full agreement to the final documents. Council will then determine when best to continue discussions regarding Veridea and set dates accordingly.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.**

Jim DeVivo, Walden Creek, represented Walden Creek homeowners, petitioning Town to amend Town Code to allow cul-de-sacs to be designated as "play streets". Petition: 100 signatures.

Sec. 14-28. Playing upon streets, sidewalks and public places.

- (a) No person shall play at any game upon any street or use any street for the purpose of recreation.
 - (b) No person shall engage in any game or recreational activity upon any sidewalk or public place in the town in any manner so as to:
 - (1) Impede pedestrian traffic.
 - (2) Endanger property.
 - (3) Endanger the life, limb or health of any person.
 - (4) Prevent the full and complete use of such sidewalk or public place by other persons for the intended purposes thereof.
 - (5) Constitute a breach of the peace.
 - (6) Constitute unreasonable annoyance to persons of ordinary sensibilities.
- (Code 1973, § 13-26; Ord. of 2-20-96, § 2)

Police Chief Jack Lewis in response to the petition, presented issues that arise and noted concerns from children playing in the streets and stated he could not endorse the request, understanding children have to have places to play, but not in public streets and roadways; some look at cul-de-sacs different than through streets, however are still public streets and access public vehicles. Mayor Weatherly added this issue has been addressed previously and re-iterated the chiefs concerns, noted the ordinance applies to all and consistent across the board, and would be thoughtful of the request; should there be a different solution, would address it when appropriate. DeVivo restated his points and presented research: Towns of Cary, Holly Springs and Fuquay allow for children to play in streets; presented news article relative to same.

End of Public Forum

NEW BUSINESS

There were no New Business items to be considered.

CLOSED SESSION

Closed Session: pending litigation, Comstock Holland Road LLC.: Holland Farm Community Association and several defendants including Town of Apex. **Action:** Council Member Gossage made the motion to move into Closed Session at 10:02 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0). Minutes are recorded separately. **Action:** Council Member Schulze made the motion to move from Closed Session back into Regular Session at 10:10 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0).

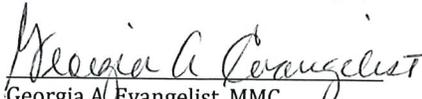
WORK SESSION

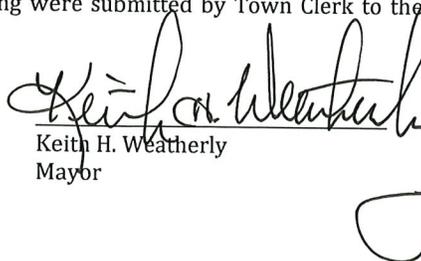
No Work Session was scheduled.

ADJOURNMENT

Action: Council Member Schulze made the motion to continue the April 5, 2011 meeting to Wednesday, April 13, 2011 at 7:00 p.m. for the purpose of a resolve of Veridea Outstanding Issues. Council Member Jensen made the second to the motion. Motion carried unanimously (5-0). **Action:** Council Member Gossage made the motion to adjourn at 11:05 p.m. on April 13, 2011. Council Member Jones made the second to the motion. Motion carried unanimously (5-0) to adjourn the April 5, 2011 meeting.

The minutes for April 5, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their May 3, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for April 19, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 19, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street, Apex, North Carolina.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Council Member Schulze was not present.

PRESENTATIONS

Presentations 01: Planner Lauren Simmons presented the 2011 Spring Appearance Awards for Residential and Commercial Properties: Creekside Commons Subdivision located on Kelly Road, Apex and MCI Business Park, 2121 E. Williams Street, Apex.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action.

Action: Council Member Gossage made the motion to approve the Consent Agenda with the exclusion of item 6 and referred same to the Personnel Committee for review and with Committee action being the definitive decision. Council Member Jensen made the second to the motion. Vote on the motion was 4 - 0. Motion carried unanimously.

1. Minutes for April 5, 2011 Council meeting and the continuation minutes of April 13, 2011, as well as the April 5, 2011 Closed Session minutes, will be placed on the May 3, 2011 Agenda for Council's approval.
2. Annexation Petition #460: Ruth C. Maynard, 0.279 acres (non-contiguous to the Town's corporate limits), and located at 3525 Old US1 Hwy (request for public water connection); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for May 3, 2011.
3. Regional Water Reclamation Facility buffer restrictions and recording with Wake County Register of Deeds, and authorization for Town Manager to execute same.
4. Amend existing policy regarding advance rental/reservation of shelters at various parks up to 12 months in advance.
5. Ordinance No. 2011-0419-03 to Amend Apex Town Code Chapter 20, Article VIII, Town Parking.
6. Police Chief requests authorization from Council to submit a Governor's Highway Safety Program Traffic Safety Project Grant application (Pulled for Personnel Committee April 25, 2011 decision).
7. Wake County Board of Commissioners Tax Report for Apex, approved/accepted by WCBOC April 4, 2011.
8. Ratify Right of Entry to facilitate construction on Wake County Public School System (WCPSS) property for the Safe Routes to School Project and authorize and ratify Town Manager's to sign same

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the agenda and it was set as presented.

PUBLIC HEARINGS

Public Hearing 01

Planner Lauren Simmons

Rezone #11CZ03 and Master Subdivision Plan: Jones & Cnossen Engineering, PLLC, applicant, seeks to rezone 25 acres: Traditions at Bella Casa Phase 3C-3E from Rural Residential district to Medium Density Conditional Zoning district and Master Subdivision Plan for property located at 2724, 2728, 2800 & 2820 Evans Road and Lazio Lane; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes and contains the request as stated. Staff recommends approval of the rezone and subdivision plan Phase 3C-3E with conditions:

1. The applicant will be allowed to get up to 50 Certificates of Occupancy on Lazio Lane in prior to connecting Lazio Lane to Grouse Road. This number includes the approved lots in the Bella Casa PUD Master Subdivision Plan.
2. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles. Covered porches are required on the front façade of each single family residential structure facing the public right-of-way. All residential units shall require a crawl space or a minimum of two steps to the front door and 14 inches to the front door.
3. A tree protection fence shall be required to be installed 10 feet from the rear property line at a minimum on each lot prior to the grading or building of individual lots that are adjacent to RCA and around the RCA and limits of disturbance.

Private recreation facility will be available in Bella Casa for this phase; Parks and Recreation Advisory Commission recommends payment of fee-in-lieu \$172,842.31 for all phases of the project. Request is consistent with 2025 Land Use Plan, Unified Development Ordinance Apex Transportation Plan, and includes a street stub east of the property and connects site with Evans Road and Lazio Lane. Planning Board met April 11, 2011 and unanimously recommended approval of rezone and master subdivision plan with conditions stated.

Mayor Weatherly opened the public hearing at 7:15 p.m. Stuart Jones, Jones and Cnossen Engineering spoke in support of the request, a continuation of Bella Casa, and will save as many trees as possible, and will provide additional landscape. The recreation facility is located north of this phase near Evans Road and Milano Drive and the residents would be added to the Home Owner's Association and have access (2 acres with pool/tennis courts/play ground). With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:20 p.m. and referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the rezone and master subdivision plan with conditions stated. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 01

Public Hearing 02

Senior Planner June Cowles

Rezone #11CZ04 and Land Use Plan Amendment: Jack Skaggs, Jr., applicant, seeking to amend 2025 Land Use Plan from Low Density Residential to Commercial and Low Density Residential and rezone 1.01 acres from Wake County district to Neighborhood Business Conditional Zoning and Low Density Conditional Zoning district, located at 3521 Old US 1 Hwy; possible motion regarding same. Staff presented the planning report, and is incorporated as a part of the minutes, and notes existing conditions and request as stated. A neighborhood meeting report is included; permitted uses are listed in the report. Planning Board met April 11, 2011 and unanimously recommends approval to amend 2025 Land Use Plan and rezone with conditions.

Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing the request, closed the public hearing and referred the matter to Council. **Action:** Council Member Jensen made the motion to approve the amendment to the 2025 Land Use Plan and rezone with conditions stated. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 02

Public Hearing 03

Senior Planner June Cowles

Rezone #11CZ05 and Land Use Plan Amendment: Jones & Cnossen Engineering, PLLC, applicant, seeks to amend the 2025 Land Use Plan from Office and Institutional to Mixed Use, Office, Commercial, High Density and Medium Density Residential and to rezone .28 acres from Office & Institutional Conditional Zoning district to Mixed Office Residential Retail Conditional Zoning, located at 924 Center Street; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes and contains the request as stated and states existing conditions.

Staff recommends approval of the 2025 Land Use Plan amendment as Mixed Use Office and High and Medium Density Residential, and rezone to MORR-CZ with permitted uses as follows and limits commercial: Accessory Apartment; Single Family; Barber and Beauty Shop % (30% of gross floor area of building); Office, Business or Professional; Floral Shop; Medical Office; Newsstand or Gift Shop %; Personal Service %; Utility, Minor; Real Estate Sales; and Studio for Art. A neighborhood meeting report is in the report; permitted uses are listed in the report. Planning Board met April 11, 2011 and voted 6 -1 recommending approval to amend 2025 Land Use Plan and rezone with conditions. Mayor Weatherly opened the public hearing at 7:20 p.m. Stuart Jones, Jones and Cnossen, spoke in support of the request, noting the small one-quarter acre site, with no public sewer, and how the site transitioned from residential to industrial, then rented and now request to rezone to MORR-CZ and to allow for retail; noted should the property adjacent be develop, most likely would absorb this site. With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:24 p.m. and referred the matter to Council. Clarity was given in regard to the retail uses percentages and with a change in conditions; noted conditions can't be forced, but must be agreed to by the applicant; noted staff's position to allow for retail in the district classification had been the same with the Seymour property in the downtown and differs from applicant's request. **Action:** Council Member Gossage made the motion to approve the request with conditions stated by Stuart Jones, Jones and Cnossen vs. staff recommendation and position. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 03

Public Hearing 04

Senior Planner June Cowles

Rezone #11CZ06: Colvin Park, LLC, applicant, seeks to rezone 69.83 acres from Rural Residential district to Medium Density Conditional Zoning district, located south of Smith Road, west of Stephenson Road and north of Satori Way; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes, and contains the request as stated. Colvin Estates was approved in 2008 however the construction plans were not submitted. Proposed uses were noted, and proposed restrictions and conditions by applicant were added to the application after the initial filing for rezone and are:

1. All buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding;
2. All residential units shall require a crawl space/turned down slab, a minimum of two (2) steps or 14 inches to the front door.
3. All residential roofs shall be covered with wood or asphalt shingles.
4. Along the border between the subject property and the property at 2900 Timpani Trail, a minimum 10 foot common area buffer will be maintained. In this area all existing trees will be removed in order to prevent potential tree falls from greater exposure to wind. A new Type C Spatial definition vegetated buffer will be created to separate the properties from each other in this 10 foot buffer area.
5. Along the border between the subject property and the property located at 2901 Timpani Trail, a minimum 10 foot common area buffer will be maintained. In this area all existing trees will be preserved in order to maintain the natural buffer that already exists between the two properties.

A neighborhood meeting was held with concerns being related to traffic, buffer, lot sizes and homes; report is in planning report. Request is consistent with 2025 Land Use Plan, Transportation Plan and compatible with surrounding properties; staff recommends approval of the rezone with restrictions/conditions stated by applicant in the report. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone with conditions proposed by applicant. Mayor Weatherly opened the public hearing at 7:35 p.m. Matt Kirkpatrick, Colvin Park LLC, spoke in support of the request; noted TIA was conducted for site plan approval. With no one speaking in opposition, Mayor Weatherly closed the public hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the request with conditions stated. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing #04

Public Hearing 05 (Quasi-Judicial)

Planner Lauren Simmons

Rezone #11CZ07 and Special Use Permit #11SUP02 and Minor Site Plan: Leslie Cordileone, Skyway Towers, applicant, seeks to rezone 2.8 acres from Rural Residential district to Office & Institutional Conditional Zoning district, the property located at 3101 Tingen Road, and seeks a Special Use Permit to construct a proposed 180' telecommunications tower; possible motion regarding same. All persons speaking during the hearing gave sworn testimony limited to the issues related to the rezone and site for the proposed tower and were administered an Oath by the Town Clerk prior to presenting evidence. Attorney Hank Fordham described the Quasi-judicial process prior to the presentations and noted two motions would be necessary: one for the rezone request and one for the minor site plan/special use permit.

Lauren Simmons, Planner Town of Apex, stated her credentials and gave the purpose of the rezone and request for Special Use Permit and Minor Site Plan approval for Skyway Towers, with the property being located at 3101 Tingen Road, near the future intersection of old US1 and NC540 interchange and outside the Town limits, to construct a 180' Telecommunications Tower. Current Zoning is Rural Residential and request to rezone to Office and Institutional Conditional Zoning; Current Land Use classification is Office and Institutional and Current Use is Residential; adjacent zoning and 2025 Land Use Plan classifications were stated and full planning report is incorporated as a part of the minutes. The 2.8 acres is a portion of 30 acres and currently a single family lot; portion of parcel for rezone is wooded and unutilized by the owners. Applicant will be required to plat 20% of the rezoned acreage as RCA; applicant will only grade access road and lease area; drop zone will remain undisturbed; project does not require water or sewer; project is exempt from stormwater requirement. Neighborhood meeting was held January 26, 2011, and report is included in the planning report, noting concerns and responses: could tower be moved further east; if signal would interfere with other signals, other carriers besides AT&T, affected property values, and if indoor cellular coverage would be provided, would tower be lit, why other portions of property were not being rezoned if 2025 Land Use Plan called for Office and Employment. Tower is being moved further east and tower is not lit. Proposed is consistent with the 2025 Land Use Plan, which calls for Office Employment in this area, and the rezone, Special Use Permit and Minor Site Plan meets the requirements of the Unified Development Ordinance. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone, minor site plan and Special Use Permit. Staff recommends approval of the rezone, Special Use Permit and Minor Site Plan. Mayor and Council stated they had no prior contacts prior to the quasi-judicial hearing.

Proponent: Attorney Tom Johnson, Nexsen Pruet, Raleigh, N.C., stated his credentials and presented evidence: Linwood and Dianne Council, property owners are were present. Proposed tower construction is near the NC540 intersection and necessary due to increased demand on services; noted families have dropped their land lines and are using mobile communications and wireless devices, with 60% of all 911 calls made from wireless devices; noted Onslow County at 70%. ATT Mobility, Leslie Cordileone, Radio Frequency, and Micah Retzlaff, Project Manager, Excell Communications, Inc. 223 US Highway 70 East, Suite 120-A, Garner, NC stated their credentials and certified the documents being submitted as evidence, complies with the rules and regulations, process and procedures and contains accurate and true information to the best of their knowledge.

Council Questions: Council Member Jones asked about the accommodations for more than one carrier and number. Attorney Johnson responded a total of four could be accommodated, not to say more could not be accommodated in the future and as design is strengthened and given the situations.

Opponent: none

Mayor and Council stated they had not visited the proposed site prior to the quasi-judicial hearing. Mayor Weatherly closed the hearing at 7:55 p.m. and referred the matter to Council. **Action:** Council Member Gossage made the motion to rezone the property as requested. Council Member Jones made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously. **Action:** Council Member Jones made the motion to approve the minor site plan and Special Use Permit as requested. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously. Mayor Weatherly advised the quasi-judicial hearing is ended.

End of Public Hearing 05

Public Hearing 06

Senior Planner June Cowles

Rezone #11CZ08: Town of Apex and Apex First Development, applicants: Town of Apex seeks to rezone .64 acres from Planned Unit Development Conditional Zoning to Office and Institutional district, located off Old Raleigh Road west of Apex Peakway. Apex First Development seeks to rezone .68 acres from Office & Institutional, Neighborhood Business Conditional Use and Planned Unit Development Conditional Use to Planned Unit Development Conditional Zoning district, located off Old Raleigh Road and northwest corner of Apex Peakway and Mill Hopper Lane; possible motion regarding same. Staff presented the staff report and is incorporated as a part of the minutes, and contains the request as stated. Applicant's proposal reflects a property exchange as stated in the report. Neighborhood meeting was held and included in the report. Staff recommends approval of the requests for rezones with conditions as stated in the Old Mill Village PUD CZ rezone case #10CZ14 for the northwest corner of Apex Peakway and Mill Hopper Lane. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone with conditions consistent with Old Mill Village.

Council Member Gossage asked Council to recuse him from participating and voting during this discussion and hearing as he has been contracted to do consulting work for the associated company. **Action:** Council Member Jensen made the motion to honor the request to recuse Council Member Gossage. Council Member Olive made the second to the motion. Vote on the motion was 3-0 to recuse Council Member Gossage. Motion carried unanimously.

Mayor Weatherly opened the public hearing at 8:p.m. and with no one addressing this request, closed the public hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the request as presented. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 06
End of Public Hearings

OLD BUSINESS

Old Business 01

Town Manager Bruce Radford

Council during their annual retreat gave support to staff recommendation to forego purchase of E-32 site and move forward with use of the funds for other park facilities: Seagroves Park and Hunter Street Park.

Council will give consideration to options for funds previously committed for land purchases at the E-32 school site. Council will be presented options to move forward with construction plans for Seagrove's Park and Hunter Street Park, and an option to reduce the extent of the construction effort at these two Parks and add a construction project at the Nature Park. Manager Radford presented the report and is incorporated as a part of the minutes that offers options that would expedite park projects noting Council had discussed this during the annual retreat. Council Member Jensen suggested monies be distributed to all three park projects, moving forward for bid, award contracts and moving on for the citizens use. John Brown Director of Parks, Recreation and Cultural Resources and Kent Jackson Director of Construction Management presented options that would reallocate bond funds earmarked for a land purchase and costs estimates to upgrade and how best to distribute funds to provide the most for each park. Valve System repair for the Apex Community Park had been considered, and noted discussion to expand the Nature Park Plan would be tied to the sale of \$6 million in bonds and contingent on the ability for repay of the debt service associated with the bond sale. Options were discussed in detail. Brown stated the PR&CR Advisory Committee recommendations did not include valve repair, considered it maintenance and felt it was not the intent of purpose for the bonds approved by the voters, and recommended allocation of funds for Hunter Street and Seagroves Farm Parks.

Former E-32 Existing Bond Funds On Hand = \$1,325,000					
	Hunter St	Seagroves Farm	Nature	Dam Repair	Totals
Option 1	\$945,566	\$346,620	0	0	\$1,292,186
Option 2	\$786,068	\$301,981	\$229,269	0	\$1,317,318
Option 3	\$786,068	\$301,981	0	\$227,325	\$1,315,374

Cost differences between Options 1 and 2 for Seagroves Farm Park noted less than \$45,000 and conclusion to upgrade would be less expensive now than later, with Manager Radford advising if directed the difference to upgrade could be taken from General Fund Balance. Pros and Cons to expand the Nature Park were discussed in detail and suggestion by Council Member Jensen to sell lesser bonds: ½ million; staff noted associated costs would be the same for the bond process and would have the Finance Director look into the possibility of the sale of bonds for a lesser amount with debt service being less. Council did agree Hunter Street Park was a highly visible park and should also be given a better upgrade and to bid sooner would be less costly than later. Mayor Weatherly referred the matter to Council. **Action:** Council Member Jensen made the motion to choose Option 1 with the understanding staff would look heavily into the sale of bonds to expand the Nature Park plan to get it going. Staff noted construction plans are close on both Hunter and Seagroves parks and would start the bid process as soon as possible. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during Public Forum.

NEW BUSINESS

New Business 01

Principal Planner Brendie Vega

Revised Master Subdivision Plan Parkside on the Creek: Parkside Development Group, LLC, owner, seeking to amend previous subdivision plan approval for 104 residential lots, proposing 103 residential lots on 60.07 acres, located at the 2147 Mt. Zion Church Road at the end of Blazing Trail. Staff presented the Planning report and is incorporated as a part of the minutes, and explains the existing conditions and background of the previously approved Parkside on the Creek Major Subdivision Plan. Proposed changes include roadway layout to decrease amount of stream crossings, reducing the number of lots, noted Milano Drive was under construction, and requests to amend the conditions as follows:

1. Tree protection fencing shall be installed at least 10 feet from the rear lot line on each lot prior to the grading of individual lots.
2. "No construction traffic" signage shall be posted at the entrance to Whistling Quail Run.
3. Snipe Court road improvements shall extend and connect to Whistling Quail Run prior to the 51st Certificate of Occupancy.
4. Milano Avenue shall be dedicated from the planned subdivision to Evans Road prior to the first plat of any phase.

RCA is not required, Parkside will pay a fee-in-lieu, noted access and circulation plan, landscape, and grading plan, with recommendation for tree protection fencing for each lot as they develop. Plan is consistent with 2025 LUP, UDO and Transportation Plan identifying Street G as a future major collector and Humie Olive Road as a 2-lane thoroughfare with left-turn bays/lanes; will connect Whistling Quail Run to Humie Olive. Planning Board met April 11, 2011 and unanimously recommends approval with conditions; staff recommends approval with conditions as stated. Discussion followed that fee-in-lieu for Parkside was based on the rate granted with its original approval in 2007 and satisfies the Parks and Recreation requirement, and is adjacent property to the Nature Park. Attorney Fordham advised the original decision to grandfather does not apply to the revision of the plan and could consider whether to grandfather the revision to the plan or not; Planning Department decision was to proceed as is. Stuart Jones, Jones and Cnossen, addressed the revised configuration dropping one lot, and noting the recreation area in Bella on the other side of the creek near Milano was optional and folks could join; noted lots of stream buffers, open space, and areas for kids to play, a different kind of recreation area cleared, with the change in the creek crossing, bringing this revision. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the revision with conditions stated. Council Member Jensen made the second to the motion. Vote was 4-0. Motion carried unanimously.

End of New Business

Information: Tom Hendrickson, Veridea, stated he would provide addendum and updates of the SD Plan, Tables and UDO as agreed to during the April 5, 2011 Council meeting. Staff advised there should be at least two weeks for a full review of the documents for accuracy prior to discussion with Council, with some issues still to be addressed, one being reallocation, with Attorney Fordham advising they were close on all and should not be substantial. **Action:** Council Member Gossage made the motion to set May 10, 2011 as a Special meeting to continue Veridea discussion and for a possible motion regarding same. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

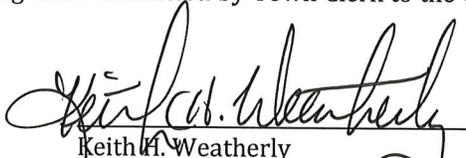
No Work Session was scheduled.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:00 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried.

The minutes for April 19, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their May 3, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for May 3, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 3, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Schulze gave the Invocation. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance. Council Member Olive was absent.

PRESENTATIONS

Presentation 01

Proclamation for 2011 "National Police Week and Peace Officers Memorial Day".

Presentation 02

Proclamation Apex High School Women's Varsity Swim and Dive Team "2010-2011 State 4A Champions".

Presentation 03

Diana Dayal, President Apex Teen Council, gave an update on their events and future plans.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. **Action:** Council Member Jensen made the motion to approve the consent agenda with a substitute document for #4. Council Member Jones made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

1. Minutes for Council meeting of April 5, 2011; and April 5, 2011 Closed Session (separate cover).
2. Minutes for Council meeting of April 19, 2011.
3. Annexation Petition #461: Town of Cary for Western Wake Partners (WWP), petitioning to annex 23.558 acres into the Town's corporate limits and located at 2916 Olive Chapel Road; (non-contiguous to the Town's corporate limits), (Western Wake Partners proposed pump station requires Town public utilities services); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for May 17, 2011.
4. Findings of Fact and Conclusions of Law for Motiva Major Site plan located at 2300 Ten-Ten Road approved by Council February 15, 2011.
5. Statement of the Council and Ordinance for Rezone #11CZ02 Lindsey McLamb, petitioner, for property located at 2705 Evans Road approved by Council March 15, 2011.
6. Statement of the Council and Ordinance for Rezone #11CZ03 Jones & Cnossen Engineering, PLLC, petitioner, for property located at 2820 Evans Road approved by Council April 19, 2011.
7. Statement of the Council and Ordinance for Rezone #11CZ04 Jack Skaggs, Jr., petitioner, for property located at 3521 Old US Hwy 1 approved by Council April 19, 2011.
8. Statement of the Council and Ordinance for Rezone #11CZ05 Jones & Cnossen Engineering, PLLC, petitioner, for property located at 924 Center Street approved by Council April 19, 2011.

Consent Agenda continued

9. Statement of the Council and Ordinance for Rezone #11CZ06 Colvin Park, PLLC, petitioner, for property located between Stephenson Road and Smith Road approved by Council April 19, 2011.
10. Statement of the Council and Ordinance for Rezone #11CZ07 Skyway Towers, petitioner, for property located at 3101 Tingen Road approved by Council April 19, 2011.
11. Statement of the Council and Ordinance for Rezone #11CZ08, Apex First Development and Town of Apex, petitioners, for the property located at Mill Hopper Lane and Apex Peakway approved by Council April 19, 2011.
12. Findings of Fact and Conclusions of Law for Special Use Permit #11SUP02, Skyway Towers, for property located at 3101 Tingen Road and approved by Council April 19, 2011.
13. Set Public Hearing May 17, 2011 for Rezone #10RZ08: Town of Apex Hunter Street Park, containing 10.57 acres.
14. Set Public Hearing May 17, 2011 for Rezone #10RZ09: Town of Apex Seagroves Park, containing 11.609 acres.
15. Set Public Hearing May 17, 2011 for Rezone #10RZ10: Beaver Creek Pump Station, containing 22.998 acres.
16. Set Public Hearing May 17, 2011 for Rezone #10RZ11: Olive Chapel Park PUD Amendment, containing 23.11 acres.
17. Road Closures for Saturday, May 14, 2011 Scott's Mill Subdivision, 7:30 a.m. to 9:30 a.m. for 2011 STTM Monarchs in Motion 5K Run/Walk.
18. Sprint Com, Inc. Lease Agreement to locate Communications Antenna and Equipment on Tingen Road Water Tank and Site, located at South Salem Street and Tingen Road, and supporting Resolution Declaring Leasehold Interest Surplus, Resolution Starting Upset Bid Process, and Legal Notice.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Council Member Jensen asked to amend the agenda for New Business #2: Authorize expenditure of \$10,000 from General Fund for soil erosion control along Peakway. **Action:** Council Member Jones made the motion to add this item. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously. Mayor Weatherly asked to amend the agenda for New Business #3: Authorize expenditure to expand Code Red for warning emergency notification. **Action:** Council Member Schulze made the motion to add this item. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

PUBLIC HEARINGS

There were no scheduled public hearings.

OLD BUSINESS

There were No Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during Public Forum.

NEW BUSINESS

New Business 01

Director of Finance Lee Smiley

Review of 3rd Quarter Financial Summary: Benchmark for 3rd Quarter financial performance is 75% for revenues and expenditures; significant variances were noted. Financial summary reflects finances are almost exact as one year ago and if the finances hold, will reflect a surplus at year end. Financial performance report was accepted by Council.

End of Old Business 01

New Business 02

Council Member Bill Jensen

Authorize expenditure of \$10,000 General Fund for temporary soil erosion control: along Peakway, Olive Chapel Road to South Salem Street to prevent run-off in HOA retention pond. **Action:** Council Member Jensen made the motion to authorize the expenditure. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of New Business # 2

New Business 03

Mayor Keith Weatherly

Authorize expenditure to expand Code Red Emergency Communications: for warning emergency notification. A calling data base of all subscribers, citizens that are the most at risk within the projected path of an identified storm would be notified. Only citizens who sign up will receive the notification and may elect to receive alerts for any combination of severe weather warnings. Prorated May 15 for \$1,445 (renewal date 09/26/11 with first year cost \$3,937, and 2nd. and 3rd. year cost \$7,875). **Action:** Council Member Schulze made the motion to authorize the expenditure to expand the Code Red system. Council Member Jones made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of New Business # 3

End of New Business

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

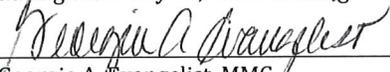
No Work Session was scheduled.

ADJOURNMENT

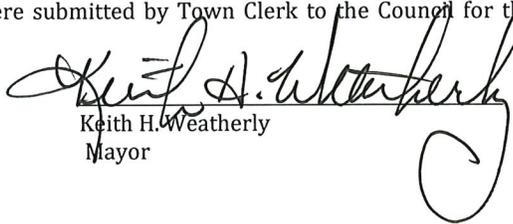
With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:40 p.m.

Action: Council Member Jensen made the motion to adjourn. Council Member Gossage made the second to the motion. Vote on the motion was 4 and 0. Motion carried.

The minutes for May 3, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their May 17, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Special Meeting Agenda for May 10, 2011

A Special Meeting of the Apex Town Council was held Tuesday, May 10, 2011, 7:00 p.m. in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

SPECIAL MEETING AGENDA

VERIDEA SUSTAINABLE DEVELOPMENT PROJECT

Rezone #09CZ07, Unified Development Ordinance Amendment, and 2025 Land Use Plan Amendment: the purpose of the meeting was for discussion and possible motion regarding proposed Veridea Sustainable Development project. Lookout Ventures, Inc. owner/applicant seeks to (1) amend the Unified Development Ordinance; (2) amend the 2025 Land Use Plan from Mixed Use: commercial, office and institutional, high, medium and low density residential to Mixed Use: commercial, office and institutional, high & medium density residential; and (3) to rezone from Planned Unit Development Conditional Zoning (PUD-CZ), Light Industrial (LI), Rural Residential (RR) and Residential Agricultural (RA) to Sustainable Development Conditional Zoning (SD-CZ) district classification with accompanying SD Plan for the property generally bound by US 1 Highway, East Williams Street, and the future NC 540 corridor, containing approximately 1,011 acres.

Staff began the discussion regarding the outstanding Veridea issues.

Director of Planning Dianne Khin referred to the SD plan references related to the standard specifications and construction details. Stated all agreed the standard specifications and construction details as amended should be followed, not to say they should never be amended; referenced Sec. 6.2.1: "notwithstanding the foregoing, the Apex Standard Specifications and Standard Details, as modified and amended from time to time, shall be applicable to the Development, except to the extent otherwise provided in this SD Plan or where the modified Apex Standard Specifications and Standard Details are specifically inapplicable to Veridea." Referenced: Sec. 2.1 Introduction: if there are standards that are amended the SD Plan shall control. Attorney Fordham had notified Attorney Reaves of this concern, with Attorney Reaves stating that he believed the way to deal with this was to add to Sec. 6.2.1: with the last sentence reading "except to the extent otherwise provided in this SD Plan", text to read, except to the extent otherwise specifically provided in this SD Plan. To the extent that there is a matter that is dealt with specifically in the SD Plan, it will control over the standard specifications and designs, however, to the extent it is not specifically dealt with within the SD Plan, the standard specifications will govern and will govern going forward as they are modified. Khin stated those specifically noted in the SD Plan: Sec. 3.5.2 Alternative Thoroughfare Standards, subsection b.i.ii.iii, pavements, right-of-way widths, radii of curvature, street typical sections and standard street cross sections showing utility locations. Khin agreed with the text revision; Attorney Fordham stated it does cure the clarity. Khin wanted it clear the standard specs going forward would apply and should amendments need to be made, would not be stuck with the 2011 version.

Khin continued there were no planning outstanding issues, however there were two engineering and two public works items and were linked to legal items; staff matrix shows staff verification on outstanding items from the last meeting; changes have been made to the SD Plan. Legal handout in the agenda packet: SD Plan Sec. 3.3.3 Noncompliance and SD Plan Sec. 4.2.2 Reallocation. Handouts for legal comments and Veridea comments that were not in the packets are both incorporated in the minutes and referred to by reference.

Legal Issues/Comments Related to Veridea proposal; is not intended to address all the legal issues; identifies issues, gives Apex Legal's comments. All "Sec." references are to the SD Plan unless indicated otherwise.

1. The 250 Acres in Sec. 3.1.3 Does Not Count Against Authorized Development, Sec. 3.1.3.

Does everyone intend the language in the first sentence of Sec. 3.1.3 that says "In addition to the total authorized development authorized by this SD Plan,?" This language means that the development on the 250 acres will not count against the development maximums.

Attorney Fordham stated he didn't receive any comments, but was a point of notification.

2. Noncompliance, Sec. 3.3.3.

The parties agree on the objectives for Sec. 3.3.3, but are still working on the text.

Attorney Fordham noted this was addressed on page 3 of the Veridea handout document and does comply with earlier discussion; basic idea was the Town would make clear the remedies it has that relates to Veridea and UDO Article 11 enforcement provisions, making it clear that in emergency situations do not have to go through procedures, thinks this if someone fails to comply have a full set of remedies to use, giving clarity to the section: example not meeting thresholds for infrastructure or balance would prevent CO from being issued. Developer version: if there's a violation in respect to a particular project or an area and doesn't have system wide implications you can't penalize the rest of Veridea.

3. School Sites, Sec. 3.4.2.4.

Council Olive and Veridea are still discussing this issue.

Attorney Fordham stated that he thinks the language is satisfactory between the developer and Council Member Olive. Council Member Olive was in agreement that it meets all the requirements: provides opportunity for the school system to acquire space with reasonable time frame and presented at the appropriate time assures future children in Veridea will have a place to go to school not far from home.

4. Partial RCA Credit for Open Space, Sec. 3.4.3.1.e.i.

Does subsection "i" need to be revised to read: "Open Space, excluding Civic Buildings and parking lots or spaces of any kind";

Attorney Fordham stated page 4 of the developer's handout excludes civic buildings and adds all associated parking, municipal parking lots, and parking associated with Open Space that exceeds the direct needs of such Open Space and was an effort to address Council Member Gossage's concern with parking lots being accounted as RCA credits and being a part of open space; feels they had reached a balance and met the concern.

Director of Planning was uncertain why Section 3.4.3.1.c. deleted: "Notwithstanding UDO 8.1.2C), Size of the RCA, a total of 100 acres of RCA shall be established within the Development" and asked if this were consistent in keeping with RCA. Public Works Director understood RCA would apply until the Environment Enhancement Plan (EEP) was approved and referenced 3.4.3.1.a.; UDO 8.1.2 A) shall apply to the development as a whole as opposed to individual site plans or subdivision plans; trying to understand the effect. Example: when looking at big box store, do not want to lose RCA on something they want to preserve; purpose of RCA is identify preservation and decision and Planning Director through TRC identifies what needs to be protected. Asked if it doesn't apply to site and subdivision plans? Khin responded, if first site plan comes in without the EEP, they would do what the UDO says - 25% RCA; should they have the EEP showing Veridea stream buffers and say it's already 18%, then it would come before Council to approve and if approved, they are done with the site plan. Public Works Director was satisfied with this.

Lookout Ventures Tom Hendrickson understood they could not do anything on the site until the EEP is approved; direction was to remove the text as this would be addressed in full context in the EEP, not having to deal with each separately and noted UDO 8.1 reads "shall apply to the development until the EEP is adopted by Council in accordance with UDO 2.3.16.F)3)b) except as follows:" with each of those exceptions being dealt with, leaving the rest in tact that nothing else will go forward until the issue was the amount, the question how and what, and he can't answer that without the EEP; EEP is required prior to doing anything and before the first site plan.

Attorney Fordham stated it's still worth deciding what doesn't apply outside the EEP in the unlikely event that this went forward without the EEP ever becoming reality, which is unlikely being obscure legal event, but since it can't be 100% ruled out, wanted to assure this is understood; clarity: the 100 acres has been taken out of equation. Provision: "UDO 8.1. Resource Conservation shall apply to the development until EEP is adopted by Council with exceptions as follows", continued for some reason if the EEP went out, would have UDO accepted as modified, a-e; as long as those provisions are acceptable, he advised this would be fine with amount of RCA being determined by UDO. Khin agreed and noted the EEP has to be done before the first site plan; they couldn't get approval until they come back with the EEP and that would be the time all the points about RCA would be included, and including how many acres. Attorney Fordham advised the most likely scenario is that nothing would happen without the EEP; was being cautious having it both ways. Attorney Fordham added any additional language: UDO 8.1. Resource Conservation and any other provision of the UDO that relates to RCA, shall apply until with Khin agreeing. Attorney Fordham advised any deviation of a document will have to be written out, compiled and looked at carefully to assure it says exactly what everyone thinks it should say, before action is taken.

Conversation followed regarding RCA provisions with Attorney Reaves offering substitute language: Section 3.4.3.1 to say "UDO 8.1. Resource Conservation and other provisions of the UDO dealing with RCA not otherwise dealt with specifically in the SD Plan shall apply to the development until the Environmental Enhancement Plan is adopted by Town Council in accordance with UDO 2.3.16.F)3)b) except as follows:", and then continued with the subsections. Attorney Fordham advised the 100 acres has been removed, and the number of acres would be decided in the EEP.

Items 5 – 7 were not discussed.

5. Substituting Bicycle Trails for Sidewalks, Sec. 3.5.2.e.

Does the ability of the developer to substitute bicycle trails for sidewalks in the fourth sentence need some limitation?

6. Sec. 3.5.3.d.vi, Sec. 4.1.4 and Sec. 5.1.1.

Delete the language in 3.5.3.d.vi, “unless Town Council otherwise approves.” Delete the language in 4.1.4, “In that event, the Responsible Person shall determine the applicability of such regulation and standards to the Development.” Delete the language in 5.1.1, “In that event, the Responsible Person shall elect whether such standards are incorporated into this SD Plan.”

7. Encroachment Catchall.

Add a general provision to the SD Plan that states: “Notwithstanding any other provision in this SD Plan, any encroachment into a Town of Apex right-of-way or easement requires an encroachment and maintenance agreement with the Town before such encroachment is made.” (addressed after 8.)

8. Mixed Use Issue: The Re-allocation of the Square Footage Maximums for Retail, Office and Industrial subsections ii-iv of Section 4.2.2.b of the SD Plan Are Now Limited to 20%.

The Developer’s and Apex Legal’s language for this section is different. As per Apex Legal’s understanding of Council’s direction, text has been provided to substitute for the Developer’s text in Sec. 4.2.2.b to limit reallocations among the categories ii-iv such that no category may be increased above 120% or decreased below 80%. The suggested language reads as follows: The square footage numbers stated in i-iv set the maximum for each category of development, except that the Responsible Person may reallocate square feet among the maximums stated in categories ii-iv on a foot-for-foot basis subject to the limitations that 1) no category may be more than 120% nor less than 80% of the amount stated in ii-iv and 2) no reallocation is allowed which would result in a total daily vehicular trip generation that would exceed the maximum daily vehicular trip generation that served as the basis for the Master TIA.

Attorney Fordham advised this item was related to Section 4.2.2 and states 8000 units and spells out square footage for the three non-residential uses: retail, office and industrial. Even though there are stated amounts for each, in the original proposal re-allocable square foot for square foot by the developer. Town transportation engineer addressed this in a previous discussion and how it affected internal capture and how it affected assumptions in the TIA, and the impact of overall traffic and transportation. He recalled discussion in land use planning of the mix. His handout contains language as he understood it. He referred to subsection b. that strikes the original language the SD Plan had about reallocation and noted the more straight forward language; noted developer could trade among those three uses however he wanted, as long as those numbers do not go more than 120% or below 80%, and as long as no reallocation is allowed which would result in a total daily vehicular trip generation that would exceed the maximum daily vehicular trip generation that served as the basis for the Master TIA.

Hendrickson referred to page 8 original document and the addendum Section 4.2.2.b; as proposed has the same net affect relative to retail; the language proposed by Lookout differs in policy and asked they concur as it relates to allocation in office and industrial; not wanting to get out of skew with retail. In terms of increase in retail square footage, he thinks the Attorney would concur their language has the same net affect as his language, just simpler and reads “provided however the responsible person may only increase the retail square footage by up to 20% subject to the limitation that the reallocation shall not result in a total daily vehicular trip generation for Veridea that exceeds the maximum daily vehicular trip generation that served as the basis for the Master TIA. Any further increase related to retail must be approved by Town Council in accordance with UDO 2.3.16 F) 3) a”, and identical between the two. He ask there not be a restriction placed on the ability to move between office and industrial; as they had lumped office and industrial uses together; given 2 million square feet of industrial and if they have a 20% limitation on this, it places a smallest amount of restriction on industrial, and if they want to accommodate a 2.5 million square foot operation, they couldn’t do it and would be limited to 2.4 million (20% of 2 million is 400,000 square feet). Thinks all wanted to put a collar on retail and they have agreed to this; he just ask while fixing that problem, not inadvertently constrict the one piece they may really find users for and would want flexibility and hopes they Town would accommodate that; the way this was worded cast a broader net than was discussed.

Council Member Olive remembered there were more impacts than traffic when making adjustments; idea of balance and impacts on every aspect of life. Council Member Jensen agreed and wanted more detail and began the discussion related to adjustments in commercial and residential uses.

Hendrickson noted the objective, in conversations, couldn’t do wide variations in retail square footage without dealing with traffic; basically both sets of language says non TIA language, there’s a budget for traffic in this traffic analysis and could previously move around, but this is clear, they could move up to within maximum 20% increase in retail but still have to account for office to make the traffic balance work within TIA. He noted Attorney Fordham’s language goes further to say they couldn’t change office or industrial more than 20% and given industrial is the lowest number, in realist terms, it’s the one that frankly comes up to be a potential problem. 2 million square feet is a lot, but if they guessed wrong, if there is more industrial than office demands, they may have inadvertently boxed themselves in, in a way that doesn’t impact the traffic, doesn’t impact residential and commercial growth, it just means we need to be able to respond to the market and still stay within the traffic budget which is what they have here.

Council entered in the discussion: Council Member Gossage, added “or convert the increase off, the other way”, with Hendrickson agreeing, “that he’d love to be able to do that”. Council Member Gossage didn’t have a problem with giving flexibility for office or industrial.

Council Member Jones didn’t have a problem with this either; he was making the assumption industrial traffic trip generation is going to be much less per 1000 square feet than office or retail, with the transportation engineer Russell Dalton agreeing. Council Member Jones wanted to go on record that he’s ok with giving more flexibility but needed to define “more flexibility”.

Council Member Olive added the presence of more industrial in theory generates less traffic, asking does the absence of office and institutional create outbound traffic that was not going to be outbound before in terms of balance; not upsetting the balance. Hendrickson responded that the language here in either case, the crystal ball of the future, not knowing until they get to that, to make adjustments would require them to show that the reallocation shall not result, no matter what the reallocation would be, would likely be that they have to show that it would not result in total daily vehicle trip generations for Veridea that exceeds the maximum daily vehicle trips generations served as a basis of the master TIA; everything ties back to the master TIA; if they assume office is higher trip generations than industrial then they would want to move more from industrial into office; they still can't move more into there than the trip generations would accommodate; there's a throttle beyond the square footage that says they still have to make sure that it fits within the trips generation of the master TIA. Council Member Jones noted in the budget of trip generations there's in and out, with Hendrickson responding this was correct.

Council Member Olive asked if the traffic impact analysis took into account the types of businesses there and those that are not there, so there are people who are leaving going to O&I because they didn't put enough of it here; asked does it take that fully into account or does it only take into account the business that is there. Hendrickson responded that if they go back and look at trip generations, if they take that off, reduce office, that is going to have an impact in the calculus and that's why Mike Horne (Kimley Horne) used this as an annuity project; anything of that magnitude was enough to trigger a major site plan and would have a traffic study in front of them as a part of that project.

Attorney Fordham advised it was important to understand the affect of the language being proposed in that all the square footage and retail could be transferred to some other use except for and controlled by the table and the text 4.2.4; not addressing this as a concern or not, but the affect would be that if retail has a higher generation rate than the others, you could float completely out of retail except for 70,000 square feet; the table would require you to keep 70,000 square feet in retail to be able to max out the O&I and would also allow subject to the transportation issues, a complete movement between office to industrial and industrial to office, subject to not increasing vehicle trip criteria.

Council Member Olive stated some of the worse case scenarios concern him and didn't know if that was intentional, being able to move as much retail as possible out, probably not, but that would create an imbalance where even if the traffic impact analysis doesn't reflect that we exceed the desired goal, it still creates an imbalance for other areas of life quality for Veridea and that would concern him.

Attorney Fordham stated this was not the only way these numbers could be amended, this is deciding how much flexibility the developer has without coming back to Council and Council doesn't have the ability to change this very easily if its approved this way; the developer could always come back and say this is not working, please reallocate; advising them that if they focus on just what they were being asked, they would need to understand just how much flexibility is provided here and that they would have no chance to change it over the next 20 years, likely.

Mike Horne, Kimley Horne, stated this was being treated like a new process and wanted to assure that he had worked on many developments like this, sustainable large developments that have a trip table that sets up trip generations and a master TIA, and they use that like a check point, and is how you have to perceive this; this is no new concept and they do this all the time and are allowed to change uses and what they clearly heard was Hendrickson had done the most important thing here, he had capped the retail at 120% and why they don't want to take that 3.5 million square feet up to 5 million square feet; he'll say it doesn't work and rightfully so, but what he needs is to have that flexibility between office and research development and as long as they keep it within the checkbook, and they can't spend more than they got, it's going to work.

Council Member Olive again said there's more to balance than traffic and that's why they were talking about this in-depth beyond making sure they don't exceed the budget for traffic. Horne continued, no doubt that everything has worked here; it's all about the traffic impact and the amount of roadway improvements that leads to that neighborhood; that's what they were here to discuss and if he wanted to build a lesser development and this is where he would have to go and this is what they are talking about, he would basically have to build a lesser development with the same improvements. Council Member Jensen asked clarity that he would build a lesser development ... with Hendrickson responding in Section 3.5.5 they have placed restrictions, layered them on, sometimes triplicate, that are ok, but all came about from different pieces. Sec. 3.5.5 are infrastructure requirements and he understands the points and talks about them under Table 4.2.2, but in the infrastructure requirements; he understands Attorney Fordham's points, and if they were under an academic exercise this doesn't keep them from reducing retail down to zero, the reality is if that were ever a remote thought they would have scaled it back before they did the TIA and set the level of infrastructure that's provided in Section 3.5.5 that's required to be done. That's the other piece in the market perspective that guarantees a healthy mix of product because they have to assure that certain levels of infrastructure are completed along the way and he and Council Member Jensen have had these conversations, those simply can't be afforded at the level that are required in Section 3.5.5 with a purely residential development, it just wouldn't happen and frankly retail is going to be a necessary and important part of this; he didn't contemplate on the thought they could reduce it down - their concern was that they were trying to address, the increasing of it to a reasonable level, and thinks Attorney Fordham's memo's for the last year or so has correctly stated that for all of their work sessions, that the document was written to allow for a full movement between 15.5 million square feet of commercial space; it could be any of the above. They understand there needs to be a restriction on retail and would agree to that, he would just ask and not to be a big point, is that unless there is a policy distinction that the Council is looking to make, these are the office and industrial then they think the language they have here adequately addresses the reason it was brought up in the first place and ask they go with it. The points of concern beyond the traffic, even in their thresholds which was where they were really looking for different uses, they lumped office and industrial uses together so it's not accounted for differently as currently there because they can't be that precise; it's hard to know today whether industrial Viridians will be a bio-tech facility that looks like an office building or looks more like an industrial building, simply do not know until they can get into the market. He would ask and understands the point and willing and conceded the point on this, putting a restriction on retail that did not previously exist, and would suffice with the language they have. Horne added that it does not exceed the master TIA with Hendrickson responding this was right.

Council Member Jensen added the restriction would not go up 20% and that it couldn't go down, asking by how much in percent. Attorney Fordham responded his recollection was during the discussion on April 5 was that Council wanted to allow 20% shift and measure it from the lower and if that's what you do basically you're saying any can go above 20% so as long as none of them go below 80%; that was his simplistic way of looking without coming back to Council. Hendrickson responded this is in the addendum, the original submitted with the package, page 8 of the document entitled Addendum to the Sustainable Development Plan dated May 10, 2011 as opposed to the one he had just sent. Handout Addendum 2 and on page 8 reads in the middle of Sec. 4.2.2.b "provided however, that the responsible person may only increase the retail square footage by up to 20% subject to the limitation that the reallocation shall not result in the total daily vehicular trip generation for Veridea that exceeds the maximum daily vehicular trip generation that served as a basis for the master TIA. Any further increase related to retail must be approved by Town Council in accordance with UDO 2.3.16 F) 3) a."

Council Member Jensen questioned that it could go down to 70,000; Hendrickson responded academically, yes. Council Member Olive noted academically was what they were looking at; having to take that into consideration. Hendrickson responded if that was the only issue and wanted to say may only increase or decrease retail square footage by up to 20% that would be fine; he never imagined that would be a problem. Council Member Jensen asked the nominal percent of retail with Hendrickson responding 3.5 million. With calculations being figured, Hendrickson said if that's what he's hearing, they didn't interpret that and if they missed it he was sorry; they are agreeing to limit the increase and if you want to say it can't be decreased more than 20% - the only reason he's standing up there and talking about this is because of what he thought was an unintended consequence on industrial and he asked they not corral all industrial at 2.4 million square feet. Council Member Jensen added from an economic development standpoint, he thinks they shouldn't; that's his own personal viewpoint and in terms of commercial retail he can see going down more than it goes up; he can see it up 20% and down 40% but going down to 70,000 square feet... with Council Member Olive saying 700 with Attorney Fordham saying 70,000. Khin added 20% is 700,000; that 70,000 are based on the charts which land use controls. Council Member Jones read it, as saying there's no end on the decrease. Council Member Olive noted this basically 2% of the nominal.

Khin questioned why in Sec. 4.2.2.b are office and industrial was split out separately; she thought everywhere else in the SD Plan, they were combined; she thinks they could solve a lot of Attorney Fordham's concerns over this if they would just put 12 million square feet of office and/or industrial; she didn't know if there was something she was missing but when they were flipping through all the charts they all say office and industrial, except here, this was the only spot. Council Member Jensen added they were looking at a production type site and is what office and industrial does; with commercial, "you are stealth-up and are eating your arm" you're not making anything. Hendrickson responded they would be fine with this. Mayor Weatherly asked if there were any objection to doing this and there were none. Council Member Jones asked what language they would use in the preceding paragraph; if you did that and have 12 million square feet of office and industrial that you could allocate among those two uses, with all due flexibility... Council Member Olive added then would go with the 20% rule... Council Member Jones adding all that leaves is retail and residential. Hendrickson response was, they can't allocate between those, they are not... Council Member Jones added, we didn't want to deal with residential only. Hendrickson continued a long time ago there was conversation about this, there wasn't a concern about allocations between the non-residential uses but there was a real concern that would not create any translation, any equation that would and there's a lot of developments that do, and would say "x" square feet of commercial that could be traded out for "x" units of residential vice-versa; they did not do this and was one of the comments in Worksession, and are fine with that and says no trading between the two, there was full trading between the commercial uses up until this provision and if we need... with Council Member Gossage interjecting they need to set a floor for retail. Council Member Jones asked what if they go with the language proposed, "no more than 120% nor less than 80% of the retail and combine the office and industrial at 12 million." Horne added, it could change, it's just with retail. Council Member Jensen could see it going up 20% and down 40%. Council Member Jones noted with 12 million for O&I you are going to be restricted by... with Hendrickson interjecting, once they are lumped together than you don't have... he was concerned with 2 million square feet, he could see a problem.

Attorney Fordham advised they had not specified the language. Hendrickson added that if he had heard Khin correctly, thinking there was no problem elsewhere, recommends: Article 4.2.2.b.iii, authorize, office and industrial uses and change 10 million square feet to 12 million square feet and delete Article 4.2.2.b.iv. Noted places of references that needed a clerical edit: 4.2.2.b. ii, iii, and iv and to say 4.2.2.b. ii and iii. Attorney Fordham asked Khin if she knew of any use of the concept of the four separate uses that are in the SD Plan. Khin responded no and it makes it two categories of non-residential and when you 20% up or down on retail, it automatically comes out of the other category and simplifies things immensely and they are good with that. Hendrickson agreed with Dianne. Attorney Fordham wanted to be sure there is total confidence and there is no where the four categories are essential. Khin responded everything she found, office and industrial were combined everywhere else. Council Member Olive asked clarity: combine O&I and then would apply the 80 - 120 rule to retail vs. O&I. Attorney Fordham advised this language had not been spelled out; noted the insert of text above i, ii, iii: could say: "the responsible person may only increase the retail square footage, increase or decrease the retail square footage by up to 20%", and asking if this worked. Council Member Olive added the only other category is O&I. Attorney Fordham added there was need for a catchall provision in an addenda that says all references the subsection iv the text shall be deleted; this needed to be spelled out clearly.

No. 7 an Encroachment Catchall in the SD Plan: Attorney Fordham referred to his memorandum and has been covered that basically says, anytime there is an encroachment in an Apex street right of way or an easement that an encroachment maintenance agreement will be required.

9. RCA and the EEP.

Language incorporating RCA into the EEP was anticipated.

No further discussion followed and Attorney Fordham stated this was the end of the memo and covers the staff's memo.

Hendrickson expressed his appreciation to staff and Attorney Fordham that worked to get the last things cleaned up and presentable, so action was before them. He appreciated the years of work and effort personally put into this and is very grateful. He hopes he had demonstrated their commitment to Apex and their commitment to make this a success. He hopes they had earned Council's support and would ask for it.

Tim Donnelly, Director of Public Works asked for clarity: Section 6.2.1 Town Standards would freeze the Town's specifications to the date the SD Plan is adopted. Noted if they are addressing road way cross sections and those needed for Veridea development, understood what they were trying to do, and they agree with that, but it also appears to freeze things like pipe materials and costs that may evolve as years go by. Attorney Fordham responded this was not intended to and could look at the language to see if it accidentally does that, but its intended to... we have already stated the places that are not trumped by the SD Plan and this is suppose to say the things that the SD Plan does control; those things specifically trumped by the SD Plan either in the standard specs, UDO or otherwise, those things are trumped and even if those particular regulations change in the future, if it's a change in a regulation that was trumped or tweaked, the regulation that was trumped is still trumped. But, the standard specs and details are not trumped except for the specific things in the SD Plan that calls out a difference from the standard specs and details and this is how he understands it. Donnelly was ok with this.

Mayor Weatherly recognized Khin for closing comments. She stated they had worked through the last four remaining issues and worked collaboratively with the developer and have had many meetings both with Council and separately and are at a point where staff recommends approval. Mayor Weatherly asked if Council had comments before entertaining a motion. Council Member Jones would like to see the documents with the written changes of those modified tonight and thinking they had been written down. He would like to assure when the motion is made, it's detailed. Mayor Weatherly called for a recess at 8:15 p.m. to allow Attorney Fordham and Attorney Reaves and staff to write out what was agreed to on the final documents.

The meeting reconvened at 8:55 p.m. Attorney Fordham presented the official copies for inclusion in the record dated May 10, 2011 and in front of the Mayor to be presented to the Town Clerk.

Attorney Fordham advised on potential motions for what was pending before Council and gave the logical order to which they should be addressed: 1) proposed amendment to the Unified Development Ordinance included in the agenda packet and a copy in the official copies, 2) 2025 Land Use Plan as presented by staff and in the staff report, and 3) a potential motion to approve the Rezone #09CZ07 including the SD Plan as presented and modified by the hand written text in the document Council has and the master official document, and as modified by the addendum including hand written text including the tables that are modified by addendum document dated May 10, 2011 by Shook Kelley.

Mayor Weatherly asked if there were a motion. **Action:** Council Member Gossage made the motion to amend the Unified Development Ordinance proposed in the agenda and the official one before them. Council Member Olive made the second to the motion. There was no discussion. The vote on the motion was unanimous 5 - 0. The motion carried regarding amendment to the UDO.

Mayor Weatherly asked if there were another motion. **Action:** Council Member Gossage made the motion to amend the 2025 Land Use Plan as presented. Council Member Olive made the second to the motion. There was no discussion. The vote on the motion was unanimous 5-0. The motion carried

Mayor Weatherly asked if there were a motion. **Action:** Council Member Gossage made the motion to approve Rezone #09CZ07 and the SD Plan as presented and modified by the hand written text on the SD Plan document and addenda 2 as modified by hand written text and the tables as modified by the modifications to tables document dated May 10, 2011, all documents placed before the Mayor. Council Member Jones made the second to the motion. Mayor Weatherly asked if there were discussion.

Council Member Jensen expressed concern with the development thresholds, Sec. 4.2.4 passed by Council, however concerned with the dwelling units vs. minimum required retail and office; the chart as approved allows up to 60% of the dwelling units, 4800 dwelling units to be installed while only installing 10% of the commercial square footage or 5% of the square footage of office and industrial and does not lend itself to a sustainable development as proposed. He can't imagine how you get 40% capture rate with those ratios as much as he wished he could figure it out. Stated as a result, the chart/table will allow for the largest condo/apartment complex to be constructed in Wake County with practically no services involved; there's not going to be a 40% capture rate; cars and vehicles will be out on the street. Developer has said they will have to build infrastructure to freeway and would minimize impact on Apex but still worries him. This is his major concern, however has others. Seems in some aspects of this plan there is no real matrix for measures and guesses they will see later on how much energy will be produced within development. He has looked at the rules set down that this development will be developed by and expressed we want to do this and we want to do that, but he can't get his hands around anything solid; to him this document is a trust me document without writing things down. He feels that if he goes ahead and votes for it, and he wants to vote for it; he truly believes we have to redesign our cities in this manner or will never solve our energy and gas problems and will continue to utilize foreign countries; and he wants to vote for it, but the fact is it doesn't balance with anything he can see and will impact people who voted for this council and may try to ensure it doesn't occur; he's going to have trouble bringing himself to vote for this because of this chart primarily. Other things, storm water and sustainable, asking why is this developer just going to meet the town requirements as they are, when Apex 1st Development came up to the plate and did the 10 year volume control and the 25 year flow control. We know Beaver Creek dumping into Jordan Lake, and the state has spent millions of dollars trying to fix the problem and indicates our stormwater requirements are not adequate. When he first looked at this he thought this was the best thing he had seen in a long time, but as its rolled, he can't get connections between these things to insure that it was a sustainable development; he says, "it's like a piece of high quality white fish that has been deep fried and served as health food," and this bothers him. He could give up on all of it, except he has too much trouble with the chart and the balance and it might as well not be there. If he could see a one line shift in the chart so that retail and office, so instead of seeing 37% of dwelling units, and only 2% of retail, then we would see 37% and require 10% and 5%; we need balance but need to be careful to allow the developer this much leave way; he's more concerned with the number of dwelling units vs. the other and if the chart shifted one line he could probably vote for this but he's just troubled.

Council Member Schulze expressed that he kind of shared his concerns but he's at the point where he's satisfied; his concern all along had been that he wanted to make sure there were enough checks/balances along the way, as he considers this an experimental project; this concept he knows has been done across the county and he would still say in experimental stages. He wanted to make sure that 10-15-20 years out, future Councils have ability to address issues or problems as they come, that they see, and it's probably not to the extent that he likes yet, but is satisfied given the pros and cons, that he will vote for it. He's convinced the checks and balances, at least enough of them, are in place that he can support this.

Council Member Jensen asked the Town's traffic engineer Dalton if there were 4800 houses, with practically no retail and no O&I what happens; do they need to do another traffic report; he was not sure where they go. Russell Dalton, Town Engineer responded they have to do traffic reports along the way as part of the major site plan, a different traffic analysis; in respect to the concern that there's too much traffic and you don't have the capture with the other uses, before they get retail and office on line and even with the significant amount of residential uses, they will still be below that total bank of trips of the whole development; 4800 homes, yes. Horne added they would best be served with two interchanges. Council Member Jones added that a series of things would have to happen, 15% of any development, with Dalton responding this was correct. Dalton stated even if it does happen to be a lot of residential up front, even though the table said it could happen, it's not necessarily what will happen, you would still have that check in place for the traffic that says people will be well served by other facilities. Still there's going to be congestion on NC55 up front and we all know that, but at least we have those checks in some of the earlier thresholds to get some of that major infrastructure started.

Council Member Gossage added not that he didn't share his concerns, but he had to shift how he thought about this from beyond the first few years of construction to build-out and beyond which is 20 years or longer, and look at it in that light, with a shift for him to look at things that way; that helped. Council Member Jensen explained it was the interim percentages he was concerned with, line 3 if reduced to 4000 and had discussed that, not wanting to badger, asking if he thought that could be reduced; just asking.

Mayor Weatherly asked if there were further discussion. Council Member Jones shared he had some of the same concerns but had to look at this as a series of tables and overlay of restrictions and flexibility and that one part of the SD Plan can be influenced by another and you can't look at this one table; he thinks there is flexibility there and also with that 15% restriction on any type development until a number of improvements are made and he couldn't remember the threshold, there has to be a connection to NC540 but there has to be another way to get traffic other than NC55 before they get to 4800 units. He was comfortable with all the staff time throughout all the departments in Town and that has gone into this, that he appreciates very much; he thinks this has been fleshed out to a degree, to say that it's been done due-diligent is definitely an under-statement. We still have the Environmental Enhancement Plan and Developer Agreement and site plans to come for review and approval. As far as the overall SD Plan, he's not sure it's the best thing he'd ever seen because he doesn't know how to compare; they've set there many times wishing they could see how this whole area developed rather than looking at 10 or 50 acres and here we have a 1000 acres to be able to do that. Again he appreciates what staff had done and what Hendrickson and his team had done to make that happen.

Council Member Gossage echoed some of Council Member Jones thoughts; staff had worked long and incredibly hard on this; all departments, but planning and legal, their countless hours and obviously folks from Lookout and folks from the community that had come and invested their time and given their feed back; this had not been a small thing, had been looked at for more than two plus years; due-diligence had been done and had worked extremely hard to close loop holes, to compromise, to find a project that works for the land owner, a project that works for the future of the community and at a time when our economy still struggles greatly, unemployment at 8 and 9 and 10% depending on where you are in North Carolina; this was something that could have an impact not just in our community, but in the region; the promise and potential is certainly worth the consideration.

Council Member Jensen agreed with that and with what Russell said; he disagrees with details here and at the same time he does agree; however, if we don't do something for live/work; if this becomes a live thing and doesn't work, then we all will be embarrassed; he will go ahead and vote for this. He doesn't like the way these charts are as being truly sustainable and as presented; he doesn't look at the housing mix as a situation that will be truly sustainable, maybe better than what we've got; it's the glory that's being presented and it's too bad; we will see what happens.

Mayor Weatherly closed by adding that he thought all would agree it would be a historic vote in Apex and clearly wanted to echo thanks to the staff, all of them that made this possible for them, because two plus years ago and in thinking about this, it was quite a daunting task to think about a 1000 acres here in Apex with a brand new first-ever development code that we were going to undertake and to consider, and if it hadn't been for the professionalism of staff to fair out those issues for us, we would never have been able to do it, but clearly the potential was there and thinks that's what had kept them all going. He continued that throughout North Carolina this is unprecedented and expressed to Hendrickson that the challenge was for him to make this all our legacy in a very good way for as many years as he could see towards the horizon; that this is going to be what sustains economic development in Apex and we will be the envy of other communities around us, he's quite sure. While it's always been his philosophy that it's not the role of government to tinker with one's business plan when it's your investment, your capital, and that he (Hendrickson) bares the risk for the success or failure, not those sitting up there, if things go not as they suspect, but, they got very close to tinkering with his business plan at times, when he knew exactly what it would take to make this venture a success; but, it is the Council's obligation to reflect community standards, make sure Town ordinances are clearly complied with, health and safety issues and those kinds of things; our deliberative careful process should be a good testimony to our community, that they looked at every possible issue and when they started the process that was concern to both of us and that they told him, it would be a long, slow and careful process; he knew he would have liked to move it along, but he thinks none of them would lose sleep over the fact that they rushed it or that they didn't look at certain things; clearly it took quite a while, but was a good function of government that they did do. Again, he appreciates him (Hendrickson) bringing this investment to Apex and thinks it will be clearly one that all will be proud of in years to come and the economic benefits to take the tax burden off residents, spread it out, clearly one that will move the generations to come frankly, we can get commercial and the quality of that, he thinks will enhance other projects not just this one for future developments.

Mayor Weatherly stated the motion was to approve Rezone #09CZ07 and SD Plan as modified and addenda 2 as modified and the tables as modified all the documents dated May 10, 2011 and placed before them, calling for the vote on the motion.

Council Member Jensen wanted to add, that they did tinker a degree with the business plan; he stated it was their job as Town Council to represent the people and find balance and the balance required tinkering with the business plan to try and mold this thing into the best they could possibly get. Mayor Weatherly responded that was included in what he had said, community standards, compliance with the ordinances, reflects community standards, health and safety, all those certainly are their functions. Council Member Jensen felt they had to tinker at times. Mayor Weatherly stated it's the philosophy of government, in that he believes in free enterprise system, where he puts up the business capital and assumes the risk. Council Member Jones called for the question.

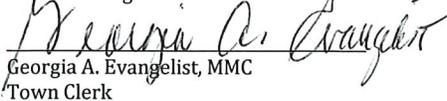
Council Member Jensen continued that if they were going to do this as a Town Council, they needed to focus on economic development and do what was needed to bring business into Town and means incentives, noting Apex was the only town in Wake County that doesn't consider incentives. He felt the only way this would balance out is if they work diligently to bring business, as they had worked to try and get this put together. Vote on the motion was 5 - 0 and unanimously approved.

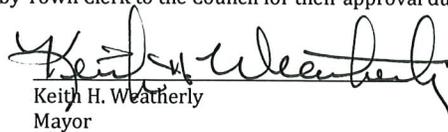
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:20 p.m.

Action: Council Member Jones made the motion to adjourn. Council Member Gossage made the second to the motion. Vote on the motion was 5 and 0. Motion carried unanimously.

The minutes for May 10, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their June 7, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for May 17, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 17, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance and extended a welcome to those in attendance. Council Member Schulze gave the Invocation.

PRESENTATIONS

Presentation 01: UNC Municipal Benchmarking Study by Mr. Dale Roenigk:

UNC School of Government conducts a fiscal benchmarking study annually involving local governments across North Carolina. The purpose of the study is to enable governments to measure performance and costs in a meaningful empirical data supported way. Goals of the project were: accountability, management decisions and continuous improvements. The report presents performance and cost data for local government services. Some cities have improved services, identified problems and saved a substantial amount of money. Annual cost of the study project is \$10,000 per municipality. The Manager has included the cost for the study in his recommended FY2011-12 budget and recommends participation. Council by consensus felt the study would be beneficial to the town.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Attorney Fordham offered a substitute document for #6. **Action:** Council Member Schulze made the motion to approve the consent agenda with the substitute document for #6. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for Council meeting of May 3, 2011.
2. Minutes for Personnel Committee meeting April 25, 2011.
3. Annexation Petition #462: William T. Wilson, Sr. (10.322 acres); Florence Morrison, Family Living Trust (13.613 acres), and Betty Sue Morrison (0.011 acre) or 24.998 total acres contiguous to the Town's corporate limits and located on Evans Road (developer wants to tie to municipal water and sewer facilities);
1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for June 7, 2011.
4. Set required Public Hearing for proposed FY2011-12 Annual Budget, Tuesday, June 7, 2011 at 7:00 p.m.
5. Budget Amendment No. 10: Code Red weather notifications, erosion control measures along Peakway, and insurance reimbursement for the street sweeper.
6. Ordinance No. 2011-0517-04 Amending Section 12-21 of the Apex Town Code to accommodate Town of Apex, Site 14 Water and Sewer Extension Policy, and related to the Western Wake Regional Water Reclamation Facility.
7. Personnel Committee recommendation to adopt new Position Classification Plan for FY11-12.
8. Tax Report for Apex approved and accepted by Wake County Board of Commissioners May 2, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. **Action:** Council Member Olive made a motion to consider New Business #2 prior to Public Hearings due to the volume of attendees. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0. The Agenda was set as amended (minutes for New Business # 2 is in New Business section).

PUBLIC HEARINGS

Public Hearing 01

Senior Planner June Cowles - Planning Board met May 9, 2011 and unanimously recommended approval.

Rezone #10RZ08: Town of Apex, applicant, Hunter Street Park, 1250 Ambergate Station contains 10.57 acres; Town seeks to rezone the property from Planned Unit Development Conditional Zoning to Conservation Buffer. Staff presented the planning report which is incorporated by reference as a part of the minutes and recommended approval of the rezone. Mayor Weatherly opened the public hearing at 9:16 p.m. and with no one addressing this item, closed the public hearing, referring matter to Council. **Action:** Council Member Schulze made the motion to approve Rezone #10RZ08. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 02

Senior Planner June Cowles - Planning Board met May 9, 2011 and unanimously recommended approval.

Rezone #10RZ09: Town of Apex, applicant, Seagroves Park, 201 Parkfield Drive contains 11.609 acres; Town seeks to rezone the property from Planned Unit Development Conditional Zoning to Conservation Buffer. Staff presented the planning report which is incorporated by reference as a part of the minutes and recommended approval of the rezone. Mayor Weatherly opened the public hearing at 9:17 p.m. and with no one addressing this item, closed the public hearing, referring matter to Council. **Action:** Council Member Jones made the motion to approve Rezone #10RZ09. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 03

Director of Planning Dianne Khin - Annexation Petition #461: Town of Cary for Western Wake Partners (WWP), petitioned to annex 23.558 acres at (non-contiguous), 2916 Olive Chapel Road into the Town's corporate limits; Western Wake Partners propose a pump station requiring Apex public utilities; rezone hearing for the property follows the annexation #11CZ10. The property is in the Apex jurisdiction and part of the watershed buffer; WWP must annex the property and will build the pump station. Town of Cary is the lead agency and owner of the property. Tim Donnelly Director of Public Works reported the size of the lot would allow flexibility and trade of lands with the Corp of Engineers to mitigate wetlands impacts and will average out density and allow green space. Apex will eventually be named on the deed. Staff recommends approval of the annexation petition. Mayor Weatherly opened the public hearing at 9:20 p.m. and with no one addressing this item, closed the public hearing, referring matter to Council. **Action:** Council Member Gossage made the motion to approve Annexation Petition #461 as presented. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 04

Planner Lauren Simmons - Planning Board met May 9, 2011 and unanimously recommended approval.

Rezone #11CZ10: Town of Cary for Western Wake Partners, applicant/owner; Beaver Creek Pump Station contains 22.998 acres; seek to rezone from Wake County Zoning R-80W to Rural Residential Conditional Zoning; rezone of the property will allow for construction of a pump station requiring Apex utilities. Staff presented the report which is incorporated as a part of the minutes and referred to by reference; staff recommends approval of the rezone and notes it is consistent with the 2025 Land Use Plan for very low density and is the first rezone of the site. Permitted uses for rural residential district are stated in the report. Mayor Weatherly opened the public hearing at 9:21 p.m. and with no one addressing this item, closed the public hearing, referring matter to Council. **Action:** Council Member Jones made the motion to approve Rezone #11CZ10. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 05

Planner Lauren Simmons - Planning Board met May 9, 2011 and unanimously recommended approval with the condition.

Rezone #11CZ11: Stuart Jones/Jones & Cnossen Engineering, PLLC, applicant/owner; Olive Chapel Park PUD Amendment and Master Subdivision Plan, property contains 23.11 acres; seek to rezone Planned Unit Development Conditional Use to Planned Unit Development Conditional Zoning (amendment). Staff presented the report which is incorporated as a part of the minutes and referred to by reference and noted the site was former L'Hermitage at Beaver Creek PUD and recommends approval of the rezone amendment with one condition: all existing utilities that are extra or not serving a new property will need to be removed at the Town's water and sewer main. A utility plan will be approved at the construction submittal phase of the project by staff; applicant proposes single family lots instead of townhomes for the master subdivision plan; subdivision has been renamed Olive Chapel Park and proposes smaller minimum lot sizes for the single family homes in order to change the townhome lots to single family lots.

Mayor Weatherly opened the public hearing at 9:25 p.m. Stuart Jones, Jones and Crossen spoke in support of this item, noted townhome market had flat lined and will build single family homes on existing streets and confined as they were built for townhomes. Lot width minimum 50' and will change lot sizes from 4500 square feet to over 6000 square feet for the single family lots. Existing homeowners are excited about the single family homes to complete the subdivision. Mayor Weatherly closed the public hearing, referring matter to Council. **Action:** Council Member Gossage made the motion to approve Rezone #11CZ11 Amendment and Master Subdivision Plan. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearings

OLD BUSINESS

Old Business 01

Manager Bruce Radford: Possible motion to approve the Phone System Report and 1) authorize Town Manager and Town Attorney to finalize a Business Service Agreement with Verizon, and 2) authorize Town Manager to execute same. Manager Radford presented the phone system report which explained a significant cost-saving solution (\$200,000) using the existing phone system (Nortel); services will be the same with like equipment vs. replacement of the system and is included in the present FY2010-11 budget. RFP's were received from Verizon and FeatureTel; he expressed concern with the hosted system FeatureTel; staff recommends approval of Avaya - Verizon service and to authorize Town Manager and Town Attorney to finalize a Business Service Agreement with Verizon, and 2) authorize Town Manager to execute same. He offered this was a better alternative for the Town and advised in the future would need to increase features of the system to include a voice mail system; estimated cost \$14,000 to \$18,000. Council asked questions and it was noted FeatureTel quote included voice mail system. Mayor Weatherly referred the matter to Council. **Action:** Council Member Jones because of staff's research and found to be a better alternative, made the motion to approve Verizon service agreement to be finalized by Manager and Town Attorney and signed by Manager. Council Member Schulze made the second to the motion. Motion carried, 3-2 vote with Council Members Gossage and Council Member Olive voting no.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.**

David Zlotchemko asked Town: 1) provide park connectivity, noted a clear path to Apex Barbecue from Crocketts Ridge, Bella Casa and Kelly Road and on Holland Road and noted a green area Beaver Creek to connect to Kelly Park to Colon Drive and Old US1 and 2) provide parking at crossing of the American Tobacco Trail on Olive Chapel Road. Manager Radford advised costs associated with sidewalk to Kelly would not be funded in the next years, was possible but came with a price tag. Council Member Jensen added it comes down to money and would have to raise taxes 2 or 3 cent, with Zlotchemko responding it was absolutely ok with him and would be glad to collect signatures from neighbors; some were in support of clearing the path for 5 neighborhoods, and being a watershed, asked why not put a greenway through it.

End of Public Forum

NEW BUSINESS

New Business 01

Fire Chief Mark Haraway - Possible motion to (1) cease provision of EMS Services and relinquish operations of EMS services and personnel to Wake County effective June 29, 2011; (2) declare EMS vehicles and equipment surplus effective June 29, 2011; and (3) authorize Town Manager to approve and execute an Agreement and other necessary documents between the Town of Apex and Wake County to facilitate the transfer of EMS services, personnel, vehicles and equipment to Wake County effective June 29, 2011. Fire Chief gave explanation behind the request advising when the Town assumed responsibility of EMS provision, the intent of the Council was that EMS services would be self-sustaining, requiring no additional town resources, and has been proven not to be the case. Based on new revenue modeling strategies of Wake County, the implementation of a new Wake County Budget Manuel, implements a "shared cost" model for all existing contract agencies; the continued additional costs to manage an EMS Division within the Town, would have to be subsidized by \$170,374. In operational dollars not only from FY12 but also in future years based on projected annual revenues for the Apex EMS Division. Wake County has agreed to take over the Apex EMS provision with no reduction in service to the Town's citizens and no subsidy for services from the Town of Apex. All EMS employees will be placed in a position and have no interruption in employment. His recommendation to relinquish the Apex EMS operations was a business decision based on budgetary shortfalls. Council discussed coverage service provisions for the key coverage area and associated costs that will likely continue to increase in the future.

Dr. Myers, Medical Services Director, stated Apex is the only municipal EMS that remains in Wake County, and expanded on the numbers: budgetary provisions and revenues, reporting on the geographic mix of the area and response times. He advised the County would be accountable and responsible for EMS services and by General Statute "County shall establish", always had been a county service and was not a municipal service and was not a good decision for Apex to hold on to EMS long term, reporting on Cary being a private service and not subsidized by the County and Garner EMS services; advised the transition date would be June 29, 2011 and acquisition of the EMS services was contained in the county budget to be voted on June 20, 2011. Council Member Schulze was reluctant to relinquish the services and wanted to look at the numbers further, not wanting to remove Apex name from the service. Dr. Myers reported the County Manager had said no subsidy money will be provided to local governments for EMS services. Council Member Jones reported he had served on Cary EMS board and the financing and billing system was not so simple to understand and the point about not giving up what they thought they had - they never had anyway; shared concern as well with removing Apex name from the services and for services provided to Apex but looking at reality, Apex truck leaves and another is sent from where ever to cover our key area, and he was unsure about how to deal with this if it were not part of the county mechanism; noted a mutual aid agreement was in place; he noted numbers could get lost in all of this and was a matter of policy, asking are we doing the right thing. Chief Haraway noted an ambulance shows up and is the key, and name only was autonomy on face, they were doing business with County. Timing and deployment of ambulances were discussed further with the point being noted that permission comes from the medical director with EMS review commission to deploy ambulances, and the nearest ambulance responds. Council Member Gossage noted that parts of this were clear but not so much to make a decision tonight. **Action:** Council Member Schulze made a motion to refer this to the Finance Committee for better understanding of this before making a decision. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0. (Note: Finance Committee meets May 26, 2011).

New Business 02

Mayor Pro tempore Bryan Gossage - Council Member Gossage offered options to amend Town Code: Sections 14-28, 18-11 and 20-143 to allow for responsible recreational use of streets and sidewalks. Homeowners had petitioned Town to allow cul-de-sacs to be designated play streets. His opening thoughts: shared citizen concerns, addressed current ordinance, lacking flexibility and common sense, and was the wrong law for Apex; proposed revisions to the code would set guidelines and responsibilities while keeping children safe and keeping people from abusing the law if passed; homeowners asked in April the responsibility fall on them, the parents and guardians should they choose or not to allow their children use of the streets and sidewalks for recreational purposes; the decision to allow their children to play in streets, was goes against law, and was a hard decision for them to make, noting it should be with parental choice, with some already allowing play and placing equipment in the public streets and sidewalks. Manager Radford called on staff to present findings why the current ordinance should not be amended.

Chief of Police Jack Lewis: requested ordinance not be amended because it works: keeps citizens safe and roadways free of obstructions; streets are designed for vehicle travel, not play and folks should rely on parks and greenways for recreation. He couldn't support the proposed amendment, was wrong and contradictory however still means you cannot lawfully play in the street. He was assured parents want to provide supervision but not an absolute guarantee; rules, regulations and laws should balance for the good of all; stated the law is a preventative approach and reported since 2005 zero fatalities/critical injuries have resulted from children at play in streets, hit by vehicles and Apex deemed one of the safest communities in the state; he didn't want to tell a parent his child had been killed when it could have been prevented; expressed concern with distracted drivers.

Chief Mark Haraway, Fire Department, stated most of his concerns were covered; reported variations in lengths of cul-de-sacs, noted risks children take by playing in the streets and potential for risk coming from service vehicles; called attention to NC Safe Kids program, an effort to protect children; he would be remorse to change something that has proven to work and couldn't support the amendment that would allow children to play in streets.

Russell Dalton Town's Traffic Engineer, reported traffic injury statistics: out of 59,000 pedestrian injuries 13,000 were age 14 and younger; National Highway Safety Institute teaches children not to play in or around cars; noted parents over estimate children's abilities in street crossings and how well they perform; volume of work/play crashes occurred on roads with 25 mph or less and strongly suggests children at this state are at significant risk, and encouragement of such activities put more children in harm's way for longer periods of time while they are distracted; concern that encouraging play in the street will be a source for increased complaints for Town to make streets safer for those children, and Town has no way to respond; police receive regularly, complaints of vehicles speeding through neighborhoods, and advised most streets do not warrant traffic calming devices; does not expect cul-de-sacs to warrant traffic calming devices; many residents express concern about driver behavior and would appear incompatible with use of streets as playgrounds; advised he denies requests for "children at play" signs, noted it's not listed in Uniform Traffic Control Device Manual; there's no evidence that warning signs reduce speeds or crashes; claims are supplemented by common sense observations that are not clear or enforceable, proves a false sense of security for those that may be at risk; exposes government to liability, gives false impressions that areas without signs do not have children at play, represents unnecessary costs that propagates signs; violates principle that signs should be based on engineering, it's not political decision making. Concluded streets are not designed for play, made of asphalt/concrete, there are metal covers and drain inlets, are lined with drives and used by commercial and service delivery vehicles; stated safety measures can be in place, but he can't support making a street surface a safe place for children to play.

Recreational Use of Streets and Sidewalks

Mark Willing, Town Safety Officer reported on public safety standards and efforts by Town to provide parks for play and inspected weekly to maintain safety; addressed street barricades are for festivals and provides police protection with general liability insurance required; advised if town sanctions the playing in town streets they are asking children to share the roads with vehicles. He checked ten municipal ordinances, reporting eight prohibited children using streets for recreation: noted Town of Cary was silent on the issue and Holly Springs has an ordinance for play streets, but advised that has not been removed, however have no active play streets. In conversations with town's insurance provider, for the Town to allow such would result in an increase in town's liability coverage costs, noting Town has duty to inspect streets, similar to the parks, and with a good risk could lose coverage because due to negligence and having contributed to it; there were other general ramifications should the Town sanction use of public streets for recreational purposes.

Attorney Fordham stated statutory duties of the Town covered by G.S. §160A-296 and expanding on those and things Council should consider: 1) Town's duty is to avoid unnecessary obstructions in roadways; 2) does Town have statutory authority to allow kids to play in streets; 3) cul-de-sac ends vs. playing in thoroughfare portion, which could be obstruction; 4) associated repair and maintenance of streets; 5) could allowing playing in the streets increase town's potential for liability with potential law suit and with incurred costs; 6) advised anyone under the age of 7 can't be held contributable for negligence, and must consider at what age does a child have ability to look after themselves.

Mayor Weatherly opened the floor for Council to discuss same: Council Member Schulze asked could Council endorse silence in the issue. Attorney Fordham would have to do additional research before giving answer; noted Apex unique in that the law currently prohibits same, and to allow it and be silent, was unsure. Council Member Schulze wanted to keep the option of silence regarding enforcement of the ordinance open. Mayor Weatherly asked if the Town passively allowed obstructions in the streets, the ramifications. Attorney Fordham had no precise answer on this point and would have to do additional research before giving answer. Council Member Jensen asked if cul-de-sacs could be barricaded if there were 100% of the citizens in the cul-de-sac agreeing for it to be barricaded temporarily. Attorney Fordham responded the general public has the right to travel on the public streets and can't deter others from traveling on the streets; street closures can be permanent and temporary and considers how it affects public; private streets can be closed anytime.

Manager Radford advised staff had nothing else to offer.

- Noted lengths of cul-de-sacs: some 500 feet, some 1000 feet some, up to a mile or more.
- Accidents on cul-de-sacs: Chief Lewis was not prepared to report on this; perhaps 1000 annually in Apex with most occurring on NC55 at US1 and US64, with rest in neighborhoods between pedestrians, cars vs bikes. Focus should be on responsibility.
- Claims for damage by town vehicles: Mark Willing response: 2/3 in the past five years, noting some of those were basketball goals left in roadways, and struck by utility vehicles. Tim Donnelly reported estimate 5-10 mailboxes struck by utility vehicles and were attentive to their placement but still hit them; town repairs same without reporting.
- Council Member Gossage questioned the increased responsibility for the town to maintain streets, reference to smaller wheels. Attorney Fordham responded it was Town's responsibility to inspect and maintain and Tim Donnelly addressed associated costs and added effort to meet the maintenance demands and had addressed this during the retreat, noting need for more roadway maintenance money, the risks for cars and more so for bikes.
- Council Member Jensen addressed limitations for bikes on streets. Chief of Police Lewis noted helmets and visibility and safety; risky to ride on public streets; rules as written are that you can ride on street with parental supervision recommending riding on greenways.
- Council Member Gossage addressed challenges regarding age limitations.
- Council Member Gossage addressed the fine for the equipment being left in the street

Mayor Weatherly opened the floor for those in support of the proposed amendment to speak: Laden Smith, high school student, residents Dan Isaac, Margie Crater, David Zlotchemko, and Allison Bowser. Mayor Weatherly opened the floor for those against the proposed amendment to speak: no one spoke.

Mayor Weatherly asked Council if there were other comments: Council Member Jensen asked how they got to this point with the ordinance, reporting there were no problems with this in his neighborhood. Manager Radford reported he had a problem with the idea that the Town would sanction allowing children to play in streets and become an issue. Council Member Gossage stated children were currently playing in cul-de-sacs already and leaves a difficult choice for parents to allow their children to do so knowing they were going against the law.

Council Member Jones commented on his youth, when parents taught their children not to play in the roads, when bikes were ridden on sidewalks and when you saw no bikes signs, you would walk or take the alley, and reminded there was minimal pedestrian traffic however, he does have a problem with bikes in front of business fronts, and in his day to tell someone to go play in the street was a derogatory remark. He shared concern with option 2 which he thought was to be the preferred option for Section 14-28: cul-de-sacs could be 500' or longer, and way written brings up the enforceability issue; and with 14-28(b)(1) impede vehicular traffic differs than impede pedestrian traffic. He offered he could not support this, however, could support allowing bikes on sidewalks in a reasonable manner. He told his children and tells his grandchildren not to play in the street.

Recreational Use of Streets and Sidewalks

Council Member Schulze respects staff's comments and offered that he did support playing in the streets and cul-de-sacs, thinking that it is safe under parent supervision; sidewalks are built away from the roads and with zero accidents in general in cul-de-sacs, he sees no problems and with driveways are not much different. Thinks they could work out liability issue and insurance rates, and fines and fees for leaving equipment in the streets. Chief of Police Lewis respects his decision, however didn't want this to be taken lightly.

Council Member Olive remembers signs as well during his youth, when bikes were valid and he too would support residential sidewalks for bikes, commenting on age of maturity level being responsible and having the ability to understand the vehicle laws; have to be 16 before driving on the streets and the law was inappropriate related to riding on sidewalks. He asked for clarity regarding leaving obstructions in a state of dis-use. He considered the bulb of the cul-de-sac or circle part to be a safer place to be vs. the straighter section not being as safe because of the vehicles. He understood police would get around the issue "impede".

Council Member Gossage and Olive both felt 100 to 150 feet was a reasonable distance for cul-de-sac use. Council Member Olive noted the Ordinance was a 1973 decision and was an opportunity to make a smart decision for the children, and would support something like this, a common sense thinking idea and felt it was a small price to figure out and wanted to move forward with this.

Council Member Jones questioned families over from other areas coming and wanting to play hockey games in cul-de-sacs that they didn't live in, asking would they want it to be allowed or not, and wanted to go on record that he did ask this.

Council Member Jensen noted there were hundreds of cul-de-sacs with Council Member Gossage stating there were 300 of them. Council Member Jensen wanted to address playing in cul-de-sacs after sunset, maybe not a good idea, maybe setting a time of one-half hour after sunset and in the bulb of the cul-de-sac and not near the intersection.

Mayor Weatherly asked Chief of Police about their interaction with children. Chief of Police reported they interact with children regularly and recognize them for their safety provisions in place and often the violations, wanting the right balance; he didn't mind taking the shots, as he didn't enact the ordinance; he made comparisons regarding safe guards in place; addressing encouragement and giving authorization; noted families change within a cul-de-sac, however when parents are absent or reasonableness escapes, someone other than police would have to enforce the rules and advised police have no authority "no civil penalty for enforcement." All have the same rights and to sanction this or encourage this is a concern to him; he sees children in streets everyday and has a careful eye when it comes to safety and putting them at risk, and to stand silent he was not one to do so, and to say that this doesn't exist anymore makes a monumental statement, he makes decisions based on his conscious and what's right; he's obligated to express the best case for everyone when it comes to safety and couldn't endorse this.

Mayor Weatherly continued council addresses and are accommodating to the requests from its citizens, is what politicians do and was their duty to provide for public safety; he noted the strong passion of police and fire and the professional employees behind their stated reasons and recommendation to Council, that they not change the ordinance for the reasons expressed. He was not aware Council had ignored any recommendations when it involved public safety issues. He noted the strongly held views, doesn't conflict with their job to enforce the laws, keeping public safety first. He addressed liability issues and the town would be at jeopardy and was more serious, maybe tweaking with suggestions, believed he had heard the two chief's compelling reason to pause and not go willy-nilly and then regret it later.

Mayor Weatherly asked how to proceed: Council Member Schulze stated staff knew their intentions and gave his support to allow for play in cul-de-sacs with guidelines and restrictions. Council Member Gossage knew this was not a perfect draft, but knowing their thoughts regarding time of age, locations and length of cul-de-sacs, staff had enough language and information to get this done and appreciates all the input; would like staff to return within 60 days to finalize same. Council Member Jensen added there needs to be more mini-parks built in subdivisions and run by HOA and are headed that way, that bikes on sidewalks was different. Consensus of Council was to consider same at the July 19, 2011 meeting.

New Business 03

Mayor Keith Weatherly - Possible motion to approve three-year appointments to the Parks, Recreation, and Cultural Resources Advisory Commission and to make a one-year appointment for the Chair and Vice Chair positions. The terms of Vice Chair Greg Coley, Member Dave Duncan and Sr. Citizen Representative Member Carol Hoffman expire on 5/25/11. It is recommended the appointment/reappointments be made for 3 year terms, expiring May 2014 as follows, also recommending reappointment of Chair and Vice Chair terms:

Reappoint Carol Hoffman and Greg Coley for 3 year term to expire May, 2014

New Appointment: Tom Colwell for 3 year term to expire May, 2014

Reappoint Chair: Angela Reincke and Reappoint Vice Chair Greg Coley for 1 year term to expire May, 2012

Mayor Weatherly referred the matter to Council. **Action:** Council Member Schulze made the motion to approve the PR&CR Commission appointments. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

New Business 04

Manager Bruce Radford recommended same.

Cancel Council meeting for July 5, 2011: Mayor Weatherly noted it had been practice to cancel the first meeting in July once the budget was approved and allows for vacations, and noted at this point there were no items for the July 5, 2011 meeting; referred the matter to Council. **Action:** Council Member Gossage made the motion to cancel the meeting for July 5, 2011. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of New Business

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

Mayor Weatherly called for a motion to move into the Work Session at 10:40 p.m. for the purpose of reviewing the proposed FY2011-201 Budget. **Action:** Council Member Schulze made the motion to move into the work session. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

Work Session 01

Manager Radford stated the proposed FY2011-12 budget was balanced with no tax increase and with the ad valorem tax rate remaining at \$0.34 per \$100 valuation. Manager Radford called on staff to give an overview of the proposed. Director of Finance gave an overview of the General Fund Revenues and reflects a \$97 million increase in tax base from current fiscal year and anticipates collecting \$320,000 more in ad valorem taxes over last fiscal year. Fee changes will increase garbage rates by 10 cent for trash carts and recycling by 3 cent. Manager Radford reported 26 personnel positions were requested and due to budget constraints recommends 6 most critical positions and recommended by the Personnel Committee: Code Enforcement Officer, Customer Service Specialist, Telecommunicator, Police Officer, Powerline Right of Way Technician and Utility Maintenance Worker. Human Resources Director reported consumer price index shows a 5% increase over the past two years and noted town employees had not received cost of living or merit pay increase during the last fiscal year; staff supports merit pay and would like to see it return. Manager has recommended \$1000 base pay increase for all Town employees to offset inflation, effective July 15 at a total cost of \$373,000. Council Member Gossage, Chair of the Personnel Committee stated the Committee had reviewed the Manager's recommendation for the \$1000 increase in base pay for all town employees, however did not recommend it, but did recommend the \$373,000 be included in the salaries line of the budget, and would review optional pay methods and return with a recommendation for Council's decision as to how the increase should be paid.

Action: Council Member Gossage, Chair of the Personnel Committee, made the motion to refer the pay distribution discussion to the Personnel Committee to continue study on how it should be disbursed to town employees. HR Director gave a review of the proposed compensation increase and advised optional pay methods were offered to the Personnel Committee to consider: 2.5% merit pay at a cost of \$263,575, and a blend option for \$500 in base pay plus a 1.5% merit pay; Personnel Committee wanted to consider other options, advising Council Member Olive of the Personnel Committee, had offered a 3rd option to consider, but HR Director advised the Town did not have the funds available to implement pay at this level. Council Member Olive advised it would fit the 2% average across the Board. Discussion continued regarding performance levels, job market, inflation, merit pay, turnover rate, and further exploring optional pay methods. Council Member Olive made the second to the motion. Mayor Weatherly gave support to the Town Manager's recommendation for the \$1000 base pay for town employees, considering it COLA but not merit pay when they hadn't funded COLA for living expenses. Council Member Gossage didn't feel they could continue to consider COLA as one of the pay options. Council Member Olive didn't want to assume COLA but rather look at other pay options and Committee would then make a recommendation to Council. Motion carried unanimously 5-0.

HR Director continued it had been common practice to make a market adjustment to salary ranges to keep salaries competitive for recruitment and retention, however noted surrounding communities were not adjusting their salary ranges so staff was not recommending this adjustment. Position Classification Plan for FY11-12 was recommended by the Personnel Committee and Council had approved this. There will be a 1.55% required increase in the Retirement System Contribution for town employees spread across all funds. There is a 2.5% increase in funding health insurance plan (Town is partially self-funded). Dental plan will see a 15% increase in funding; the 2.5% health plan funding will cost \$42,682 and the 15% funding in the dental plan will cost \$21,744; those increases can be funded from the Town's Health and Dental Fund which presently has a balance of over \$200,000.

Manager Radford gave an overview of the Capital expenditures at a cost of \$518,412. Proposed budget recommends \$630,000 to be applied to street expenses; Town has done a paving study and reflects there should be a bottom line figure of \$1.1 million annually for street maintenance, which indicates the town is under budget. Council had discussed need for additional street maintenance monies, but Manager Radford informed the Town only has the ability to budget and pay \$630,000.

Director of Finance continued the over view of the water and sewer budget and projects a 19.8% increase in revenues, and rate increase of 7.75%; rate increases were planned and funds the Town's share of the projected cost of the Regional Water Reclamation Facility.

Electric Fund reflects a 4% increase in revenues and there is no change in rates. There will be a decrease in the electric fee schedule: delinquent penalty level of 5% will be reduced to 1% to be more in line with other service providers and be of help to area churches and distressed customers. \$710,000 is proposed for Capital Outlay Improvements; \$208,000 is proposed for Capital Outlay Equipment.

Manager Radford advised this ends the over view of the proposed FY2011-12 budget. Mayor Weatherly stated the Budget Hearing is scheduled for June 7, 2011 and will have a question and answer period at that time.

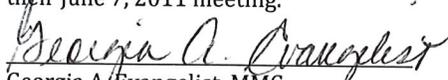
End of Work Session

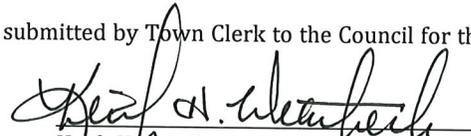
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 11:25 p.m.

Action: Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried 5-0.

The minutes for May 17, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their June 7, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for June 7, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 7, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order. Council Member Olive gave the Invocation.

Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Presentation 01

Mayor Weatherly presented a Proclamation to the Apex High School Women's Lacrosse Team, 2011 State 4A Champions.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action with Consent 2 Veridea minutes modified and Consent 13 moved to New Business. **Action:** Council Member Jones made the motion to approve the Consent Agenda as amended. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for Council meeting of May 17, 2011.
2. Minutes for Council meeting of May 10, 2011 Veridea.
3. Minutes for Personnel Committee meeting of June 1, 2011.
4. Rezone #10RZ08 Ordinance: Town of Apex Hunter Street Park, 1250 Ambergate Station.
5. Rezone #10RZ09 Ordinance Town of Apex Seagroves Farm Park, 201 Parkfield Drive.
6. Rezone #11CZ10 Council Statement and Ordinance Town of Cary, 2916 Olive Chapel Road.
7. Rezone #11CZ11 Council Statement and Ordinance, Jones & Cnossen Engineers, Olive Chapel Park.
8. Annexation Petition #460 Ruth C Maynard, owner, Marcia Maynard Lund and Gray M. Roth Executors, petitioning to annex 0.279 acres non-contiguous to Town corporate limits and located at 3525 Old US1 Hwy and known as New Hill Post Office; Resolution Directing Clerk to Investigate Petition; Certificate of Sufficiency by Clerk; and Resolution Setting Date of Public Hearing June 21, 2011.
9. Annexation Petition #463 Don and Callie Sorrell, owners, petitioning to annex 0.529 acres non-contiguous to Town corporate limits and located at 1221 Salem Church Road; Resolution Directing Clerk to Investigate Petition; Certificate of Sufficiency by Clerk; and Resolution Setting Date of Public Hearing June 21, 2011.
10. Set Public Hearing for June 21, 2011 Town Council meeting for Rezone #11CZ09 and Master Residential Subdivision Plan, rezoning from RR (Rural Residential) district classification to LD-CZ (Low Density Conditional Zoning) district for property located at 8129 Green Level Church Road containing 6.8 acres.
11. Set Public Hearing for June 21, 2011 Council meeting for Rezone Amendment #11CZ12 and Master Residential Subdivision Plan, rezoning from PUD-CZ (Planned Unit Development Conditional Zoning) district classification to PUD-CZ (Planned Unit Development Conditional Zoning) district for property located at 1909 East Williams Street containing 54.65 acres.
12. Set Public Hearing for various amendments to the Unified Development Ordinance.
13. Budget Amendment No. 11 for donation to Recreation Department; Capital Project Ordinance Amendment Electric Capital Project Fund for increased expansion of electric system, and design costs of Public Works building expansion; and Capital Project Ordinance Amendment Water/Sewer Capital Project Fund for two projects water treatment plant (New Business).
14. Downtown Merchants request to allow street banners for the Apex Jazz Festival, Saturday, September 17, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Mayor Weatherly asked Old Business 01 be heard ahead of the public hearings. (minutes appear in normal order). **Action:** Council Member Jones made the motion to amend the Agenda as requested. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0. The Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing 01

Public Hearing regarding proposed FY2011-12 Annual Budget, a question and answer session was held, and the Personnel Committee recommendation presented. Mayor Weatherly opened the public hearing at 8:27. Sean Conley, Apex Police Department stated the Consumer Price Index had risen and insurance rates increased, with income levels having no adjustment in 2010-11, had placed him behind in salary average; noted pay and benefits going away and reported surrounding agencies had given increases to employees; supports proposed increase to employees, does not support force ranking merit system; asked Council to bring back pride to the employees, give incentives to employees to stay and was a small price to pay. Blair Myhand, Apex Police Department stated he had taken a cut in pay to come to Apex and will be here even when times are difficult; stated money will attract people elsewhere and to keep the level of service expected employees should be compensated as you lose folks if the money isn't there and services suffer. Mayor Weatherly closed the public hearing at 8:45 p.m.

Council Member Gossage stated Personnel Committee had recommended \$373,000 be allocated for some type merit pay to employees which is about 2%; noted other places have no raises or bonus and further Committee recommends Option D for salary disbursement for this fiscal year. Council Member Olive expanded on past history of salary distribution and noted Committee had looked at the smartest way to address those monies and reviewed various options, as well as impacts with distributions, and not supporting the proposed \$1000 to each employee looked at how this should be done more efficiently; his position was to run the Town efficiently and spend money wisely and noted sometimes there could not be raises given; noted with Personnel Committee's recommendation for salary distribution Option D, it addresses performance levels, controls cost and spends money wisely, was very conservative and was a step in the right direction in moving forward with Option A which would be better long-term noting Option A could not be implemented immediately; expanded on performance levels - top performers noted as "Rock Stars" down to unacceptable performance. Manager Radford stated the proposed FY11-12 budget recommendation a \$1000 be given to each employee equal to a 2% increase, having considered the cost of living index, and would equal about \$40 per employee over the course of the year. Mayor Weatherly commented on past COLA and performance increases and gave his support in that he felt all employees should receive some additional compensation. Council Member Jones agreed to reward the employees, noting they were all necessary and should be recognized; discussed performance levels and inflation costs over the past years; and further haven't been able to keep up with the cost of living. Council Member Gossage felt they should move to more of a business approach than a government approach. Mayor Weatherly recognized the Human Resources Director to report on the employee morale.

Human Resources Director Green stated employee morale was down and were behind in the salary averages and supports the recommendation proposed for \$1000 across the board to each employee and knows this is not a long term solution, but felt it was the best approach for this year, having always put forth to employees that we are all in this together, and expressed she had concerns should the Town move forward with Option A Forced Ranking System that could be implemented in FY2013. Mayor Weatherly commented they should make this whole with cost of living and then performance merit. Council Member Jones couldn't say this was unacceptable and would have to look at this. Council Member Jensen agrees \$1000 for each employee now; simplicity was COLA as there had been no COLA in the past year however, believes in a performance base merit pay system. Council Member Schulze agreed not to give to those that were unacceptable performers; \$1000 was a nice gesture since there was no increase last year and applauds the direction the ranking system is moving in which would more accurately reflect employee performance. Council Member Olive commented that there are currently no employees in the Unacceptable category and we have almost 40% in the top category. This is called performance rating inflation and has nothing to do with importance or impact on morale, but assures equity across departments and sets performance standards and protects assets and was a good use of money. Council Member Gossage acknowledges with \$373,000 there will be a much larger increase to some. Mayor Weatherly commented a higher percent would be going to lower pay employees, understanding there's no problem with that. Mayor Weatherly asked if there were a motion.

Action: Council Member Gossage stated Personnel Committee recommends and placed his statement in the form of a motion, to move forward with Option D for distribution of merit pay with the recommended \$373,000 this FY and moving towards Option A as the Committee did not support the Town Manager's proposed \$1000 for each employee. Council Member Olive made the second to the motion. Vote on the motion was 2 for and 3 against with Council Members Jones, Jensen and Schulze voting no. Mayor Weatherly stated the motion fails. Mayor Weatherly asked if there were another motion. **Action:** Council Member Jones made the motion to accept the Manager's proposed recommendation supported by Human Resources, that \$1000 in base pay be given to each employee that performs at the acceptable level. Council Member Jensen made the second to the motion. Council Member Schulze agreed with the direction being taken for now and noted it was a good compromise. Council Member Olive commented the Manager's option does not address ratings and would address those FY12 and 13. Motion carried. Vote on the motion was 3 and 2 with Council Members Gossage and Olive voting no. Motion carried. Council Member Schulze noted there needs to be consideration given to street maintenance, with Manager Radford agreeing this was a valid point, however needs to spend \$1 million a year and proposed for this FY \$740,000, however would keep this in mind. Mayor Weatherly stated the budget was scheduled for adoption at the next regular meeting June 21, 2011 and would continue discussions: EMS and unresolved employee issue on Thursday, June 16, 2011.

End of Public Hearing 01

Public Hearing 02**Director of Planning Dianne Khin**

Public Hearing and possible motion regarding Annexation Petition #462 for William T. Wilson, Sr. (10.322 acres) and Florence Morrison Family Living Trust (13.613 acres) and Betty Sue Morrison (0.011 acre) or 24.998 total acres contiguous to the Town's corporate limits and located on Evans Road; developer wants to tie to municipal water and sewer facilities. Staff presented the petition for annexation, property was a new phase of Bella Casa and to get construction plans approved the property must be annexed. Mayor Weatherly opened the public hearing at 9:20 p.m. and with no one addressing the petition, closed the public hearing and referred the matter to Council.

Action: Council Member Gossage made the motion to adopt an Ordinance to extend the corporate limits. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearings**OLD BUSINESS****Old Business 01****Council Member Jones will state the Finance Committee recommendation.**

Possible motion to continue or cease provision of EMS Services and relinquish operations of EMS services and personnel to Wake County effective June 29, 2011; declare EMS vehicles and equipment surplus effective June 29, 2011; and authorize Town Manager and Town Attorney to execute an Agreement and other necessary documents between the Town of Apex and Wake County to facilitate the transfer of EMS services, personnel, vehicles and equipment to Wake County effective June 29, 2011; and authorize Town Manager and Town Attorney to execute License Agreement to allow Wake County EMS exclusive use of portions of Apex Fire Station No. 4.

Council Member Jones, Chair of the Finance Committee reported the Committee met May 26, 2011 and continued discussions on June 6, 2011; reviewed the proposed FY11-12 budget which included a projected budget for Apex EMS and noted anticipated revenue shortfalls. Committee asked questions and clarity given regarding financial projections and concerns. Finance Committee recommendation was, that based on the financial evidence their recommendation was for the transfer of Apex EMS services to Wake County EMS with an added condition should the transfer occur that an Apex representative be seated on the Wake County EMS review board.

County representatives Paul Coble, Joe Durham, Skip Kirkwood and Dr. Brent Myers were present to bring clarity to the issue. Council Member Schulze expressed the move of EMS services to the County doesn't save taxpayers money, and should the County not reimburse the Town for expenditures would hurt the Town and felt it appropriate to keep EMS operations under the Town's control at least one more year for closer accountability; sees this as a policy issue. Coble expressed Wake County feels it's important to unify EMS services under one budget; noted Apex's growth; Apex can't receive reimbursements for Medicare and Medicaid and County can; County would spread costs over the entire system; concern Apex citizens want good service regardless of where they are i.e. Wake County EMS and/or Apex EMS named trucks and expressed to be outside of Wake County EMS was a detriment to the system in that the Town would spend money for those services, discussing efficiency of the services/contracted services, reimbursements and expenses, noting it would be best for the Town to be included in the unified system and with Wake County operated system, would relieve Apex budget and are seeing contracts disappear. Mayor Weatherly commented they can't be totally autonomous, not an option, with Coble responding correct. Coble noted there is approximately \$600,000 in additional revenue from Medicare and Medicaid that would not be collected by Apex but can be collected under the unified County system and would see costs savings associated with this; that only one entity can collect those funds and that was the County. Manager Radford voiced he disagreed, if Apex EMS was retained, would get \$40,000 to \$60,000. Director of Finance Lee Smiley discussed revisions in Town's budget of \$41,000 using a revised County formula and a final total need of \$110,000. Manager Radford advised Wake County would take all Apex EMS employees, those having made application to the County, with more offers to be made and those would gain Wake County certification expanding on the training and to bring on those four employees for a short period would be costly to the Town, and to hire for one year would not be stable employment; and if they were unable to fill an ambulance with competent employees the services might suffer.

April Haughney, ten year employee Apex EMS voiced the decision made would force Town employees to make decisions having no recourse but to turn to the County, as they may not have adequate staff to run EMS and employees are ready to go there and voiced they were under immense stress; she would like to remain with Apex EMS and asked they be given an opportunity to continue to operate under Apex.

Manager Radford advised he would take direction from Council and would do the best to hire and continue to provide EMS services to the Town. He further advised County Manager David Cooke had agreed all certified employees would have jobs with the County if the transfer occurs, if not, has agreed to hire those that applied and are accepted. Joe Durham added employees would be looking for long term positions and if those that applied are certified and available, a job would be offered; County would determine where they would be positioned.

Skip Kirkwood Wake County EMS Division stated employees are given opportunity to bid for shifts, locations and assignments, expressed preferences and schedules are made and seem happy with the results. Council Member Jensen in looking at revenues and expenditures, noted \$1.16 million in projected revenues and \$1.26 million in total expenditures with a differ of \$86,000 and expecting transition costs, asked if Town is willing to cover those costs for a year, noting a \$80,000 Town subsidy in the past, with Council Member Schulze responding it was to him. Council Member Gossage stated he assumed new contract would differ and could be considered 3 to 5 years, with Coble responding the County would not consider a one year contract, but multi-year contracts and would decide on reimbursements. Council Member Gossage discussed the Finance Directors financial analysis \$1.145 million in revenues, \$1.295 million in expenditures and differs \$150,000. Council Member Jones noted the Finance Committee had discussed finances and whether it was \$80,000 or \$150,000 annually, the quality of EMS services will not change however reminded the Committee had found it not in the best interest of the Town to maintain EMS and the best coordinated effort would be with Wake County EMS providing the services, always has and always will in the future regardless, asking whether or not taxpayers need to pay and didn't feel an appeal would get very far, with Coble advising that was correct. Council Member Schulze felt that Apex pays twice, felt would still get good service with Wake County but questions wisdom with EMS based in Apex in that 1) County would house Station 4 and one in Cary which was too far away, and 2) would lose control of event handling. Kirkwood advised they do not handle events as there is nothing gained and noted some volunteer Firemen go as first responders and work events. He further discussed the area coverage and noted the 55 station would at some point be unserviceable, however Apex would be covered. Council Member Gossage continued discussions with the Finance Director regarding the budget for the ambulance asking clarity and noted additional costs associated to complete it and expanded on the life of the vehicle and the vehicle plan in place with Winstead, noting last vehicle cost \$110,000.

Council Member Jensen expressed concern with the four employees that would be leaving, with Winstead noting they have to keep the door open with Wake County and loosing those four would hurt them; it was noted some of those work with more than one agency and there's nothing to prevent them from that. Coble added they can turn to the County and they could operate at the level of service that is good if not better. Myers added the way that things had been done in Wake County displayed a fine system and Apex could have a contract, but there would be no special deal, it would look like other contracts, portions of the contract would change; it was Apex choice; can Apex do this, Apex has to make the decision; not to worry about boundaries but take care of patients; noted Town of Apex audit would suffice; noted County would collect all dollars, budget for Apex EMS divided by 12 would be an identical contract from a budget perspective; vehicles would be placed where County decides; Williams Street Station is not an approved housing, based on maintenance and the way it is today, and would re-evaluate it as economy improves. Manager Radford addressed the deficit the Town would absorb \$150,000 the first year and expanded on equipment costs. Myers added County would pay rent on the fire department which was a better deal and addressed the advantage of the County giving supplies to the Fire Department in lieu of rent.

Action: Council Member Jones put forth the recommendation from the Finance Committee in the form of a motion, based on the financial evidence, recommends the transfer of Apex EMS services to Wake County EMS services with the added condition should the transfer occur, that an Apex representative be seated on the Wake County EMS review board. Council Member Jensen made the second to the motion, based on budgetary concerns and loss of employees and uncertain regarding the additional costs \$80 to \$150,000.

Discussion continued with Council Member Schulze expressing he was not settled on the numbers and would vote no on the motion, feeling there needed to be more time to evaluate costs, and that one year was not enough time to make a decision on something they would never get back; it pains him, employees and taxpayers. Mayor Weatherly added if there is a contract the Town would be locked in with Council Member Schulze adding if Apex could not provide the service, then the County would take over; if the service goes downhill then they would lose control. Mayor Weatherly stated the Town would try to meet their contractual obligations, that Wake County would give outstanding service and called attention to the Town subsidy. Council Member Schulze still wants EMS represented at special events and Council Member Jones reminded him they could still provide an Fire Department EMT. Discussion followed regarding: loss of the legacy, the reflection of community pride, and why use taxpayers to subsidize services; seeing no benefit, County would still make decisions for EMS services.

Council Member Gossage spoke to the budget, shifts and projections, noting shifts to County would strip more than \$1.1 million dollars out of the organization, discussing and giving clarity to assets, land, and buildings; it bothers him that in one year they had striped all this from the organization and would shift responsibility to the County. Discussion continued regarding options, even if the recommendation were to keep EMS, could be back; discussed value in delay of action which would give opportunity to talk with EMS folks to determine if they go or stay. Mayor Weatherly saw no compelling reason to make the decision at this time, Council by consensus decided to hold a special meeting Thursday, June 16, 2011 at 7:00 p.m. **Action:** Council Member Jones withdrew the motion. Council Member Jensen withdrew his second.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.**

Chief Jack Lewis, Apex Police Department commented on the pay issue at hand agreeing numbers rating inflation are not inaccurate, calling attention to the disproportionate numbers and there was work to be done; stated he is under staffed however based on his experience those in Apex fair better than most and perform a more professional level of work, exemplify work ethics and core values. Current staff are too be commended for their services to the citizens, doing so much with a small staff are deemed to do a good job, and represent the Council well; this issue has hurt morale and devalues.

NEW BUSINESS

Consent Agenda Item 15: Budget Amendment No. 11 for donation to Recreation Department; Capital Project Ordinance Amendment Electric Capital Project Fund for increased expansion of electric system and design costs of Public Works building expansion; and Capital Project Ordinance Amendment Water/Sewer Capital Project Fund for two projects water treatment plant. Director of Finance Lee Smiley gave detail and clarity to this item.

Action: Council Member Olive made the motion to approve as presented. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0. Council Member Olive would like to see such items as this in the future be considered New Business.

Council Member Olive responded to Chief Lewis comments about the pay issue, in that they had set reasonable standards for setting the bar for ratings, felt it to be consistent and fair. As far as morale, was hard to give salary increases until revenue stream supports increases, and stated his position was to spend taxpayers money efficiently, noting some employees were not carrying their weight and wanted to reward the best "the rock stars" and where some may go and it may hurt; teams should be awarded as teams, and should spend money efficiently.

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

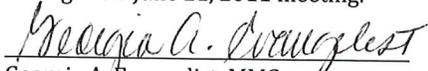
There was no Work Session items to be discussed.

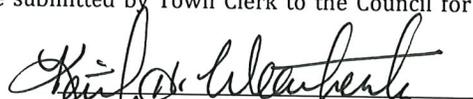
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:40 p.m.

Action: Council Member Schulze made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

The minutes for June 7, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their June 21, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith W. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for June 16, 2011

The Special Meeting of the Apex Town Council scheduled for Thursday, June 16, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order and gave the invocation and called on an Apex scout to lead the Pledge of Allegiance and extended a welcome to those in attendance. Mayor Weatherly stated the purpose of the special meeting was for continued discussion and for a possible motion to continue operations or cease provision of EMS Services and relinquish operations of EMS services and personnel to Wake County effective June 29, 2011; declare EMS vehicles and equipment surplus effective June 29, 2011; and authorize Town Manager and Town Attorney to execute an Agreement and other necessary documents between the Town of Apex and Wake County to facilitate the transfer of EMS services, personnel, vehicles and equipment to Wake County effective June 29, 2011; and authorize Town Manager and Town Attorney to execute License Agreement to allow Wake County EMS exclusive use of portions of Apex Fire Station No. 4.

Manager Radford stated Wake County proposed a new model that would allow EMS to be retained by Apex termed a Financially Independent Apex EMS that included Apex paying a full share of all Wake County System costs; new formula would be a cost based revenue contribution; the former proposal would have allowed Town a risk/reward model in which if Town made a profit Town would be able to retain the proceeds after the shared system costs. Proposed County model would establish a predetermined amount of funds from the County based upon what the County estimate would cost them to provide service; and County would not fund a contracted service that is estimated to cost more than a County EMS provided service; costs (subsidy) to Town would decrease.

Manager Radford recommended Apex retain EMS service and retain local control the Town has. Wake County will provide Apex \$1,077,348.00 paid out monthly over twelve months; will retain all Medicaid and subscription funds; will not bill the Town for system costs for administration, dispatching or patient billing; will have budgetary control for EMS positions they would fund. Apex would be responsible for ambulance replacement costs: FY11-12 Apex would expend \$42,000 to place a refurbished box on new ambulance chassis; in future Apex would make contributions to capital reserve to purchase a new or refurbished ambulance every eighteen months; useful life of a truck is four years. Because Wake County will not be paying a fee in lieu for rental space the Fire Department budget will increase by \$10,000.00 for medical supplies for first responder vehicles; EMS insurance \$20,000.00. Noted four Apex paramedics have accepted positions with other agencies; County has rigid standard for training and certification and employee costs to rehire and train \$99,210 (cost is attributable to backfilling with LSE's during training period; this cost in coming years will be reduced as a result of lower future turnover.)

FY 2011-12 budget deficit \$138,210.00 and includes \$99,210.00 a single year expense to hire and train; and \$39,000 for expenses not covered by Wake County policy. Noted in past years Town contributed subsidy to Apex EMS Inc. up to \$80,000.00; therefore in the coming year Apex would contribute \$58,000.00 more than in some years past; this number will decrease next year. Funding must be reserved to carry out the plan as described: \$138,210.00 contribution would be funded from an unencumbered General Fund Balance of \$96,210.00 and a transfer from EMS Capital Reserve \$42,000.00 to complete ambulance refurbishment.

Noted if Council approves the recommendation as proposed, Apex EMS will be a standing Town department; Nicky Winstead will remain with Town for a period up to one year to ensure continued Ems operations within department (may be 6-7 months.) Noted while replacing/training employees for those that have taken employment with other agencies will be difficult, Manager and Winstead stated it can be done; once employees are trained and department head position hired, Winstead will retire from Town. As a standing department of the Town of Apex, Apex EMS will be supervised by Assistant Town Manager Mike Wilson who has served on Apex EMS Inc. Board of Directors and has a familiarity with EMS processes and finances. Nicky Winstead Apex EMS was present and gave his assurance that Apex EMS could fill two ambulances with fulltime staff.

Dr. Brent Myers, Wake County was present for clarification and to answer questions. Council Member Jones, Finance Committee Chair stated the Committee had not reviewed the new model, however understands the model is better and was speaking for himself and not the Committee. He asked what would the Town be buying for the \$138,210 contribution besides the name on the truck, noting Wake County makes the decision for the operations policy and decisions regarding ambulances: the location, issue, response time, no matter what name for Apex, and the Town has ability to use the fire department for special events coverage; continued as much as he has sentimental and emotional ties to EMS and would like to keep it, questioned what value is being giving to the citizens for this amount of money. Council Member Jensen Finance Committee member agreed with the statement of Council Member Jones.

Council Member Schulze noted this a valid point, expressing concern for future service levels and if there was a degrade in services, they would be at the mercy of the County and voiced his preference to retain EMS, seeing it as an important public safety service to the Town and the Town needs to be accountable. Council Member Jensen stated the County is accountable for the EMS services and the Town couldn't tell them what to do, with Dr. Brent Myers expanding on this statement, as he felt it would be beneficial to understand how the quality of service is maintained, and stated the EMS Committee is responsible for the services and are governed by State Statute and that the quality of EMS care resides with the committee; Wake County continues their offer for an appointed representative to serve on the EMS Committee.

Council Member Gossage stated what the Town has known works and was unknown if they were to go to the County; addressed the numbers, flexibility regarding \$42,000 for an additional ambulance, noting three EMS vehicles would be on the road, asking if they need a fourth vehicle, and could decide if there needed to be an additional vehicle when need arises, nothing what they have now works well. He noted the \$1.2 million in assets that was brought to the Town when EMS became a part of the Town and after one year to turn those over to the County troubles him, and he felt \$138,000 was a small amount to for their good work and assured Chief Haraway would make it work, and gave his support to have EMS be a part of the Town.

Council Member Olive was thinking along the same lines; noted they have sufficient vehicles to operate now, and \$42,000 was discretionary and could finish a vehicle if need be; \$99,000 for training was not an ongoing expense; \$141,000 was close to a balanced budget; stated Town took EMS assets in good faith and reached an agreement and were obligated to carry it further to make this work. Addressed level of services by the County and by Town not knowing how to measure those; noting plan maps show an overlap in service areas and comfortable with the locations as they are now; would like to look at options regarding training expenses; felt Apex could make EMS work.

Mayor Weatherly addressed contract guidelines, with Dr. Myers, stating the County is responsible regardless, and the length of the contract has not been established, and did want to think long term no matter what, noting contracts are annual, however are changed yearly and requires an external audit and Town's existing audit would suffice and assures situations does not occur when the County has to step in and take over services. He explained procedures that would determine the contributions the County would make in response to Council Member Jones questions, and noted there's a detailed manual that reflects accounting costs to provide EMS services and is based on number of employees and units that will be provided.

Council Member Jensen made additional comments regarding positioning of ambulances by the County and asked Dr. Myers for his professional medical services opinion regarding same. Dr. Myers assured EMS services are critical and came down to patient outcome identity and they are committed to focus on this and will evaluate this as patient outcome would not change, and stated Apex is responsible for the people that will be served and will cover all areas as they overlap; and added Apex Fire and EMS are outstanding organizations and committed to provide quality levels of services.

Mayor Weatherly asked if there were a motion and then would continue discussion. **Action:** Council Member Schulze made the motion that Town of Apex continue with its operation of Apex EMS as had in the past year. Council Member Gossage made the second to the motion. Council Member Schulze stated that he has respect for Wake County EMS as they provide great services, but saw public safety as a priority and Apex should step up to keep the promise to its citizens, and that it was a reasonable cost to provide this service to its citizens; he looks forward to the operational changes that are proposed and would follow them closely; his conclusion, he can support this decision 100%.

Council Member Jensen stated even though he has respect for Apex EMS, he would vote no on the motion, explaining things have changed since the start, noting four employees had committed to leaving to go to other agencies and Apex is responsible to keep EMS on track, and the outcome should they go to Wake County would be no different, and it was more to keeping EMS and was not sure how this would work in far-term; responsibility was to get the best service to the citizens at the smallest cost to the citizens; thinks they are responsible to the citizens for EMS to go to the County and noted they had been assured they would receive the same level of services and the Town would not run in deficit.

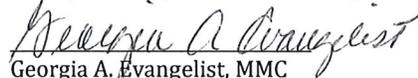
Council Member Jones made comments regarding service quality with Wake County and noted Apex is a contractor and was contingent on the County's direction to provide EMS services, noting financial risks involved from here moving forward and questioned what the reward was and asked are we taking a risk. Mayor Weatherly commented, he's not sure citizens are better off as they will pay a subsidy to fund EMS, and persons do not care what name is on the ambulance; clearly it's down to the fact that it's the best level of services and would not change if those services were under the County; he would see how Council votes and hopes for the best, noting their obligation was to serve the citizens and they will, one way or another.

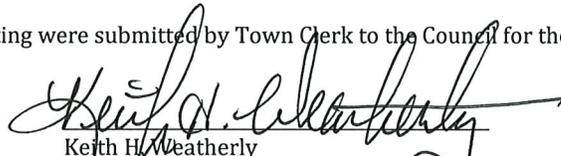
Mayor Weatherly called for the vote on the motion as stated, with a vote of 3 for and 2 against with Council Members Jones and Jensen voting no, Mayor Weatherly stated the motion carried and would be under contract as described. Manager Radford stated the structuring of the EMS budget and how the deficit would be funded: General Fund \$96,210 and transfer from Fire & EMS Capital Reserve \$42,000, for a total budget deficit not inclusive of any new employees of \$138,210; projected FY11-12 EMS Budget Expenditures \$1,227,558.00.

ADJOURNMENT

With no further business to be discussed regarding this item, Mayor Weatherly called for a motion to adjourn. Council Member Gossage made the motion to adjourn with no opposition, the meeting adjourned at 7:40 p.m.

The minutes for June 16, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their July 19, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for June 21, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 21, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the pledge of allegiance, and extended a welcome to those in attendance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Council Member Olive asked to amend the minutes of June 7, 2011; Clerk amended the minutes. Mayor Weatherly called for a motion for approval of the consent agenda as modified. **Action:** Council Member Olive made the motion to approve the consent agenda as amended. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for Council meeting of June 7, 2011.
2. Minutes for Finance Committee meeting of May 26, 2011 and continuation to June 6, 2011.
3. Annexation Petition #464 Motiva Enterprises, LLC, property owners/petitioners petitioning to annex 10.302 acres contiguous to Town corporate limits and located at 2300 Ten-Ten Road; Resolution Directing Clerk to Investigate Petition; Certificate of Sufficiency by Clerk; and Resolution Setting Date of Public Hearing July 19, 2011.
4. Set Public Hearing for July 19, 2011 Town Council meeting for Rezone #11CZ13 from PC-CU to PC-CZ district for the property located at the corner of Laura Duncan Road and US64 and contains 16.16 acres.
5. Set Public Hearing for July 19, 2011 Council meeting for various amendments to the Unified Development Ordinance.
6. Resolution No. 2011-0621-08 Authorizing Wake County Revenue Director to collect taxes on behalf of the Town of Apex.
7. Resolution No. 2011-0621-09 Intent of Apex Town Council to close a portion of Broadstone Way and schedule Public Hearing for August 2, 2011.
8. Ratify transaction and letter agreement with Mr. and Mrs. Al Harlan Hurlock related to remedying a building code violation with respect to an accessory structure located at 1304 North Salem Street, Apex, North Carolina.
9. Authorize Transfer of 3.5 acres of property at the Western Wake Partners Pump Station Site on Olive Chapel Road to the United States Government.
10. Wake County Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Council Member Jensen asked Public Hearing 8 be heard first and Council hold a closed session to receive legal advice prior to the hearing. Attorney Fordham asked to add a Declaration related to Water Reclamation Facility with change in language (Old Business). Mayor Weatherly asked for a motion to set the agenda as modified. **Action:** Council Member Jensen made the motion. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0. Mayor Weatherly stated the meeting agenda was set as modified. Minutes for Public Hearing 8 will remain in order as it appears on the agenda.

PUBLIC HEARINGS

Public Hearing 01

Senior Planner June Cowles; Planning Board met June 13, 2011 and unanimously recommended approval with conditions. Public Hearing and possible motion regarding Glen at Green Level Crossing Rezone #11CZ09 from Rural Residential to Low Density Conditional Zoning for the property located at 8129 Green Level Church Road containing 6.8 acres.

Senior Planner Cowles presented the Planning Report and is incorporated as a part of the minutes; oriented to the property location; neighborhood meeting was held and discussed proposed Wake County School site; alignment of Roberts Road at Green Level Church Road; Beckwith Farms amenities lot and pool location; applicant agreed to limit permitted uses and applicant agreed to the conditions in the staff report: 1) no vinyl siding shall be permitted on the exterior of any building and 2) all single family homes shall be on crawl space or raised slab with a minimum of three steps twenty-one inches from finished grade to finished floor elevation at front door; this condition shall not apply to the portion of the home used as a garage or patio; applicant will make a fee-in-lieu payment for parks and recreation; rezone is consistent with Unified Development Ordinance and 2025 Land Use Plan. Planning Board unanimously recommended approval with conditions and uses proposed by applicant and architectural conditions. Mayor Weatherly opened the public hearing at 7:25 p.m. David York, Smith Moore Leatherwood, LLP, Attorney, Raleigh, spoke in favor and stated staff's report was accurate and rezone is consistent with 2025 Land Use Plan and addresses all facts of legislative matters. No one spoke in opposition. Mayor Weatherly closed the public hearing at 7:26 p.m. and referred the matter to Council.

Action: Council Member Gossage made the motion to approve the rezone with conditions. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 01

Public Hearing 02

Senior Planner June Cowles; Planning Board met June 13, 2011 and unanimously recommended approval with conditions. Quasi-judicial Evidentiary Hearing and possible motion for Glen at Green Level Crossing Master Residential Subdivision Plan for the property located at 8129 Green Level Church Road containing 6.8 acres.

Mayor Weatherly introduced the quasi-judicial evidentiary hearing and stated the process. All persons testifying were administered an oath by Town Clerk prior to giving testimony and stated their credentials; there were no opponents. Mayor Weatherly and Council Members Jensen, Gossage, Jones, Schulze and Olive disclosed they had not made contact with any party prior to the hearing nor had they visited the site.

Senior Planner June Cowles presented the planning report that contains data for overall plan and is incorporated as a part of the minutes; plan contains 13 lots and stormwater pond; access off Green Level Church Road and connected to Beckwith Farms to the north and stub street south; RCA is less than 2 units per acre and not required; utilities and storm drainage are consistent with Unified Development Ordinance; condition proposed by applicant is related to access: prior to the first plat, the road stubbed to the south shall be installed to the entrance to the south/adjacent to the recreation site. This extension, combined with the platting of Phase 1 portion of Road "A" will satisfy second access requirement for Beckwith property (need to connect road in order for this not to be a long cul-de-sac which would not be consistent with UDO cul-de-sac length); condition is added to subdivision plan. Plan is consistent with UDO and 2025 Land Use Plan. Planning Board met June 13, 2011 and recommends approval with the one condition. Applicant was present. Council asked questions of staff. Council Member Schulze asked if homes would be built on the south side; Cowles responded it's for recreational site amenities—this site plan and construction plan have been approved for club house, pool and tennis courts.

Proponents: David York, Smith Moore Leatherwood, Raleigh, called forth witnesses to testify: Glenn Phillips, John Aldridge, John R. McAdams and Mike Horne, Kimley Horne; noted Toll Brothers representative was present. Phillips responded to questions from York: was familiar with Town's UDO and 2025 LUP -laid out the subdivision and designed it in accordance with same and in his professional opinion the subdivision plan meets or exceeds UDO requirements and goals and objectives of Land Use Plan. No further questions were asked. Aldridge responded to questions from York: he is familiar with Town's stormwater requirements and storm water facilities within the subdivision plan and in his professional opinion meets or exceeds the UDO requirements. No further questions were asked. Horne responded to questions from York: he is familiar with the Town's transportation plan and road improvements requirements, as well as NCDOT road requirements and with road layout and access points within the subdivision plan; in his professional opinion the road layout access points shown in the subdivision plan meets or exceeds the requirements of the Town and NCDOT. No further questions were asked. York stated in order to approve the master subdivision plan Council needs to find that it meets the UDO requirements; had presented sworn expert testimonies to that affect; requested approval of the master residential subdivision plan. No further questions were asked.

Town Transportation Engineer Russell Dalton addressed UDO Section 7.5.4.e. Public Access requirements stating points of access shall be separated by a minimum distance of 1000' except in cases where Town Council approves a decrease to no less than 250' and when environmental barriers or neighboring properties prohibit a greater distance between them; staff recommends approval but is less than 1000' still within UDO guidelines. Mayor Weatherly asked if this required formal action of exemption or waiver. Member Schulze didn't see this, only that it shall apply to all standards of the UDO; Dalton responded if it's compliant, an acceptable deviation, this is correct. Council Member Olive asked Dalton to point to the distance he was speaking to. Dalton responded the distance was along the thoroughfare noting full movement access; noted applicant had stated it's approximately 500' to what would be a right-in and right-out access which would connect to this portion of the new neighborhood development.

Attorney Fordham read from UDO that points of access shall be separated by a minimum distance of 1000' except in cases where Town Council approves a decrease to no less than 250' and when environmental barriers or neighboring properties prohibit a greater distance between them; he advised that it doesn't require any formal action and would have to be based on Council findings on one of those two things; would have to be reason for it. Mayor Weatherly asked if there were a motion to approve, would it have to include that. Attorney Fordham advised he didn't know that it had too, but would be better practice to include it; he restated the two conditions: when environmental barriers or neighboring properties prohibit a greater distance between the points of access.

Dalton added in this case it's not an environmental barrier but it is a constraint with the property that was obtained; they do not own properties to the north and do not own a connection to the south that would allow them to make 1000' spacing work; they would have to purchase additional property. Council Member Olive asked if it were fair to say if the access were moved to the north side of the property you would still not be able to reach 1000' in measurement, with Dalton responding that was correct. Attorney Fordham responded to Council Member Gossage regarding findings: if you find based on testimony, that it's safe and appropriate. Council Member Jones asked clarity: new access is right-in and right-out with Dalton responding this was correct. Horne made comments and was comfortable with this.

There were no opponents. There were no closing statements. Mayor Weatherly stated this completes the hearing process and closed the hearing at 7:42 p.m. and referred the matter to Council for decision.

Action: Council Member Gossage made the motion to approve the Glen at Green Level Crossing Master Residential Subdivision Plan for the property located at 8129 Green Level Church Road with the condition stated and the exemption as read regarding the reduction in spacing of the two intersections due to the property issues. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 02

Public Hearing 03

Senior Planner June Cowles

Planning Board met June 13, 2011 and unanimously recommended approval with conditions.

Public Hearing and possible motion regarding Pemberley Rezone Amendment #11CZ12 from Planned Unit Development Conditional Zoning district classification to Planned Unit Development Conditional Zoning district for the property located at 1909 East Williams Street containing 54.65 acres.

Senior Planner Cowles presented the Planning report and is incorporated as a part of the minutes; oriented to the location of the property; original planned unit development was approved 2007; had placed tree protection fencing and removed some trees, activity on site ended 2008 due to the economy and resumed 2011; property was purchased by Ashton Raleigh Residential LLC. Neighborhood meeting was held and discussed trail along creek - noted Miramonte experience when developer didn't finish the trail; residents were concerned about the trail amendment.

Applicant is not proposing revisions to PUD uses but conditions. Applicant requests removing conditions:

- A. The owner/applicant shall be responsible for maintaining the trail and its shoulders up to 10 feet on each side of the trail center line until such time as the development is turned over to the HOA. At that time the Town will take over the maintenance as part of the Town's public greenway system.
- B. The trail shall be constructed prior to the 50 percent (115 units) of the units that receive Certificates of Occupancy.

This tract of Pemberley would only be constructed under 2007 plan for a trail at this distance along the creek, where the Miramonte Subdivision has a longer area for the trail.

Include conditions:

1. The applicant/owner shall pay a Park and Recreation fee in lieu.
2. The funds paid in lieu of building the greenway shall be earmarked for the actual completion of the greenway shared by Miramonte and Pemberley subdivisions.

Parks Recreation Advisory Commission unanimously recommended payment of fee-in-lieu for 227 units.

Road Extension to the East Conditions: applicant proposes not to build the road extension to the east property line that includes crossing an existing creek and floodplain. There is an existing road "Colby Chase Drive" to the east within the Merion Subdivision, previously a Wake County subdivision. There is a 500 foot wide property between the Pemberley eastern property line and the end of Colby Chase Drive. Revised subdivision plan shows a turn around, essentially a temporary cul-de-sac that will include a "Future Road Extension" sign. Conditions for the extension of the road to the east property line are proposed as follows:

3. Prior to subdivision Construction Plan approval, Construction Plans for the waterline extension (stand alone project) along with an engineer's estimate of construction cost shall be submitted and approved by the Town.
4. Prior to approval of First plat in the subdivision, Construction Plans for the future extension of Colby Chase Drive to the property line, including required structure over Middle Creek with an engineer's estimate for the road and structure shall be submitted to and approved by the Town of Apex.
5. Fees in lieu for both waterline project and road extension project shall be paid prior to the 115th building permit according to the estimates including any anticipated permitting or mitigation for the stream crossing, subject to the condition of applicable developer's agreement with the Town of Apex (50% of the subdivision).

Noted architectural standards are same; Apex Transportation Plan: applicant would pay for road but not construct it; access is same off East Williams Street, there is a stub north and west, and the connection would be with Miramonte Subdivision. Planning Board unanimously recommended approval with conditions: remove conditions A and B; parks and recreation conditions 1 and 2 and road extension to the east: 3, 4 and 5.

Council Member Schulze asked if they do not complete the road then who completes it. Russ Dalton Transportation Engineer stated applicant was concerned that this is a long section of roadway to stub east, and not knowing when the gap would be completed and would have to get into the stream to do construction, making it difficult. Idea was whenever the subdivision east comes in and that extension was done, Town would work out a deal with those parties to connect the road; they will build their part or either Town would front money to them to complete it with design that has already been completed or Town would construct it as a separate project. Council Member Schulze asked if developer of the project would give Town money now, how accurate was the cost estimate to complete the road, given the stream conditions. Dalton responded they would review the cost estimate based on current market prices and will include permit fees; will do a typical construction estimate and stated there is no interest earned on that money but is money that can be used in the future.

Council Member Jensen was concerned construction costs now are not high but when they are ready to build the road, it might be a completely different environment, asking how do we manage that if we get an estimate that is only 50% of the costs and it ends up costing us more. Attorney Fordham asked if it were going to be paid at the 115th building permit with Dalton responding correct. Attorney Fordham added that might impact the timing. Council Member Gossage asked when the estimate would be done. Dalton responded it will be done prior to the construction plans; paid prior to 115. Council Member Jensen didn't know when the 115th would be built. Dalton responded that's true; the concern obviously is more than a year or two out and what if it's 5 or 10 years, would be further behind and that's correct that the longer they wait the more likely the road will be more expensive. Council Member Jensen asked if we get interest on the money, that interest would be an offsetting factor. Attorney Fordham added, once they get the money asked, if he meant interest before payment or after. Dalton advised we don't get an inflation payment. Council Member Olive asked with the fee in lieu payment and the actual construction, while we have the money but haven't spent it during that time period- with Attorney Fordham interjecting he was sure the Town would invest it, but in terms of there being a cola built in, between

the time it's calculated and the time it's paid, it sounds like that's not a part of the deal. Council Member Olive stated that would be his concern that the estimate they would get today would be a very affordable estimate and then the future costs of the construction once it actually happens, we would not even be able to invest that money even at a fairly decent return and have the cash ready for construction; believes cost of construction would go up faster than the interest rate that we would be able to get from any kind of investment so he would be concerned that if they don't do a fee-in-lieu calculation using future value and maybe should involve the Finance Director to make sure they have proper calculations.

Mayor Weatherly stated they should have a public hearing before discussion and opened the public hearing at 7:25 p.m.

Speaking in favor: Jason Bertoncino, Withers & Ravenel, Inc. spoke in support of the rezone; project was approved four years ago and due to economic times now returns fundamentally unchanged; minor revisions were made at staff level over time; converted townhomes units 128 to 110 and single-family units 101 to 117 and total of 227; decrease of two units; single-family homes will provide more tax base. Two issues: 1) greenway construction on the far side of the creek, a greenway to nowhere at both ends; that will be reimbursed by the Town and developer, the cost of the greenway fees as it does not connect, thought it appropriate as a fee-in-lieu payment to the Town; met with the neighbors and was their primary concern given the situation that occurred in Miramonte, and after a lengthy discussion, not wanting to speak on their behalf, believe they have all commonly resolved that they are agreeable that they would do a fee-in-lieu of construction provided the Town was agreeable with a fee-in-lieu and once received by the Town would be earmarked dedicated for greenway construction be it on Marimonte or Heavner Tract or Pemberley property as long as those easements are dedicated, thinking there may be with a little bit more money, you get more bang for your buck, a little more project out of it and maybe would also be located somewhere that would be more useful to the residents rather than dead-ended in both directions. 2) road - one of the primary concerns of the developer/builder standpoint, you have a 600' long roadway to nowhere that doesn't connect a rather large gap over to the next property before it could connect and certainly raises concerns somewhat dubious behavior - trash dumping or loitering, things of that nature, not necessarily meanable in a residential neighborhood to have a long dead-ended road and therefore thought a fee-in-lieu to the Town for payment of that road again with intent of the road being a 0% gain for the developer and more beneficial to the Town; they are required to work with the Town to come up with a construction cost estimate relative to those things as the Town engineer stated including any permit costs, design costs and things of that nature. Thinks it should also be noted that once the Town has the money, as the attorney presented, the Town has a right to do with it as you will. At that point in time could use it as another project or whether you put somewhere to collect interest, it's the Town's prerogative to prioritize. Also noted 600' long roadway once out of its warranty period, whether it's 10, 20 or 30 years before its connected it will be maintained with costs sunk into that with the Town's perspective, how much he can't specifically qualify; it's not in his area of expertise but will be real costs to the Town for relatively little benefit to the citizens at their opinion in this point in time. He didn't know if this alleviated all concerns and stated for the record, as the plans stand now, their requirement for that road connection is with phase seven which was approved by Council when they did the plan four years ago, not to talk about going away, but when you talk about assurances or getting stuck, it is the very end of the project assuming this project doesn't go well, the potential that it doesn't get built anyway could occur; with these last lots not also occurring; again, they are trying to be fair and reasonable and much like everything else in life, if everyone moves forward successfully it's a success and if everyone doesn't then no one succeeds; again this is a 0% gain for the developer.

Council Member Jones asked how many units in the phase being talked about where the road is a condition of it. Bertoncino responded 227 in the total plan and roughly 24 connected to that. Council Member Jones addressed the condition for fee-in-lieu would come at 115 with the actual requirement for the road doesn't become until 200 with Bertoncino responding this was correct. Council Member Jones responded it's required unless you do the phase with the 24 lots. Bertoncino responded from his perspective that you could say Council is getting the money early or at least road vs. money earlier, speaking from his perspective. Council Member Jones added getting it earlier but as mentioned, it may not be the actual cost of the road. Council Member Gossage understood it's a zero percent gain and he understood that, zero percent to the developer, but not zero percent to the Town of Apex; need to take this into consideration. Council Member Schulze asked if they never build that last phase, and you've already given the town the money, do we have to give the money back. Bertoncino responded no sir, when the money is given to the town, it is the town's to do with... and obviously there are some inherent risks in construction costs but again there are also risks in maintaining the road, and the costs may be sunk there, that goes nowhere.

Council Member Gossage asked if there were any idea of the costs to maintain the road, with Bertoncino adding and a bridge and floodplain. Manager Radford responded inclusive or exclusive final lift, with Bertoncino interjecting he's sure that would have to be installed. Manager Radford asked the Director of Public Works for his input regarding the road stub prior to the bridge constructed, with Council advising inclusive of the bridge. Director of Public Works Tim Donnelly stated they do not have a lot of experience maintaining bridges; noted culverts in town that qualifies as bridges: Buckingham that they just spent a lot of money to maintain it. He noted this an interesting issue in that he thinks the Council's sentiment and his professional opinion the cost of building the road would be greater than the engineer's estimate because of where prices are today; in his 17 years experience with the Town, the other times they received fee-in-lieu money to build a road, every time it cost more money; he doesn't know what it would cost to maintain if built now.

He suspects that if development recovers you will see growth on the other side of Middle Creek that perhaps would let you connect Colby Chase; also there's an item that comes later that is for a town subdivision on the other side of Middle Creek that would be close to Colby Chase and might be an opportunity to connect the waterline to the next development; that's not to say you will approve the next development because it has its own complexities, he's saying that growth will occur that way and his history here has been that when you get money from a developer generally by the time you get around to building it usually costs more, just from experience and also an opinion that prices now are very low; the biggest proof of that is with the bid opening they just had that they are quite below the engineers estimate and it's because of the costs of concrete and steel and contractors are hungry and prices are low. He doesn't have an estimate for maintenance.

Council Member Jensen asked if the road were built, do we just block it off. Donnelly responded that's exactly what would happen, given example: road north of Beaver Creek Commons built for extension where it needed some maintenance and there's been erosion, etc. and is a bridge also and is particularly expensive but they haven't really looked at it, and figured whenever the road was extended would look at it hard, but right now its blocked off on the side that hasn't developed, but where the townhomes are and just sitting there waiting to be used.

Hampton Pitts, Division President of Ashton Woods Homes, and Ashton Raleigh Residential, LLC is the owner of the property, addressed this as a positive that led to a better quality community due to the reasons mentioned in terms of the potential pit falls and issues that rise with the dead-ended road to nowhere. Also recognize that the capital being in the hands of the Town now vs. being tied to the last phase might be a positive in conjunction with the final item being that the property to the east is not controlled nor is a right of way controlled - the line seems to indicated there is a path and a corridor there, that is in the town's control to build the road on. Certainly in the future development submittals that may be a requirement that could be captured at that point in time, but leads to uncertainty as has been discussed about the future timing of when it might be built. If there were a date certain, where it was going to be built in the future and when it would be an easy acquiescence of theirs to say factor in that time, factor in what they expect cola to be on the increased costs, and he could agree to say, if the prices rise or, they are at a low point right now in material costs, they could make that issue go away if they knew it would be built in 2018; they simply do not know; it may never be built, that's a potential and a likelihood until the land to the east is controlled by some type of development that comes before Council. Having said this, they felt this was a more certain way for the town to get control of the dollars and control their own destiny, but at the same time, they have mentioned this is not about trying to avoid doing something that was originally approved and purchased the property knowing it was a requirement; if it's the Town's desire for them to build the road and bridge would be happy to do so; as per the original condition of the final phase, would like to if that's the choice of Council would still like to entertain the fee-in-lieu on the pedestrian path as was the advisement of parks and recreation. He thanked Council for their consideration.

No one spoke in opposition.

Council Member Gossage asked Chief of Police Jack Lewis if he had public safety issues he wished to address with long unused portions of roads. Chief Lewis responded it depends on what that section of the road might be adjacent to as it could become problematic; if it abuts against a closed nature boundary, then there's likely not to be a lot of traffic and activity there; people historically think that might be a place that folks would go together and hang out, but the access factors into it and how appealing that might be for someone to go with mischievous intent; he doesn't think they have that issue anywhere in town; the one Public Works Director talked about is clearly not one of those problematic areas because of where it is; it's clearly visible and well lit; if its dark or secluded then it does create the potential for those types of problems, not based on what happens here in Apex, but based on what he has seen through the years. It certainly makes it easier for them if the road is built there and a clear barrier that controls that; you can't stop people from walking but 600' to create mischief, they may drive down there and out of sight, but if its controlled access limited there blocked for vehicular traffic it takes care of some of that.

Mayor Weatherly closed the public hearing at 8:10 p.m. Manager Radford and Director of Construction Management had discussed the fact that the developer has the ability to provide at their choosing a cost that would be agreeable to the Council and that amount be 150% of the anticipated current costs of the road itself, 50% more than what the engineer's estimate would be in order to pay for future costs. Attorney Fordham advised the developer would have to agree to this. Mayor Weatherly asked for a response from the developer before they discussed this. Council Member Jones clarified that the Manager was saying they have an option to build it, or pay 150% of the estimated costs and that would come now or prior to the 115 units, with the Manager responding it was to be determined, but thinks estimating it now and getting the fee in lieu would be the most advantageous to the town. Council Member Jensen asked if it were the same 150% whether estimated today or at the 115 house units, thinks they would be safer at the 115. Manager Radford ask to please consider how long it might take the developer to build and sell and occupy 115 homes; it may put them a number of years down the road, and they don't know ... take the experience of local builders over the past three and one-half years, what number benefits. Council Member Jensen stated the fee in lieu comes in at the 115th house unit, if that's the way he read it, we don't get it today; if they didn't get to 115 then we would be in trouble. Manager Radford responded if we didn't get it today, then who's to say that they would get it at all at the 115th home if there were 36 built 36 and then they went away.

Mayor Weatherly asked Bertoncino if he would like to respond to what was being discussed. Bertoncino responded he didn't come to make this a complex matter and thought they had an idea that was beneficial to both parties. Council doesn't seem to be comfortable with that; that's fine - with regard to this issue they were comfortable with current approval that it would be built with the last phase of the development at that time, and would meet normal obligations for roadway construction for subdivisions in town, and still keep the greenway fee-in-lieu issue; that's closure for everyone; clarified, was still making the greenway request.

Attorney Fordham wanted to assure the conditions were clear. Cowles restated: remove conditions A & B about building the greenway; and include conditions 1 and 2 and remove conditions 3, 4 and 5.

Mayor Weatherly called for a motion.

Action: Council Member Schulze made the motion to approve rezone amendment #11CZ12 with modifications to the proposal, remove conditions, 3, 4 and 5, and keep the removal of conditions A & B, and keep conditions 1 and 2. Attorney Fordham asked that he change the word from remove conditions to exclude so it's clear that he's excluding removal. Council Member Schulze then restated the motion to approve rezone amendment #11CZ12 keeping conditions 1 and 2 as submitted; removing conditions A & B as submitted; and excluding conditions 3, 4 and 5. Attorney Fordham stated he was thinking they were leaving in the removal of conditions A & B. Council Member Schulze responded that was correct. Attorney Fordham stated he heard this slightly differently. Mayor Weatherly added that was what he means. Council Member Gossage added with conditions 1 and 2 and removing conditions A & B. Council Member Schulze restated, but excluding conditions 3, 4 and 5. Council Member Gossage made the second to the motion. There was no discussion on the motion. Vote on the motion was 5-0, and unanimously approved.

End of Public Hearing 03

Public Hearing 04

Senior Planner June Cowles

Planning Board met June 13, 2011 and unanimously recommended approval.

Quasi-judicial Evidentiary Hearing and possible motion for Pemberley Master Subdivision Plan for property located at 1909 East Williams Street containing 54.65 acres.

Mayor Weatherly introduced the Quasi-judicial Evidentiary Hearing and stated the process. All persons addressing Council were administered an oath by Town Clerk and stated their credentials; there were no opponents. Mayor Weatherly and Council Members Jensen, Gossage, Jones, Schulze and Olive disclosed they had not made contact with any party prior to the hearing nor had they visited the site.

Town Senior Planner June Cowles presented the planning report; showed the 2007 plan with the road extension over the creek; stated packet included the temporary cul-de-sac; applicant now says they will build the road to the property line and will be a revision in the subdivision plan. The only other changes noted by Bertoncino were there would be more single-family and less townhomes with a total reduction of 2 units; noted 2007 plan shows where townhomes were built and now shows single-family homes along the road and basically the same and staff approved having the same units within the PUD plan, were just adding more single-family and reduces townhome units, everything is the same as far as the 2007 subdivision plan. Council Member Jensen asked if RCA remains same - Cowles responded yes. Council Member Schulze asked if it were the same number of units - Cowles responded total reduction was 2 units less; in 2007 101 single-family and the subdivision proposed before them was 117 single-family; in 2007, 128 townhomes and today, 110 townhomes; 2 less units today than 2007. Questions by Council: Council Member Schulze referred to the change in townhomes, asking did they pack more townhomes in the other area. Cowles responded no they are in the same area showing where townhomes were located and now were single-family. There were no more questions for staff.

Mayor Weatherly asked the proponents come forward.

David Garrett, representing Ashton Residential, stated his credentials calling his witnesses:

Jason Bertoncino responded to questions from Garrett: he was familiar with Town's Unified Development Ordinance; he participated in the redevelopment revisions before the Council; revisions conform with Town ordinances; stated the subdivision plan before Council offers a revision so they can be in compliance with the zoning; with regard to the amendments, was a PUD plan as well as a master subdivision plan and were essentially identical so the same conditions that were excluded/removed in the previous plan 3, 4, and 5 will need to be excluded from this plan and do agree with that; conditions 1 and 2 will remain; on this particular plan he doesn't think it's a stretch for anyone - there's a cul-de-sac bubble at the end of the road in question will no longer exist and in that white area that is the right-of-way, there will be a new road that will also be a condition of their master subdivision plan that at the time of construction drawings for this subdivision, they will complete the design of the roadway and that whole design for that length for phase 4 will be completed prior to the platting of any lots in the subdivision.

Hampton Pitts: Garrett did not ask questions but stated Pitts was available should there be questions for him. Garrett formally submitted their application and documents as evidence.

Mayor Weatherly asked if there were further questions. Dianne Khin Director of Planning, stated based on comments made during the rezoning thought it would be a good condition to have a barricade noting the area on the plan so folks are not going down that stretch of road. Council asked questions. Council Member Jones asked if that were the developer's responsibility to build and dedicate to the Town or was it the Town's responsibility. Garrett responded his client indicates they would want one. There were no further questions or comments. Mayor Weatherly asked if this covers all basis of the hearing, with Attorney Fordham responding it does. Mayor Weatherly closed the public hearing at 8:30 p.m. and referred the matter to Council.

Council Member Jones stated the rezoning conditions they had removed, makes a difference to the subdivision plan as pointed out, so the motion needs to itemize those changes of the rezoning. Attorney Fordham responded it doesn't need to refer back to the rezoning, but the impact it has on the documents in front of them needs to be referred to, to describe how they will change, assuming a second set will be submitted in conformity with whatever action is taken tonight, and any additional conditions that were agreed to would be added to the motion. Mayor Weatherly stated the floor was open for a motion.

Action: Council Member Jones made the motion to approve as presented with the condition of a barricade and agreed to by the petitioner and the changes to the site plan in accordance with the previous conditions and changes for the rezoning. Council Member Gossage made the second to the motion. Vote on the motion was unanimous 5-0.

End of Public Hearing #04

Public Hearing 05

Planner Lauren Simmons

Planning Board met June 13, 2011 and recommends approval with condition.

Quasi-judicial Public Hearing and possible motion for McDonald's at Beaver Creek Commons – Amendment to the Beaver Creek Commons Phase 1 (Lowe's parcel) Major Site Plan. Lowe's Home Centers requests approval for a McDonald's restaurant on a proposed outparcel at 1101 Beaver Creek Commons Drive.

Mayor Weatherly introduced the Quasi-judicial Public Hearing and stated the process as governed by the state law and requires Council to make a discretionary decision from evidence presented during the quasi-judicial hearing. All persons testifying both proponents and opponents experts to the subject matter were administered an oath by Town Clerk prior to giving testimony and stated their credentials. Attorney Fordham stated Council must disclose whether they had or had not made contact with any parties prior to the quasi-judicial hearing or whether they had or had not visited the site which was a relatively new procedure in site and subdivision plans; his impression was there may have been some discussions before he had sent an email to Council informing them this would be quasi-judicial and should not have contacts; so the fact that a contact may have occurred does not mean anything wrong has been done, simply were not informed earlier enough to avoid talking with people about it; occasionally people email or call even after you may know and you tell them you can't talk to them. The purpose was to disclose all contacts whether it influences them or not and secondarily addresses whether even with contacts would not influence you anyway from being impartial.

Mayor Weatherly disclosed he had received one email prior to knowing the issue would come before them in the quasi-judicial nature; it was clarified to him when he contacted the Town Manager with questions about it and he was informed it was quasi-judicial. He didn't respond to the email and would have no affect on the deliberations. He had no other contacts that he's aware of. He has visited the site, asking if there were the appropriate time to state that. Attorney Fordham advised it was fine to disclose he had visit the site, just at the appropriate time; now can comment whether it would have an effect on being impartial, but at the appropriate time later after the evidence has come in, you would describe the site visit and any impressions you got from that later so if anyone has questions – you need to let folks know what you know by virtue of that visit so they can bring any other evidence or questions where there's a full picture; you can address whether it has caused you to make up your mind, but other than that thinks it's more productive to address that in the context of the evidence.

Council Member Gossage disclosed he had received one email and saw the subject line and did not open the email. He had email conversations back and forth with a local business owner and prior to being informed this would be quasi-judicial; went to the site and met with the local business owner and looked extensively at the roads in the area, had maps on site, and looked at traffic; he would say that he had definitely formed opinions about the project and if he were on that side he would want me to recuse myself, so that's the request he would make. Mayor Weatherly stated this is the process they would use when they had formed an opinion, with Attorney Fordham agreeing. Mayor Weatherly asked for a motion to recuse Council Member Gossage from participating and voting and he could either stay seated or leave his seat.

Action: Council Member Schulze made the motion to recuse Council Member Gossage. Council Member Jensen made the second to the motion. Motion carried. Council Member Gossage left his seat.

Council Member Jones disclosed he had received an email from a business owner and due to his procrastination didn't respond to said email until he learned it was quasi-judicial from Attorney Fordham's email and then responded with that information that he could not converse email or otherwise about this situation. He received two other emails that had the subject in the line and responded to them in the same manner and didn't remember the names; receiving the emails didn't affect his opinion. He had visited the site; he drives through the Lowes' parking lot.

Council Member Schulze disclosed he had received two emails; the first one made him aware of the issue it was quasi-judicial and didn't respond to that one; the second one once he knew it was quasi-judicial, didn't open it; he feels he can give the hearing a fair and partial opinion.

Council Member Olive disclosed in April he was contacted by the operator of an existing restaurant in Beaver Creek Commons Drive of a possible project that might impact traffic in front of his restaurant; he later identified the project as McDonalds restaurant; he had not heard of it prior to this point so he met with him and discussed it in fairly lengthy detail. He did begin to form opinions. In May he learned from staff that this was going to be a quasi-judicial hearing so at that point he ceased any conversations regarding it, however, with the prior conversation and communications in mind, he also requested to recuse himself from this discussion and the vote. Mayor Weatherly called for a motion to recuse Council Member Olive from participating and voting and that he could either stay seated or leave his seat. **Action:** Council Member Schulze made the motion to recuse Council Member Olive. Council Member Jones made the second to the motion. Motion carried. Council Member Olive left his seat.

Council Member Jensen disclosed he had received two emails, one read prior to understanding this was a quasi-judicial hearing; he did not respond; he did not participate in conversations in anyway; he goes to Lowes, he has been at Lowes.

Mayor Weatherly opened the public hearing at 8:45 p.m.

Lauren Simmons, Planner, presented the planning report for McDonald's site plan, applicant Lowes Home Center and is a part of the minutes. Site is approximately 15.8 acres; proposed McDonald's site is approximately .8 acres or 35,365 square feet; existing location at the Lowes and pointing to proposed location; provided a reference map regarding different developments in Beaver Creek for the point of discussion. Parking: the proposed is going into the Lowes' parking lot; Lowes currently has 715 spaces; UDO requires 489 spaces and over by 226 spaces; proposed reduction to accommodate McDonald's restaurant is 109 spaces of which 31 will be coming back for McDonald's restaurant making a net loss of 78 spaces with a total of 637 spaces on site which still makes the site over-parked. Current land use classification is commercial and current zoning is planned commercial and current zoning is consistent with both those classifications; to familiarize to the site: north is Beaver Creek Commons out parcels; south is Beckett Crossings and Carriage Downs neighborhood; east is Beaver Creek Commons; west is Beaver Creek Commons noting Target. Proposed restaurant is 4,500 square feet with double drive through; staff issue: proposed McDonald's uses two shades of brick already approved in the Beaver Creek Commons development - the stone color and the yellow trim and brick elements are new colors being proposed by the applicant and are requesting they be allowed to use the new stone color and yellow accent color for trim and roof elements. If the stone, yellow trim and yellow roof are approved, then it will allow others in Beaver Creek Commons to use the stone, yellow trim and yellow roof to be in accordance with the UDO Section 9.2.4(b) Harmony of Design. Materials and colors can be limited based on percentage of building façade and roof; current approved roof and awning colors are three shades of blue and red and is an approved trim and sign color; material board was submitted as evidence and provided by the applicant. Town Transportation Engineer Russell Dalton will present the Transportation Impact Analysis. Simmons continued the site plan meets the required RCA, landscape and buffers are part of the existing development and no new impervious surface is being proposed, so there is no stormwater requirement or new buffer requirement as it meets the landscape requirements of the UDO for vehicle use area and building plantings, etc.; meets the requirement for town's lighting ordinance; and for utility, will be served by the town's water and sewer system; public works will continue to do the utility layout during site construction review to assure all requirements are met; is consistent with the 2025 Land Use Plan and the zoning; proposed major site plan is consistent with the UDO with the exception of the elevations. Planning Board held a quasi-judicial public hearing on June 13, 2011 and recommends approval with the condition that the applicant agree to pay for the proposed re-stripping plan and Town Transportation Engineer Russell Dalton will present this. At the Planning Board, applicant agreed to pay for the re-stripping.

Transportation Engineer Russell Dalton stated his credentials. Stated one concern expressed to him by a member of the public, actually owner/operator of one of the out parcels was traffic congestion on Beaver Creek Commons Drive prior to a request and submittal of a TIA from the applicant; they have their traffic engineer here to discuss that. When he started looking at the plan, one thing he discussed with the McDonald's site was trying to put in a improved pedestrian crossing cross walk at their site and they can speak to that; he was also trying to find opportunities to improve pedestrian safety, one of his primary concerns out there; with a shopping center and a roadway of this type, you are always going to have some level of traffic congestion and in some ways is helpful because the more traffic that's out there tends to actually slow people down but you are always going to have turning conflicts and there have been a number of minor collisions out there on the road. One of the solutions he had presented and not based on any findings of the traffic study, was where - he believes this driveway was the closest to the BB&T outparcel, with Simmons stating this was correct, where the McDonald's is coming in over to the west pointing to it on the map, it actually opens up from a left turn lane and becomes

an additional through lane, so what happens is people coming from this through lane suddenly finds themselves opportunity to pass people and jump out ahead and approach 55. One of the recommendations he had and has actually talked with the people in the town trying to do this just as soon as we have the new budget year is to change this through lane into a left turn exclusive lane like they have upstream and would keep people from jumping over into that lane thinking it's a through lane and try and pass other drivers and hopefully slow people down. And also beyond that lane, improve a crosswalk at that location and adding a triangular striped island to provide sort of a refuge. One other thing he had thought about since the Planning Board meeting, another good idea would be to put in one of the road mounted signs, "Yield to Pedestrian" to provide some positive reinforcement and visibility out there in the middle of the road to improve visibility of pedestrians. Also with this plan, the Chick-fil-A driveway at one time had a concrete island in it, and when he started with the town, he was called out there to investigate traffic problems with the circulation for that driveway and he recommended our public works staff remove that concrete island - he believes the intent was to make that a right-in and right-out, problem is it wasn't a real right-in and right-out, people would just turn around the island and make that dangerous for them; opening it up made allowed drivers to make that left turn a lot easier and in his opinion made the situation safer without the island. He would like to go one step further and actually strip that as a two-lane exit, a left and a right, and would help with some of the congestion in the area because drivers sometimes get hung out there, you're not sure if they are going left or going right and some people try to get around them and this would actually designate two different lanes and help alleviate some of that confusion. With this restriping plan, it was priced out with Clark Paving and Marking at around \$2,200.00 and the applicant offered that up as a condition to pay for that instead of the town having to fund that to help mitigate some of their site traffic impacts. They will discuss more of the traffic impact study.

Mayor Weatherly asked if there were questions of the Council. Council Member Schulze stated he had a hard time understanding the traffic impact analysis and asked how many new vehicles would be entering this. Dalton requested the applicant come forward and their traffic engineer speak to the details of the study and if you like ask questions of them or follow up with him. Council Member Jensen asked if McDonalds is a stand alone, how many parking spaces would be required. Simmons responded, are required to have 29 spaces and proposed 31.

Lacey Reaves, Attorney, Raleigh stated because this is a quasi-judicial hearing on a major site plan, would offer testimony only of experts. He will express opinions about legal matters related to the satisfaction of certain elements of the ordinance; he qualifies himself hopefully as an expert stating his credentials. As Lauren stated this is an infill commercial development and internal to the Beaver Creek Commons Shopping Center and takes advantage of existing impervious surface already in existence and already technically in use, although as Lauren testified there are a substantial number of excess parking spaces serving the Lowes store; they will propose to locate this new McDonalds in the corner of that parking lot and as Lauren testified if this project goes forward, and is built, there will still remain 148 excess parking spaces; they will submit this will be an infill use of existing resources. Because this is a major site plan, burden on the applicant to establish criteria of Section 2.3.6.e.2 UDO have been satisfied. As you know there are eight criteria in the ordinance, the first of those almost always is an issue, and is an issue here tonight, that is the requirement that must be established - the proposed use is compatible with surrounding land uses; will establish tonight that this proposed new use on Beaver Creek Commons Drive will be compatible with the exclusively commercial land uses that surround it. Remaining seven criteria of the ordinance require basically that the site plan meet all the other criteria of the Unified Development Ordinance, saying all other sections of the ordinance are satisfied. He thinks there are two issues tonight and will identify those: 1) compatibility and 2) proposed use at this facility a shade stone color and the use of yellow for trim and roof treatment meets the criteria of the ordinance. Lauren referenced Section 9.2.4(b) of the UDO; that ordinance speaks to building material as it relates to colors; it requires that for a color to meet the UDO and to be utilized in a commercial development that color must be present within the development within an adjacent neighborhood and is the exact language of the ordinance - adjacent neighborhood; they will establish tonight just a short distance just down Beaver Creek Commons Drive in the adjacent commercial very close adjacent commercial development, the HH Gregg store is currently in existence and a very dominate color utilizes the color yellow. As far as compatibility is concerned and Lauren reported the site is zoned commercial, it is located on land designated for commercial use in the 2025 Land Use Plan, and is completely surrounded by land that is similarly designated. He would submit as a matter of law in North Carolina with those two conditions present, it is a presumption of compatibility.

He offered tonight the testimony of three expert witnesses: Brian Soltz and Doug Hervey and Steve Green; all giving their credentials and responding to questions of Attorney Reaves:

Soltz responded: he began the project as a land planner laying out the proposed McDonalds site in the parking lot currently Lowes; he actually prepared the site; he identified the proposed site using the materials and surrounding land uses that are commercial uses; development in the area began with a single commercial development but expanding beyond a single commercial development to include this entire quadrant as well as other areas at this intersection of Hwy 55 and US64; described the proposed site plan under consideration noting a yellow box that would represent the area where the site would be located; met early with the planning staff, meeting with Russell, other planners and other staff members; to review the proposed layout, this is not the exact same layout - from that meeting we came back and from staff's comments to help improve circulation of the property, eliminated parking spaces, worked with the ingress and egress points of the lot, and overtime following some internal approval from his client, submitted the patch plan to staff

along with the other associated plans. A couple of components of the site plan that he would like to point out are the circulation patterns of the site; the McDonalds is set up with a one way circular circulation pattern; from his experience in designing McDonalds and other fast food restaurants with drive through facilities and other vehicular access areas, one way to flow through the property allows customers to enter into the property and exit the property in a safe manner. The site is also designed with components of the UDO and as indicated earlier in regards to lighting and landscaping, stormwater management and utilities. Some other components added to the site are pedestrian access points which Russell touched on earlier. A comment that did come from staff was the addition of the pedestrian crosswalk.

Reaves interjected, that he had asked he identify the points of in the proposed vehicular ingress and egress points of the site. Soltz responded the proposed ingress and egress locations, noting the existing driveway, the Lowes parking lot and noting another driveway which is shared between the Lowes and the Target parking. Reaves then referred back noting both points of ingress and egress are at intersections where it's possible to cross Beaver Creek Commons with Soltz responding yes they are; they are full access points. Reaves ask he describe while looking at the slide, the businesses that surround the proposed site. Soltz noted beginning at the intersection: Panda Express Restaurant – another fast food drive through facility; Wachovia Bank site that has a drive through facility for banking and teller needs; next site is the Chick-fil-A Restaurant and also has a drive through facility. Reaves asked the point of ingress and egress off Beaver Creek Commons Drive for the Chick-fil-A, with Soltz pointing to the location in front of the restaurant and it is shared with the adjoining Chili's Restaurant. Attorney Reaves noted that particular curb-cut does not serve the McDonalds site with Soltz responding it does not. Reaves asked he continue talking about the surrounding area. Soltz continued: Chili's Restaurant, BB&T Bank, TGI Fridays, I-HOP Restaurant and SunTrust Bank. Reaves asked he go back and ask he identify the location of the HH GREGG Store. Soltz pointed to the location behind Carrabbas. Reaves asked, if he would describe that as adjacent commercial development to Beaver Creek Commons - Soltz responded yes, as he had stated earlier, the development in this area has evolved over time with the approval of a multi-commercial facility. He continued, the ingress and egress access point into Beaver Creek, and identified them at this location are frequently used by other vehicles to enter the commercial facilities in this area. Soltz continued the pedestrian crosswalk proposed and mentioned earlier will be similar to design shown in photographs of design provided by Russell showing which includes a pedestrian safety point when pedestrians are crossing Beaver Creek Commons, they will be able to have a refuge area noting its location, and both sides is a concrete island and also contains signage of the pedestrian crossing; the design of the crosswalk is also used in a high visibility crosswalk which is typical for these type roadways. Attorney Reaves noted that type of improvement is in the public right-of-way; McDonalds would bear the cost in his estimation with Soltz responding yes; it's included as part of their construction drawing. Soltz noted other ingress points of the property one-way inbound access, a one-way exit, and a two-way connection access, noted the area in the shopping center that is shared. Pedestrian access is ADA assessable, route from the public right-of-way up a ramp type entrance and to the front door of the McDonalds; also includes pedestrian amenities such as a bench. Reaves asked that he describe the materials, colors and design of the proposed building - Soltz responded as Lauren said the materials and colors of the building with the exception of two elements complies with the established color pallet for Beaver Creek Commons; he presented a slide photograph provided by staff and submitted originally for the development for this site; explains it's the only element left, not having been able to locate the original. Elevations show the brick as a majority of the material color which matches that of the brick listed on the pallet; the other two components mentioned earlier the stone surrounding the front of the building and the entrance and accents on the side, identified the stone that matches finish color used on the Lowes building and recommended to use that color material by Lowes property from the development of their site, and have incorporated that into their design. The other color is the yellow roof trim and color; showed photos of surrounding businesses that shows use of different materials and elements, noting the Panda Restaurant, Chick-fil-A Restaurant, Chili's Restaurant, and the awnings included the color green, which is not on the color pallet presented earlier. Reaves noted there is yellow in their sign, with Soltz stating yes, that is correct; the Qdoba Restaurant which incorporates different colors in their signage again; the HH GREGG property which is adjacent to this development which incorporates yellow as a major component in its design; more awning colors red and white strip with white awning color was not part of color pallet in this development either; pointed out a variety of different stone finishes on various buildings in this area which was also not specifically identified on the pallet; the Target building; Lowes building; the overall view of their site. Reaves asked if he believed the color yellow and stone color McDonalds proposes complies with the provisions of the Unified Development Ordinance – Soltz responded yes he believes they do comply with the ordinance considering the major color elements that are on the pallet are utilized as part of their proposed building. The new colors if allowed would be compatible with the other colors that are presented in the adjacent development. Section 9.2.4.(b) specifically states and allows colors that already exist on the block or in the adjacent neighborhood. The HH GREGG clearly has the predominant color on its building and its very close and certainly in the adjacent neighborhood.

Reaves asked Soltz, for the record, about the other technical criteria that a major site plan must satisfy as far as the UDO is concerned. In his opinion does this proposal meet the zoning district supplemental standards, with Soltz responding, yes it does. Attorney Reaves asked how about the site development standards, with Soltz responding yes. Reaves asked, how about the regulations that relate to the mitigation of the development of steep slopes, with Soltz responding yes. Reaves asked has the proposal satisfied requirements for the dedication of right-of-way, with Soltz responding yes. Reaves stated other required improvements, has that element of the ordinance been satisfied, with Soltz responding yes. Reaves asked if he were aware of any relevant standard of the Unified Development Ordinance, specifically Article 7 Subdivision that are not satisfied with this proposed site plan, with Soltz responding no.

Reaves asked if there were other questions of Soltz, and with there being none called his next witness: Doug Hervey, who answered questions from Attorney Reaves: Reaves asked if Hervey and his group participated as a part of the design team that designed this proposed development, with Hervey responding yes. Reaves asked he were familiar with the area around the site, with Hervey responding yes. Reaves asked how he would describe the area, with Hervey responding he would call it traditional suburban retail development with each retailer using building designs representative of stores in other locations and its brand; result is a variety of designs and heights and roof designs. Reaves asked, from an esthetics standpoint, and in his professional opinion, does he think this proposed McDonalds would be compatible with the surrounding area, with Hervey responding yes he does. Reaves asked if he thought the use of the color yellow in anyway creates incompatibility, with Hervey responding no he does not; there are a variety of building colors in the area and yellow is used with the HH GREG store, and is a short distance away; also you have heard there are other unified materials and colors that tie McDonalds into unified buildings.

Reaves asked if there were questions of Hervey, and with there being none, called his next witness: Steve Green, who answered question from Attorney Reaves: stated he had practiced transportation and traffic engineering, for the past seven years for NCDOT and Ramey Kemp and Associates and prior construction engineer. Reaves asked if he and his firm were engaged by McDonalds to do a traffic assessment with respect to the proposed development, and with Green responding yes they were. Reaves asked if they submitted that assessment to the Town, with Green responding yes they did. Reaves asked he describe the analysis that was performed and the nature and scope of the work, with Green responding that upon being contracted by McDonalds to prepare the TIA for the Town for the scope of the work, and was agreed they would study the intersections of Beaver Creek Commons Drive and Zeno Road, Beaver Creek Commons and the private drive between the Lowes and Target, as well as Beaver Creek Commons Drive and the site access drive. They conducted traffic counts at those intersections on the weekday period during the lunch time 11-2, as well as during the p.m. peak 4-7; looked at the 2011 existing conditions and 2012 the proposed year of buildout of McDonalds without the site and then 2012 with the site being built with conditions. When they conducted their analysis they determined through their IT trip generation manual there would be 1100 additional vehicles per day that would utilize the site going to and leaving the site. During the lunch peak there would be 114 vehicles total that would enter and exit during that peak hour. 76 that would enter and leave during the p.m. peak which is less than one vehicle per minute entering and exiting; less than 4% of the traffic will be utilizing the Beaver Creek Commons and Zeno Road during the lunch and p.m. peak; at the overall three intersections there were a couple of them that fell to level service E or F and McDonalds did not contribute to those that fell at level service E or F. Reaves asked how he would describe the amount of traffic to be generated by the proposed development in relation to the traffic that currently exists, and is otherwise projected to exist at this location. Green responded with there being less than 4% total traffic that's out there, he would define it as marginally insignificant. Reaves asked if he prepared a written report, with Green responding yes they did. Reaves asked if the document he had was the written report, with Green looking at the document, and responding yes. Reaves submitted the document as evidence. Reaves asked to whom had he submitted the report, with Green responding to Russell Dalton, Town of Apex. Reaves asked, to his knowledge if Mr. Dalton had reviewed and accepted the report, with Green responding yes he did. Reaves asked if he had had suggestions about the site plan and the development that were communicated to him, with Green responding in particular, related to the striping that was agreed upon by the Planning Board, the change in the striping and the turn lane, and the pedestrian crossing. Reaves asked Green to summarize the conclusions and recommendations from the report. Green stated overall, there were no improvements that needed to be made based on the study to the surrounding transportation network based on the level of services directly related to the McDonalds site, due to the existing configuration; right-of-way constraints - the improvements suggested by Mr. Dalton should help traffic flow overall; the opening of I540 in the future may help Beaver Creek Commons Drive some; he believes with the extension of the bridge over Kelly Road that will leave Beaver Creek Commons Drive in the future will allow for more even distribution along Beaver Creek Commons Drive and will lessen some of the impacts of existing traffic conditions now; but overall the site will not significantly increase traffic conditions or worsen traffic conditions. Reaves asked, if he thought in anyway the addition of this proposed use to Beaver Creek Commons will create an unsafe or hazardous situation from a traffic perspective. Green responded no, the ingress and egress points being full movement at the intersections should prevent that from being unsafe. Reaves asked in his professional opinion, did he believe from the perspective the traffic from McDonalds would be compatible with the character of the surrounding land uses, with Green responding yes. Attorney Reaves asked if there were questions of Green.

Council Member Jones asked clarity that the level of service would not change with McDonalds, having read in the report at one point it would go from E to F. Green responded it would not change because site trips from McDonalds; the turning movements would decrease; levels of service are not due from McDonalds' site trips; there are no turning movements at those drives, the level of service decreases at BB&T drive; there's no turning movements from the McDonalds to that site drive. Reaves asked if it were because of increases and what they refer to as background traffic, with Green responding it is due to the increase in background traffic as well as the overall through traffic on Beaver Creek Commons Drive; when you have a left hand turn and a stop condition any traffic you add is going to increase whether its growing 3% a year from 2000 and 2012.

Council Member Schulze questioned the 1100 visits if that were totals throughout the day asking what percent of those are new vehicles. Green responded it was 1000 new vehicles and 2200 overall with half those pass by with existing traffic. Council Member Jensen asked clarity that when you first come into the Lowes area and come around that corner and that first intersection where people turn left, he thinks it might be Zeno, right now to him is a disaster, asking the level of service. Green responded the level of service at Beaver Creek Commons Drive at Zeno Road in the background condition of 2012 at lunch peak is level service F and remains F in the combined condition. Based on the approved, when they prepared the site, the TIA, proposed distributions of traffic, and the way traffic works, when you look at the site now when Lowes parking lot was set up, internal circulation is actually such that someone coming up Zeno drive that is going to go to McDonalds is set up for them to go through the Lowes parking lot on the internal circulation as opposed to traveling to Zeno Road intersection.

Dalton clarified with levels of service, they were talking about un-signalized intersections, and are talking about approached levels of service, you're talking particularly about one approach at each case at those two intersections that's failing; typically when you talk about a signalized intersection and levels of service A through F, you're talking about overall average level of service, so at a signalized intersection you might have one that works at C or D typically, but would still have certain approaches that might be operating at E or F. With an un-signalized intersection like in this case, it's not uncommon at all to have an approach operating at E or F. It goes back to how much stop delay there is and how much volume there is whether it warrants a signal. He read from the: UDO Section 13.19(c) Transportation Development Fees, traffic impact study: (c) Stop-controlled minor street approaches to intersections may exceed LOS D provided the addition of development traffic at the intersection is not anticipated to warrant a traffic signal upon build-out and the resulting congestion does not block traffic movements at adjacent intersections; this is the criteria for un-signalized intersections that are below D. Reaves stated to Dalton, it has been determined he assumes the traffic that would be generated by this proposed development would not warrant a signal at any of these locations. Dalton responded he would not expect a traffic signal to be warranted; he would say in the case of Zeno Road, there's potential it could meet one of the traffic signal warrants, but in that case, he knows from early scoping with this development as a whole, NCDOT was very much against a traffic signal at this location as its proximity to 55; it's a dangerous alignment and it probably would not improve safety because traffic signals are really not safety devices, they usually trade one type accident for another. Also the Town currently has no means to operate a traffic signal in terms of timing, we don't and it's on our road Beaver Creek Commons Drive is ours, so NCDOT would not offer to maintain that signal for us. There were no further questions.

Mayor Weatherly stated they would cross examine, addressing the one opponent:

Tony Holmes, Chick-fil-A owner/operator, stated he had information he wanted to present and stated his credentials having been at this location for six years; noting the area of expertise questions would be directly related to his business, experience and knowledge of being there, and traffic moving in and out of that business, Reaves said they certainly have no object of Mr. Holmes testifying to the facts, but object to any opinion he expresses with regard to traffic and affect on surrounding areas or implication.

Mayor Weatherly stated first they recognize cross examine of their witnesses at this time, and then asked the Town Attorney for a ruling on Holmes credentials when he gets into his testimony. Holmes responded he was willing to present that first then cross examine. Mayor Weatherly stated generally you would cross examine the other persons. Attorney Fordham advised that he thought it would be better to go ahead and cross examine first. Holmes responded this was fine: he assumed everyone had a copy of the Ramey Kemp traffic study, noted Mr. Rynal Stephenson was the author, and asked if he were here tonight. He was not; Mr. Green was present. Holmes stated the information he would like to provide is factual information based on current counts of traffic movement that comes in and out of his unit and he thinks is pertinent to the questions he would be asking Green. Attorney Fordham stated the usual course is to cross examine and he could ask questions about facts, you can't assume facts not evidence. Holmes stated that was fine; he was stating the facts about care movement out of his site. Mayor Weatherly stated there was some discretion regarding the order of the proceedings stating to Holmes if he would feel more comfortable presenting some factual information prior to questioning the previous testimony then he could proceed. Holmes stated it would help. Attorney Fordham wanted to clarify at this point that he was going to testify about facts and didn't need to make a decision yet about what is perceived as an expert. Mayor Weatherly stated he would allow the Attorney's to call a point of order if Holmes entered into areas that may not be considered.... Attorney Fordham stated he was assured they would hear from Attorney Reaves if there's reason to expect an objection. Attorney Reaves added in that regard maybe Holmes could tell them if he's qualified to conduct traffic counts, has he conducted counts before and would like to know what the basis of the facts are. Attorney Fordham stated to the Mayor he could allow Holmes to proceed and as things come up, should establish a foundation for the testimony. Mayor Weatherly asked Holmes to proceed and understand any parameters in which they have to deal with tonight.

Holmes offered an Exhibit of Transaction counts and drive-thru transaction information for April and May 2011; he has a system that allows him to track every transaction through the drive-thru, counter or carry-out order. For Chick-fil-A in May, 2011 – 40,027 transactions; are closed on Sunday so there's an average of 1540 a day; for the drive-thru alone 954 and points this out because on the very last page is a map and numbered and can more easily speak to them – Intersection 2 right outside of his unit, and where the drive thru directly dumps out is 954 a day for May. He stated they could see information for April 39,312; average per day 1512, and drive-thru average per day 937. Under other: last 28 day average was put together last Monday for the Planning Board and not that old; have averaged on peak hours 105 cars typically between 12-1; also the peak during those 28 days was 123 cars; math roughly every 30 seconds a car is coming out of that drive-thru, either going right taking the 2 or going right out taking the 3. This is the only two methods for vehicles to basically get out, to take a left out of his lot. This is the factual information he has to present. Holmes continued since the author of the study is not here he stated the representative was Mr. Green, Ramey Kemp and then directed his questions to Green. Holmes asked Green if he would use the map and point out the three intersections that were involved, with Green responding 4, 3 and 1, and for the record Holmes wanted to point out 2 was not a part of that study. Holmes asked that Green share with the Council what day of the week the study was performed. Green responded traffic counts were done on February 23. Holmes asked what day that was on, and Green responded he didn't know, with numerous folks responding it was on a Wednesday. Holmes presented more factual information that the busiest days of the week for his particular business was: Fridays and Saturdays. He continued any information he had presented was averages – for Friday or Saturday, would be above all of those averages. He pointed out the traffic study was not done on a Friday or Saturday. Holmes asked, based on the study page 2 the estimated average daily traffic would be 2230 vehicles half of which are new vehicles asking Green if this were correct with Green responding yes. Holmes asked if it were safe to say that out of those 1, 115 that it would impact the amount of traffic on Beaver Creek Commons Drive with Green responding yes. Holmes pointed out on page 3 of the study shows that intersection #3 – 60% of the traffic that would leave the McDonalds unit would use that intersection and travel east and was not 60% of the 1000 and 60% of the 2200 which would amount – 60% of 2300 is 1338. Green restated that 60% of the traffic site would be traveling east, with Holmes agreeing traveling east, not necessarily at that intersection; they would travel east on his map, left to right; that would passing going through from either 4, 3, down past 2 to 1 with Green adding that's correct. Holmes asked as a part of the study two of the intersections, three were studied, two of the intersections were rated as D, E, and F movement, and asked Green to use that math and point those out and use numbers also. Green responded 1 and 3 with Holmes adding if you see the yellow arrow, Green can testify that you can; he read the study and the yellow arrows on 1 and 3 are in fact the movements that are rated D, E or F with Green responding correct. Holmes pointed out for the record that as established earlier intersection 2 is not a part of the study and if you backed out in this subdivision, you would see starting with the Panda Express moving north past his unit up to the IHOP and BB&T, there are seven businesses and to those seven businesses, has two points that customers can access Beaver Creek Commons on a left turn. One of those was a part of the study and that was 3 and that left turn was a D, E, or F; 2 was not a part of the study but 2 happens to be pinned between two of the study intersections which in fact have D, E, and F movement. Holmes asked Green if the striping plan proposed by Dalton and part of the Planning Board's recommendation were a part of the study, with Green responding it was not. Holmes asked Green if any of his study involved traffic lights or possible traffic lights at any of these sections, with Green responding no it was not because it was not because of the coordination with the town and NCDOT, with Holmes responding that was fine. Attorney Reaves asked Holmes let him finish his answer to the question, with Holmes responding he did, he said no, however Attorney Reaves asked that he let him answer the question. Mayor Weatherly stated he can, let him answer. Green continued, with coordination of NCDOT and the Town, the space between NC55 and Beaver Creek Commons Drive and Zeno Drive and Beaver Creek Commons Drive is not sufficient nor the geometry really a good place to put a traffic light; doesn't allow for the timing and already have triple lefts at Beaver Creek Commons turning left on NC55 to allow for proper timing, with Holmes responding right. Holmes stated he testified to that earlier. Holmes asked the difference between NCDOT 55 and intersection, with Green responding he did not know. Holmes added its 1400 feet, asking if that were sufficient distance for a traffic light. Green responded according to NCDOT standards you can have one at 1000 feet to 2000 feet. Holmes thanked Green and stated that's all he had for him at this moment.

Apex Police Chief Jack Lewis was cross examined by Holmes and who stated in 2009 Apex Police Department responded to 91 motor vehicle crashes on Beaver Creek Commons Drive, 2010, 122 crashes, to date 2011 there's been 49. Holmes asked in his professional opinion would the addition of 1,115 cars on Beaver Creek Commons Drive without any additional traffic improvements be treated additional hazardous or more hazardous conditions. Chief responded in Apex they have less than 1000 motor vehicle crashes they investigate that are fully reportable; perspective wise of those mentioned, in 2009 of the 91 they responded to 76 are reportable, has to do with whether or not a crash occurred but whether it meets a threshold of reportability based on property damage or the presence of an injury, so there is a difference. Last year they responded to more crashes 122, 80 of those met the threshold for reportability. They have worked hard in this area with speed enforcement, warning devices, to try and slow down the traffic, he does agree with Engineer Dalton most of the time about things and he made a statement earlier that slower vehicles sometimes do, congestion does make things a little safer, they hope they do make things a little safer by slowing down and may have had an impact in the difference between 80 reportable out of 122 because they are a lower speed; lower speed accidents generally have less damage and less likelihood of accident severity which is based on either crash damage or injuries. The issues that the police from being out there have to do with congestion and to navigate from one side to the other; its pointed out on this that left turns that take you back towards 55 come in conflict with traffic that's already on that

roadway going towards 55 so there's no doubt in his mind that as you add a number of vehicles headed towards route 55 that encounter those vehicles that are trying to make left had turns from any of those access points, it becomes problematic and causes backup on that side of the road which results in impatience and impatience and driver inattention are two primary factors in many minor crashes, not mattering that peoples cars are damaged, have to deal with it, but nonetheless not severe crashes as engineers would rate them and those who are involved in it sometimes study, so yes the addition of traffic there does, but he has to say that it is less than desirable in that you've got uncontrolled intersections and he knows NCDOT's posture, they don't own this road, they don't have a dog in the hunt, but there are complications caused by not having signalization controls; and Tim Donnelly who he has the greatest respect for, has talked in front of them before about the town not having signalization capabilities and those kinds of things, and is one of those examples where he again agrees with Dalton that signals cause different kinds of accidents but sometimes they help you avoid some of the more severe ones because of the speed and slowing down flow and giving people a chance to see a controlled turn as opposed to an uncontrolled turn. He bases this on the fact that he has been involved in crashes and tries to determine what happens to them since 1975 and still occasionally has an opinion at sever crashes when we have one here. Rather than specifically answer about just this statistics by Mr. Holmes he needed to tell the backdrop of what he saw in its entirety to be far to everybody because from his perspective that is a very congested road and is horribly concerned about a pedestrian trying to cross that road at threshold times when its dangerous because of the anxiety that comes with that makes it very dangerous and hopes the sign that goes there, the one that's erected, lasts longer than the one they put on Salem Street which was stolen the first weekend after they installed it.

Attorney Reaves asked if he would have an opportunity to ask Chief Lewis questions, with Mayor Weatherly responding absolutely.

Planner Lauren Simmons was cross examined by Holmes; asked Simmons if the similar site was proposed on the Target site as far as the number of parking spaces that was required, would Target have the left over number of spaces to supply a site similar in size. Simmons responded from her limited knowledge of the Target site plan, she believed is over-parked as well. Council Member Jones asked she described over-parked. Simmons responded that over-parked means they exceed the requirements of the UDO, not much more than 2 parking spaces, she can't speak exactly but at least 100 spaces or more. Attorney Reaves objected as there was no proposed development for the Target site and is speculation. Holmes stated he could establish relevance. Attorney Fordham asked how he would establish relevance. Holmes stated the relevance to this particular situation if this site plan is approved with no traffic improvements here, the Town Council will be presented with possibly in the future, the same argument that a business may come into the Target and want to do the same type of site there, and there's already a precedent set that traffic improvements would not be required to prove that. Attorney Reaves spoke from his seat and said each site plan has to be approved on its own standards, and is sheer speculation. Attorney Fordham advised the Mayor he could do as he did before that it has some relevance to it... with Attorney Reaves interjecting this was quasi-judicial and the next major site plan would be quasi-judicial and based on its own merits, with Attorney Fordham agreeing. Mayor Weatherly stated this line of questioning doesn't have relevance to this particular issue. Holmes asked if it were appropriate to make a statement that was not opinionated to summarize. Mayor Weatherly stated he could make a summary statement and each party would get the same chance to wrap up. Holmes asked if it would also be opportunity to rebuttal with Mayor Weatherly responding that's what he was doing now unless there are additional witnesses, anybody new, then he could cross examine. Holmes did not make further statement.

Attorney Reaves cross examined Chief of Police Jack Lewis: that he had heard Greens testimony, with Chief responding yes. Attorney Reaves asked if he had had an opportunity to review the traffic study that Ramey Kemp and Associates prepared that Green had talked about and offered as evidence, with Chief responding no, he was asked specifically questions about police activity there. Attorney Reaves stated he heard Green testify that the additional traffic that would be generated by this McDonalds would be less than 4% would add less than 4% traffic to existing traffic on Beaver Creek Commons Drive. Chief responded yes he heard him say that. Attorney Reaves asked so your testimony would be that any traffic to Beaver Creek Commons Drive would be something he couldn't support. Chief responded in fairness he was not in that loop to have looked at it; what his comments were based upon when he additionally said that about two-thirds of the traffic that was associated with that would come out and go back toward route 55, identifying Green, made the statement that two-thirds of the 2200 plus vehicles would exit in a couple of spots but passing past those several intersections that were numbered. Attorney Reaves stated it would still be less than 4%. Chief stated he hadn't seen the whole report. Attorney Reaves asked if he heard him say that. Chief responded he heard him say 4% and heard him say the vehicles would be traveling by there and McDonalds and the impact of those vehicles on those intersections which are already problematic. Attorney Reaves stated the problem is left turns from businesses on the other side out on Beaver Creek Commons Drive. Chief stated there is a great tendency for that to be a problem. Attorney Reaves asked if there were any kind of restriction that could be placed on traffic that would help the situation. Chief responded he guessed that was what he was speaking to a little bit about the intersection which he believes is 3 and some conversation about signalization or traffic control that would provide a controlled break where people could anticipate. Attorney Reaves asked if he had discussed this particular situation he's talking about with the Town's traffic engineer Dalton. Chief responded no.

Attorney Reaves cross examined Green, that he had head Holmes comments about signalization and asked if he had any observations based on the comments he heard. Green responded that 10 FAWA statistics show with installation of or

traffic signals stop controlled intersections, that traffic accidents increase, 2) based on the expressed desire of Holmes possibly see a traffic signal at intersection 3, you have immediate impact to the upper left, but the driveway would need to be, probably need to go away in terms of safety; the other problem you would have is with the amount of left hand turns coming out of these other sites; you would have an expectation as a driver at a red light that when you got your green light that you would be able to turn and not expect traffic such a short distance down the road at intersection 2; you also would not expect traffic to be coming from the other direction with that driveway as close as it is. Attorney Reaves asked is the potential closure of curb cut at intersection 2 something that could be studied. Green responded it could be studied, he thinks overall the amount of development on that side the short distance between the Beaver Creek Commons Drive and road where drive throughs are created to traffic in his opinion and based on doing studies at Cross Roads Plaza having worked at Beaver Creek Commons on the extension, and Beaver Creek Commons Drive for two and one-half years, stacking issue and turning right leads to the impatience for people to get out and pushes to make those movements; one thing they could do because they have a roundabout further down Beaver Creek Commons Drive you could turn those into right in and right out and force people to want to go east; NCDOT builds them all over the state and causes people to go right to come back in and then go left. Attorney Reaves stated once again he characterized additional traffic that would be generated by the McDonalds as marginally insufficient. Green responded yes, it is about equivalent as to what you would get with a year's growth, what NCDOT calls it, just above 3% during the p.m. peak so just under 4% lunch hour.

Council Member Schulze stated that it was mentioned before that 4% additional traffic at Beaver Creek Commons Drive and Zeno Road, the actual number he asked, was that the 1100 number. Green responded when you look at site trips, Appendix A, have figures for site distribution, Figure 4, with the comment 2012 peak hour traffic, if you compare the background traffic 2012 conditions to combined at Zeno, the through movement heading to NC55 background is 553 lunch hour, 409 p.m. Council Member Schulze asked what background meant. Green responded it means without the site, without the McDonalds in place; so in 2012 the year the site is anticipated to be built out the McDonalds site; without the McDonalds site so they drew the existing traffic 2011 increasing the amount by 3% the standard growth rate; without the McDonalds the through traffic is expected to be 553 vehicles at the lunch and 409 p.m. with the site going through to NC55 is 586 lunch and 430 p.m. (Council Member Jones said at Zeno) Green stated at that intersection heading east towards NC55; coming back headed west 582 lunch and with McDonalds 617 and 458 p.m. without the site and 483 with the site; and with through movement at this intersection. Council Member Schulze asked lunch and p.m. times: specific counts for that intersection.....will get back to this. Council Member Jones asked if it were typical for a traffic impact analysis of this nature for a traffic count to be done on one day only; to say is it standard practice. Green responded yes; they have times depending on the number of intersections that they have to count, they may count on more than one day, may count different intersections on different days; the requirements of NCDOT standard impact analysis, yes, the reasons they did not do their counts on the weekend was because of the nature of the business and residential, you will get a fluctuation where on the weekday you have the residential, the business and commercial all at the same time; where on the weekend you might not get some of the business in the area that would utilize the area during lunch hour; noting other surrounding businesses in the area; he couldn't tell him every business or office in that area. Council Member Schulze asked wouldn't McDonalds highest traffic be during the busiest day of the week like Friday and Saturday, like Chick-fil-A.

Cheryl Honeycutt McDonalds area construction manager stated by nature of the business and location they are going to have a different cliental on the weekend than through the week. She appreciates the comments about the traffic study and Daltons recognition of that. They do not have a particular day that is busier than the other unless you are looking at holidays and can do a better and faster volume during lunch time hours on a typical working day. Green added peak hour lunch is 12:15 - 2:00 and p.m. 5:45 - 6:45; counts were done from 11 in the morning to 2 in the afternoon, took lunch and then 4 in the afternoon to 7. Council Member Jensen stated it seemed to him Lowes service center and such, weekends would be the time to count, seeming there's a hole in the data regarding what the traffic count actually is.

Mayor Weatherly asked Dalton if he were asked, his analysis of their traffic impact, are the numbers consistent with what he would be comfortable with, and the date of the TIA count. Dalton responded it was not typical to count multiple days to do a traffic impact study, unless you think there's a lot of dynamic fluctuation, you say the traffic will go up by 20% and 30%; that may be true that certain types of traffic are busier on the weekends and be different people there, but during the week he thinks you get a lot more contractor type business that's stopping for lunch than you do maybe on the weekend; people are going over to get something for a home project and doesn't want to speculate too much, just to give them an idea he hasn't seen anything to tell him that there's one particular day that is busier than another, and also with respect to restaurant out parcels, some restaurants may do more business on a weekend and some may do more business on a weekday depending on the type fast food place it is; they may have different cliental. Council Member Jones added peak hours may be different on the weekend than during the week. Dalton responded they may be but he suspects during Christmas holiday retail traffic may be a lot higher so during this time, you may get more traffic, than any other time of the year, but as far as Monday through Friday goes vs. Saturday, he wouldn't expect a huge difference in traffic. He would have to see the numbers to understand what that is and there may be higher turn movements but less through traffic; he drives this shopping center and its busy all the time; he hasn't noticed being there on a weekend vs. a weekday that there's a huge difference in traffic on Beaver Creek Commons Drive. Chief Jack Lewis informed Attorney Reaves that he had asked if he had discussed this with Dalton; he continued he was asked for information the latter part of last week which was the degree of his late involvement with this; he sent an email to Manager Radford and to Dalton's boss, Kent

Jackson and he may have forwarded his comments to Dalton so they could have been proxy and communication with him because he talked about the police activity and specifically talked about the impact of right-in and right-out only on that other side of the road; so, he may or may not have seen that but he didn't discuss it with him but he knew he sent an email and where it went, and it was important. Attorney Reaves asked if there were further questions of his witnesses. There were none.

Council Member Jensen asked Chief Lewis what days are there the most accidents. Chief responded he couldn't tell him that; he put this together in a real short period of time and was able to screen it by that location but couldn't break it down; they are there fairly often during the week, during the time that traffic is pretty heavy, not odd hours but during the day when there's a general activity level but would say that would be consistent Monday through Saturday; Sunday morning traffic patterns out there are very different than they are weekday mornings because of late openings and staggered times out there; but he doesn't believe what he has listened to and what he watches as he's scanning summary activities pretty regularly, that's like one day here, sometimes that would be the case but he doesn't believe that's the case.

Attorney Reaves stated Mr. Homes wanted to make a final statement. Mayor Weatherly stated both could make a summary statement. Attorney Fordham asked Council say what they saw if they went there; sounds like some made site visits.

Mayor Weatherly disclosed he visited the site but didn't take a trip to view the site; he's familiar with the general area saw the location and can visualize it in his mind but didn't make a separate trip. Council Member Jones frankly wasn't sure of the location of the parking lot until he got the agenda packet. Council Member Jensen had been to Lowes in general.

Council Member Jensen asked Dalton intersection 4, was there any discussion about signaling. Dalton responded there's not been, based on the volumes, doesn't believe it would warrant a traffic signal, he doesn't think it would meet the peak hour warrant; probably would have been better if some of these had been set up as round-a-bouts like on the other end to help some of the movements, but round-a-bouts take up a lot of space and very costly to retrofit; one of the problems coming from 55, you have to drop and add so many lanes at the 55 intersection you create a lot of merge issues, he's trying to put in something like a single lane round-a-bout, you end up with two lane round-a-bouts that some people don't like. In the future could be potential for traffic signals but at this time, Zeno is probably the only one that comes close to meeting warrants and that's not because of the left turn out, but because of the left turn in coming off 55, that's a relatively heavy movement you look at that as a peak hour warrant, he doesn't know that it meets the four hour warrant but it could potential meet the peak hour warrant. It's so close to 55 the only thing he has looked at with respect to Zeno in the past is beefing up the right-in and right-out when Panda Express came in which was originally suppose to be Hardees and he has looked into possibly turning the other end of Zeno into a right-in and right-out, but then that traffic even though it is not a huge amount of traffic making lefts have to find its way out some other way; so they have to be rerouted. He understands there was some mention of NCDOT how they like to send some people down to turn around and come back but he always has some concerns about that, but then you might be making a safer movement at one place but you are sending a driver a lot further distance to make the same trip and when you have that additional exposure, you could actually increase accidents that has an unintended effect.

Mayor Weatherly called on Attorney Reaves for a closing summary or statement. He asked to follow Mr. Holmes as he thinks he has the burden of proof. Attorney Fordham advised Attorney Reaves should go last. Mayor Weatherly turned to Mr. Holmes who began that he was not opposed to development, he was a business owner; his issue was with traffic conditions at Beaver Creek Commons Drive; he knew this appeared to be a Chick-fil-A against McDonalds but he's a lone operator, he does not have the Chick-fil-A powers behind him and owns one business; he was here because of the traffic as it does exist; a decision to allow the out parcel will make additional further traffic, approval sets a precedent for further development of out-parcels in Beaver Creek Commons corridor. When Beaver Creek Commons was constructed there were limitations by this board on roads and traffic; two examples: bridge over 64, this Council did not allow Beaver Creek Crossings to be developed until that bridge was completed and in a lot of these meetings the decision was based on traffic conditions; the northern portion of Beaver Creek Commons was not developed, there is dirt that has been graded that has been delayed and not allowed to be opened until the Kelly Road connector is completed and was a decision by this Council based on traffic conditions; in his opinion, while it is a major site improvement, it is a major change to development and the original intent of traffic is being altered severely; with precedence in mind.... As a business owner, the north side, he represents one business but there are seven other businesses there, and intersections two and three are the only way customers out of all seven businesses connect to make a left turn on Beaver Creek Commons to go east, up to Hwy 55, with the condition of the volume of traffic they discussed here tonight, it would be increasingly more difficult for customers to access in and out of his business and seven other businesses there on the road. Speaking of crosswalks, it creates a situation trying to cross the road too; in conclusion, we all know there's a problem, and a lot of data has been thrown out tonight, reality is if you go out there you know there is a problem; he thinks the Chief attested to that. The decision that is made here tonight will either exacerbate the problem or help create a solution for the future.

Attorney Reaves stated this is a quasi-judicial hearing; it is to be determined on the evidence and where professional judgment is required as it relates to the evidence; he would ask that this Council give credit to the professional opinions expressed tonight. Standards before Council are set forth in the UDO; this is a major site plan proceeding and there are eight criteria that are applicable; he thinks the one they have been talking about as it relates to traffic is compatibility; he doesn't think there is any question that the introductory of this McDonalds or any other new business to Beaver Creek Commons will result in more traffic on Beaver Creek Commons Drive. The question is how much traffic. The evidence heard tonight, from Mr. Green and in the study prepared by his firm, Ramey Kemp and Associates, is that the total additional traffic generated by this McDonalds is 4% of the traffic that exists on Beaver Creek Commons Drive. Mr. Green professionally characterized that as marginally insignificant. There is a difficult situation there now; it may be some inconvenience to Mr. Holmes' customers; obviously his business is thriving; he however is the only business man of seven, he thinks he referenced, or business woman who has come forward to object what they are proposing; they are proposing a marginally insignificant traffic impact and he would submit to them, that does not rise as a matter of law to a standard of incompatibility. They would submit that what is proposed here with McDonalds will be compatible to surrounding land uses in Beaver Creek Commons and believe they have satisfied the other seven criteria, technical criteria including the criteria related to color. He asked they approve this major site plan.

Council Member Schulze asked that we're not approving a major site plan, but an amendment to the major site plan. Attorney Fordham responded that's technically true but it's the same thing; you go through the same procedure, you make a decision; the criteria is the same. Mayor Weatherly closed the public hearing at 10:22 p.m. and referred the matter to Council, asking if there were any issues to be discussed before obtaining a motion, there being none, stated the floor was open. Council Member Schulze stated he was not supportive of this measure, and it really comes down to traffic; he has no issues with compatibility, compatibility of the esthetics or the color; it doesn't bother him. Every time he goes over to that plaza traffic is horrendous no matter whether it's on a weekday or weekend, morning, afternoon or evening and frankly, it's a poor design he thinks and if you're trying to make a left hand turn coming out of Lowes or Target, you'll never get out of there. He doesn't want to do anything that will make it worse than it already is; yes 4% maybe marginally insignificant, it's still worse and being that this is an amendment to an agreed upon major site plan already, it's not like we are being asked to approve a subdivision plan; this is a change to what we've already agreed upon; to him there's no compelling reason to approve something like this and the fact that it does contribute to a degree which... that to the traffic, he's not supportive of it. He does have issues with the way the site plan traffic study was done; yes he does agree that the study was probably correct for the Wednesday that they took it on, but in reality you want to look at it on the weekends and on busier days, so he doesn't think this traffic study is very reflective of the reality of what you see out there; that's just common sense. **Action:** Council Member Schulze stated for that reason, he's going to make a motion to deny this major site plan. Mayor Weatherly stated the motion was to deny and asked if there were a second. Council Member Jones made the second to the motion. Council Member Jones stated basically for the same reasons, although the evidence has been given to them tonight that this would be statistically insignificant increase in traffic, would exacerbate an already poor at best, level of service at Beaver Creek Commons. Attorney Fordham wanted to make one comment and that was the fact that this area is subject to a prior site plan, it really doesn't weigh in as you judge it now; in other words if this meets all the standards, the fact that its already approved, would not be the basis upon which you could deny it; so in other words you would have to judge it with Council Member Schulze interjecting that he would just say its incompatible... with Attorney Fordham continuing that all he was saying was, that it wasn't an absolute rule, but he doesn't know that there's been any evidence that relates some reliance situation that would prejudice the public because somebody relied on what's already there; but if there's that type evidence you could consider that its already approved, but just as a general matter the fact that there's already a site plan approved this area is not a deterrent to consideration or even a consideration. Council Member Jones stated it wasn't really a part of his reason anyway so would leave it at that. Council Member Jensen agreed with the traffic study; in terms of the day, he's been out there on weekends and there's more definitely and more difficult; thinks its troublesome even with 4% increase its not much, but it's not designed for extra cross traffic. Mayor Weatherly agreed with the sentiment expressed here; he thinks 4% is significant when we're looking at the capacity on that road already; the over capacity, he thinks it's a dangerous situation; traffic constitutes safety issues and 4% would be significant to him. Mayor Weatherly asked if there were further discussion. There being none stated the motion was to deny and called for the vote. Vote on the motion was 3 to deny and 0 voting for which was unanimous (Council Member Gossage and Council Member Olive were recused from the vote).

End of Public Hearing #5

Mayor Weatherly called for a recess at 10:30 p.m. with the Council meeting reconvened at 10:35 p.m.

Public Hearing 06

Director of Planning Dianne Khin

Staff recommends approval of the annexation for a public water connection.

Public Hearing and possible motion regarding Annexation Petition #460: Ruth Cash Maynard, owner, Marcia Maynard Lund and Gray M. Roth, Executors, petitioning to annex 0.279 acres non-contiguous to the Town corporate limits and located at 3525 Old US1 Hwy and known as the New Hill Post Office. Khin presented the request for annexation noting the location and the request for public water connection. Staff recommended approval. Mayor Weatherly opened the public hearing at 10:36 p.m. and with no one addressing the petition, closed the public hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the annexation petition #460. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #06

Public Hearing 07

Director of Planning Dianne Khin

Staff recommends approval of the annexation to connect existing home to town water.

Public Hearing and possible motion regarding Annexation Petition #463: Don and Callie Sorrell, property owners/petitioner, petitioning to annex 0.529 acres non-contiguous to the Town corporate limits and located at 1221 Salem Church Road, Apex, North Carolina. Khin presented the request for annexation noting the location and the request was only for annexation of the house for a water connection. Staff recommended approval. Mayor Weatherly opened the public hearing at 10:37 p.m. and with no one addressing this petition, closed the public hearing and referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the annexation petition #460. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #07

Public Hearing 08

Principal Planner Brendie Vega; Planning Board met June 13, 2011; staff will report recommendations.

Public Hearing and possible motion for various amendments to the Unified Development Ordinance.

Action: Council Member Jensen made the motion to move into Closed Session at 7:05 p.m. to receive legal advice from the Town Attorney prior to hearing Unified Development Ordinance proposed amendments. Council Member Jones made the second to the motion. Motion carried unanimously 5-0. Minutes of Closed Session are recorded separately.

Action: Council Member Jones made the motion to move back into regular session at 7:15 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Council moved back into regular session at 7:15 p.m.

Principal Planner Vega stated Planning Board met June 13, 2011 and unanimously recommended approval of UDO amendments #1 and #5 with changes reflected in the staff report which is incorporated as a part of the minutes; due to the lengthy meeting, Planning Board asked #2-#4 and #6-#14 be considered during their July meeting; staff recommends approval of #1 and #5 and continue #2-#4 and #6-#14 to the July 19, 2011 meeting. Planning Board requested changes in language regarding private owned parks and recreational areas; private owned parks and recreational areas currently encouraged but not required. Amendment would require on subdivisions 50 lots or more and would provide private parks based on formula of .01 acre of private parkland per residential unit equivalent to one-half acre for each 50 lots.

Action: Council Member Jensen made the motion to refer this item to Parks and Recreation Advisory Commission for review and recommendation. Council Member Gossage made the second to the motion. Mayor Weatherly asked to continue presentation and public hearing and withhold the motion. Council Member Jensen and Council Member Gossage withdrew their motion and second.

Vega continued private parkland would be provided within the subdivision in one or more locations with a minimum half acre in size; maintenance would be provided by the subdivision homeowners association; Planning Board added parkland would have to have 50 feet of road frontage so all residents within the subdivision could access it; have a minimum width of 100 feet to avoid odd configurations; be accessible to neighborhood residents; be graded flat with maximum average grade of 1-5%; be planted with turf grass and maintained as an open play field or alternately as a configuration such as basketball court or recreation amenities swing sets or tot lot. Planning Board recommended approval of #1 with changes.

Staff read the proposed UDO amendment # 5 Section 4.1.1 Use Table to add pet services under commercial uses; a new Section 4.3.5(G)(36) Pet Services in use classifications; and a new Section 4.4.5(G)(17) in supplemental standards; clarity: domestic animals to live companion animals -staff report outlines same. Planning Board recommended approval with clarity of domestic animals to live companion animals.

Mayor Weatherly opened the public hearing at 7:20 p.m. regarding the two items from the Planning Board: Martin Hicks, 1245 Dobson Way, HOA President, Trace Subdivision, addressed # 1 and stated to require private parkland or 50 lots half acre burdens HOA to maintain it, they can't afford extra costs, and with the great park system in Apex and Cary; stated you don't need it because no one would use it. With no one else speaking during the hearing, Mayor Weatherly closed the hearing at 7:20 p.m. and referred the matter to Council. **Action:** Council Member Jensen made the motion to refer #1 to Parks and Recreation Advisory Commission. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0. **Action:** Council Member Jones made the motion to approve amendments to the UDO designated #5 as presented. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 08

End of Public Hearings

OLD BUSINESS

Old Business 01 (Add-on)

Declaration Town of Cary and Town of Apex Water Reclamation Facility Buffer

There were No Old Business items for discussion on the printed agenda, however Attorney Fordham asked to include consideration of a Declaration of Covenants first presented April 19, 2011 and between the Town of Cary and the Town of Apex relevant to the Water Reclamation Facility, to establish and maintain a continuous 200 foot wide buffer around the perimeter of the property. Apex is listed owner and modified to reflect Cary owner, with Apex assuming interest by conveyance; asked approval with review of Town Manager and Town Attorney to reflect revisions. **Action:** Council member Jones made the motion to approve the Declaration as presented. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

End of Old Business 01

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.**

NEW BUSINESS

New Business 01

Director of Finance Lee Smiley

Possible motion to approve Budget Ordinance Amendment No. 12 for sanitation expenses and Capital Project Ordinance Amendment for improvements at Seagroves Farm Park. Director of Finance presented same noting for 2010-11 revenues and expenditures for sanitation collection have exceeded budget estimates; this amendment recognizes \$60,000 of the additional revenues and appropriates it to pay for the extra costs of collection. Director of Finance noted Council recently authorized construction of improvements to Seagroves Farm Park; the capital project amendment authorizes the use of \$360,000 in subdivision recreation fees previously transferred into the project fund to finance these improvements. Mayor Weatherly called for a motion. **Action:** Council Member Jensen made the motion to approve. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

End of New Business 01

New Business 02

Director of Public Works Tim Donnelly

Possible motion to approve the Tentative Award of Contract 1-Treatment Works and Church Road Waterline Extension for the Western Wake Partners Regional Water Reclamation Facility and Associated Capitol Project Ordinance Amendment. Donnelly made brief comments and asked Council adopt a Resolution of Tentative Award to the lowest bidder Crowder Construction Company in the total bid amount of \$76,613,000 and adopt the Capital Project ordinance Amendment related to the Regional Water Reclamation Facility Capital Project Fund. **Action:** Council Member Gossage made the motion to approve as recommended. Council member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of New Business 02

New Business 03

Director of Public Works Tim Donnelly

Request from Matt Kirkpatrick, Manager of Colvin Park, LLC: Council in 2008 approved a subdivision plan for 21 lots in Colvin Estates based on in-town lots with all town services except sewer collection and disposal. Council approved a higher density based on request by him and he has studied the cost of extending sewer lines to the subdivision and has concluded due to the distance to existing town infrastructure, would like to develop a pump station and pump to Town of Cary, as its closer to the subdivision than the Apex collection system and also would like to be relieved them from paying Apex capacity fees. He noted the location on the most eastern boundary of the ETJ, showing an aerial view and noted surrounding land uses offering options for council's consideration.

Director of Public Works Donnelly stated future homeowners would have higher sewer rates than other citizens, discussed long term pump maintenance; eventually would eliminate the pump station when taken off line and Cary should have no objection; he didn't agree capacity fees should not be paid to Apex and there was discussion of a possible split in capacity fees which would have to be negotiated; asked Council's direction before spending much time on this request. Council discussed the complexity of the request and fairness to the homeowners and noted it cheaper for the developer to do it the way he proposes. Manager Radford noted it's not just to serve this parcel but others in the future discussing the basin growth in the area, not wanting to short Apex and with Donnelly noting benefit to have water lines in this future growth area. Donnelly expanded on customer rates, strongly recommending Town collect the capacity fees as any other rate payer. Kirkpatrick stated Cary was willing to consider the request and all parties would benefit; he did not want to pay the capacity fees to Apex as similar fees would be paid to Cary; anticipates development of the project asking approval for an agreement to be presented to Cary. There was discussion regarding advantages and disadvantages regarding future requests and setting precedent, paying capacity fees, future questions about the rate structure for these homeowners; Donnelly noted at first they may accept, but years later would be upset about this. Mayor Weatherly agreed it would be problematic down the road and this was helping the developer as was cheaper to do it this way.

With discussion that this would be interim, Donnelly noted capacity fees were for the plant and acreage fees could be used for system improvements and if acreage fees are paid, they could be used to get sewer there; if he were public works director of Cary, would not be interested in this temporary situation but all could be negotiated if Cary is willing; temporary would go away and rate disparity would go away not knowing the timing; explained the types of pump stations and this would be a basin one could go in, however generally not cost effective, but hopes to eliminate it.

Mayor Weatherly called for a motion, however no motion was made. Kirkpatrick then stated rates to the homeowners would be factored into the price of the homes and explained a formal disclosure process. Mayor Weatherly stated if homeowners knew upfront what they were going into. Kirkpatrick continued with the issue of paying capacity fees and a 25 year agreement with Cary and with Cary considering that permanent, would require them to pay capacity fees; discuss contribution for a future connection. Donnelly recommended the capacity fees be paid to the town and would not expect other rate payers to pay them; regarding contribution to get the collection system there, it's a new idea and better to rate payers in Apex, and getting the pump station on line. Kirkpatrick noted the contribution would be in lieu of paying the capacity fees; Cary was willing to move forward with this and asked Council's consideration. Council Members Gossage noted this was a complex request and had presented a complex solution. Council Member Olive felt they could negotiate capacity fees and rates perhaps could be squeezed down.

It was noted this solution was not perfect but was a new idea and Council asked staff work to improve on an agreement for common ground compromises. Council Member Schulze and Council Member Jensen both had expressed concern with capacity fees not being paid, Member Jensen suggested 25 years was not forever and felt they could reach new ground where developer pays and with Cary agreeing to return a percentage to make Apex whole when the station comes offline, taking homeowners out of this. Donnelly envisions collecting capacity fees and working with Cary to see if they would reduce theirs or set time lines and thresholds that they might give portions back. Council agreed staff should bring something back to them for final consideration. Manager Radford stated they may want to consider how this would be discussed with future developers who may want to develop property on the northern end where we don't have sewer but Cary would have access and along the eastern rim. Council stated they may want this to be a precedent along the border, looking at each one, applied evenly, maybe a long range plan. Donnelly noted a county study mentioning this before, and seems to be headed in that direction.

End of New Business 03

New Business 04

Town Manager Bruce Radford

Manager Radford recommended the adoption of the FY2011-12 Annual Budget Ordinance with revisions to reflect revenues and expenses associated with continued provision of EMS services; tax rate remains same and keeping all employees. Mayor Weatherly called for a motion. **Action:** Council Member Schulze made the motion to adopt the FY2011-12 Annual Budget Ordinance. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

End of New Business 04

End of New Business

CLOSED SESSION

There were no Closed Session items for discussion.

WORK SESSION

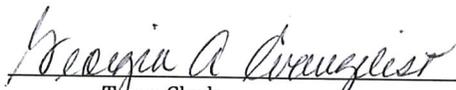
There were no Work Session items for discussion.

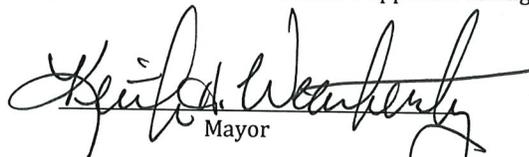
ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 11:30 p.m.

Action: Council Member Jones made the motion to adjourn. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

The minutes of June 21, 2011 Council Meeting were submitted by the Town Clerk for Council's approval during their July 19, 2011 Council Meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for July 19, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, July 19, 2011, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly will preside over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order and gave the invocation. Pledge of Allegiance was led by Scout from Troop 613. Mayor Weatherly extended a welcome to those in attendance.

PRESENTATIONS

Appearance Awards for Residential property awarded to Alex & Michelle Graham, Apex for their 209 Center Street residence, and for Commercial property awarded to Dennis & Carol Willis, Franklinton for Carden Farms a re-use project at 400 N. Salem Street, Apex.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action.

1. Minutes for Council meeting of June 21, 2011; Minutes for Council June 21, 2011 Closed Session (separate cover).
2. Minutes for Council Special meeting of June 16, 2011.
3. Statement of Council and Ordinance for Rezone #11CZ09, Toll NCII, LP, petitioner, for property located at 8129 Green Level Church Road approved by Council on June 21, 2011 and rezoned from Rural Residential to Low Density Conditional Zoning.
4. Statement of Council and Ordinance for Rezone #11CZ12, Jason Bertoncino, Withers & Ravenel, Inc, petitioner, for property located at 1909 East Williams Street approved by Council on June 21, 2011 and rezoned from Planned Unit Development Conditional Zoning to Planned Unit Development Conditional Zoning.
5. Resolution No. 2011-0719-10 authorizing condemnation related to the Old Raleigh Road sidewalk project (moved to New Business).
6. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners July 5, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Council Member Schulze asked to place Old Business 02 ahead of public hearings regarding recreational use of streets and sidewalks. **Action:** Council Member Schulze made his request in the form of a motion. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0. The Agenda was set as amended. Minutes for Old Business 02 will remain in order as it appears on the agenda.

PUBLIC HEARINGS

Public Hearing 01

Planner Lauren Simmons

Public Hearing and possible motion regarding Rezone #11CZ13, Glenda Toppe, applicant, seeking to rezone the Futrell property located at the corner of Laura Duncan Road and US64 containing 16.16 acres from Planned Commercial Conditional Use district to Planned Commercial Conditional Zoning district. Simmons presented the report for the rezone request and is incorporated as a part of the minutes; site is zoned commercial; is consistent with 2025 Land Use Plan; applicant asked to amend conditions to include vehicle sales and rental light. Site plan related issues were discussed at a neighborhood meeting to include Pine Plaza Drive extension; applicant asked to amend conditions to extend display lights turn-off time to 9:30 p.m. Staff recommends approval of the rezone with conditions listed in the staff report and extension of display light turn-off time to 9:30 p.m. Planning Board met July 11, 2011 and unanimously recommended approval of the rezone with conditions stated below and the amendment to condition three to extend display light turn-off time to 9:30 p.m.

1. A sixty foot cross access easement will be provided to the Rhodes property from the future Pine Plaza Drive. Location of that easement will be determined at site plan.
2. Light poles will be finished in black or architectural bronze.
3. Lights will be turned off at night at 9:00 p.m. and not turned on again until 7:00 a.m.

Applicant is aware of NCDOT road improvements plans for Laura Duncan at US64 and during site plan process will coordinate with NCDOT.

Mayor Weatherly opened the hearing at 8:05 p.m. Glenda Toppe, Glenda Toppe & Associates, spoke in support of the rezone request; Pine Plaza Drive extension will be built through developers property with location to be determined for north and south, entrances/exits/alignments at site plan review, and adjacent property owners could connect; applicant request amendment to condition three for exterior display light turn-off time to be 9:30 p.m. ; zoning conditions establish buffer widths for Laura Duncan Road and Hwy 64 that are less restrictive than what is required in current UDO: US64 will have a 100 foot buffer instead of 50 foot buffer; shared drive on Laura Duncan will be maintained with future conversion to right-in and right-out; stream crossings must have Division Water Quality approval; uses minimize adverse impacts and can accommodate future development on this site as well as development that occurs on surrounding properties with similar zoning; will be served by Town utilities, and sewer would be routed for other parcel development; zoning meets all current and future UDO standards. Primary change in uses is for a car dealership and noted it appropriate for the area stating appraised value: \$5 to 6 million; sales - \$40 million; public improvements - \$600,000 to \$1 million and compatible with surrounding uses, noting the approved auto dealership across street. Applicant agrees to all conditions.

No one spoke in opposition and public hearing was closed at 8:30 p.m. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve the rezone with the conditions stated in the report and the amendment on turn-off of display lighting extended to 9:30 p.m. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 01

Public Hearing 02

Transportation Planner Reed Huegerich

Planning Board met July 11, 2011 and unanimously recommended approval; available on Town of Apex website.

Public Hearing and possible motion for approval of amendments to Transportation Plan document and accompanying maps: Huegerich presented the Apex Transportation Plan document adopted October 15, 2002 with three components: bike, pedestrian and equestrian plan map, thoroughfare and collector-street plan map and transit plan map, addressing future transportation needs in and around Apex and is the first update to the plan since its adoption. Transportation Plan map was redesigned on September 15, 2009. Proposed amendments to the document and map were stated:

Changes to the document include:

- o Updated demographic data from the 2010 U.S. Census
- o Detailed progress from initial adoption of the Plan
- o Integration of recent regional studies
- o New Facility Toolkit to help visualize recommendations
- o Updated goals and actions to implement the Plan
- o Timeline for implementing goals and achieving objectives
- o Updated maps as described below

Thoroughfare and Collector Street Plan map

- o Simplified road classifications
 - o Removed Left-turn Bays/Lanes designation
 - o Removed Superstreet classification
- o Added Rural Special Street Designation
- o Added Future Local Connector Special Street Designation
- o Added new Future Realignment intersection symbol
- o Simplified Intersection Treatments
- o Limited extent of plan
- o Removed map notes
- o Removed Grouse Trail Extension between Evans Road and Holland Road

Bicycle, Pedestrian, and Equestrian Plan map

- o Simplified sidewalk classifications
- o Limited extent of plan
- o Removed map notes

Planning Board met July 11, 2011 and unanimously voted in favor of the proposed amendments to the document and maps. A full copy of the document is on file with the permanent minutes and available on the town's website. Mayor Weatherly opened the public hearing at 8:40 p.m. and with no one addressing the proposed amendments, closed the hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the amendments as presented. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing 02

Public Hearing 03

Principal Planner Brendie Vega

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance: Vega stated the parks and recreation section was referred to the Parks and Recreation Commission and would return on August 2, 2011 for Council's consideration. Vega presented proposed amendments included in the staff report and incorporated as a part of the minutes. Planning Board met July 11, 2011 and voted unanimously for approval; staff recommends approval. Dianne Khin Director of Planning presented the proposed amendment for Section 2.3.7(D)(3) Subdivision, Master Subdivision Plan, Conditions and restrictions of the UDO ask to remove reference to the 2025 Land Use Plan and Land Use Plan Update and give consideration to whether conditions should be imposed on Master Subdivision Plan that includes a quasi-judicial hearing and noted it a cumbersome process; added General Assembly has been asked to limit quasi-judicial hearings. Stated conditions had never been imposed where applicant was asked to agree. Planning Board unanimously recommended approval of the amendment; staff does not recommend imposing conditions on master subdivision plans and also recommends approval of the amendment.

Mayor Weatherly opened the public hearing at 8:55 p.m. and with no one addressing the proposed amendments, closed the public hearing and referred the matter to Council. **Action:** Council Member Schulze made the motion to approve the amendments to the UDO as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 03

Public Hearing 04

Director of Planning Dianne Khin

Public Hearing and possible motion regarding Annexation Petition #464 Motiva Enterprises, LLC. property owners/petitioners are voluntarily petitioning to annex 10.302 acres contiguous to Town corporate limits and located at 2300 Ten-Ten Road, Apex. Khin presented the petition for annexation noting the property is connected to public water and that the annexation was voluntary. Staff recommends approval.

Mayor Weatherly opened the public hearing at 9:00 p.m. No one spoke in favor or opposition. Andy Taylor, Cary resident questioned the reason Motiva was being annexed and their relationship with the Town, asking if there were discussions regarding annexation during site plan process. Attorney Fordham explained there was an annexation covenant between Motiva and the Town however an agreement replaced it to provide water to the property; advised the annexation had nothing to do with the site plan and stated Brendie Vega had notified Motiva by email that annexation was not connected to site plan approval. He informed Council the general policy was not to provide water unless the property was annexed and the 1994 agreement for water replaced the annexation covenant. Taylor asked if this were the case why it took so long to enforce the covenant. Attorney Fordham responded the 1994 agreement replaced the covenant and was not enforceable because no sewer was in place. Taylor asked how annexation changes the relationship, in town vs. ETJ, with Mayor Weatherly responding Town receives taxes once property is annexed. Manager Radford stated benefit to Motiva was a reduced water rate and there was no change in relationship as would still be in the same fire district. Attorney Fordham added they are entitled to get water if annexed and Director of Public Works confirmed this was an accurate statement and confirmed there was no sewer. Taylor asked Council postpone annexation to allow Motiva to address why the request for annexation had said site plan approval and now voluntary, and continued there was a lack of public trust and transparency in this matter. Council Member Jensen acknowledged the Motiva public relations image.

Mayor Weatherly closed the public hearing at 9:15 p.m. Attorney Fordham stated he didn't know why the request stated site plan approval as it was not factual, as the site plan had already been approved when the petition was dated. Taylor continued speaking outside the public hearing and noted petition was dated May 5 and after the statement of Council on Motiva site plan conditions were passed on May 3, asking if more conditions were named later. Council Member Jensen noted no conditions came with annexation. Manager Radford asked Council delay the annexation and would ask Motiva for a revised petition and would proceed as soon as possible. Taylor called on Alan Manase to comment who stated he can't say why, but will get an answer. Once the revised petition is received from Motiva, the annexation process will continue.

End of Public Hearings

OLD BUSINESS

Old Business 01

Director of Construction Management Kent Jackson

Possible motion to approve construction contracts for Phase I, Hunter Street Park; Jackson stated bids were opened July 7 and explained all bids exceeded the allocated budget of \$965,000; staff obtained separate prime bids for various project components, and resulted in awards of separate contracts with Town acting as general contractor to schedule work. Staff recommended moving forward with the project as soon as possible so the turf elements could be installed quickly with other elements taking place over the fall and winter months. Recommended awards as follows:

Construction Document Revision:	Haden-Stanziale:	\$ 8,100.00
Surveying / Staking(1):	BBM & Associates:	\$ 11,000.00
Grading Contractor(1):	Batista Grading:	\$286,027.50
Irrigation / Sod (1) (2):	Jones Landscaping Maint:	\$139,759.40
Fencing Contractor(1):	Frye Fence:	\$ 51,975.00
Landscaping Contractor(1):	Southern Grounds:	\$138,584.05
Lighting Contractor (1):	Musco:	\$249,150.00
Site amenities / lighting:	Town of Apex:	\$ 77,288.20
 TOTAL		 \$961,884.15

Note (1): Includes 10% contingency

Note (2): Jones Landscaping had deducted \$10,000 from their original irrigation price of \$58,000 To compensate for issues arising from two previous efforts to sprig Bermuda at Hunter Street Park. The sub (Cape Fear Turf) will not be involved in this project. Jones Landscaping is also Providing bonding for the irrigation and sod on site to assure compliance and a quality product.

Phase I construction includes all areas except the playground, shelter / comfort station, and dog park.

Jackson explained the grading process and detailed parts of the bid that were considered under grading and other work related items. Mayor Weatherly called for a motion. **Action:** Council Member Jensen made the motion to approve construction contracts for Phase 1 Hunter Street Park as recommended. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

End of Old Business 01

Old Business 02

Attorney Hank Fordham

Possible motion to approve amendments to Town Code to allow for responsible recreational use of streets and sidewalks: Attorney Fordham presented amendment options for Section 14-28 playing upon streets, sidewalks, and public places. Section 13-11 obstructions-structures, vehicles, and addressed Section 20-143 riding bicycles on sidewalks. Town Manager Bruce Radford advised the insurance providers and staff had stated their opposition to the proposed.

Discussion evolved around Section 14-28(b) direct supervision was defined as within sight of and under control and further supervisor being parent, guardian or assignee (an authorized adult); further hours of play, age of juvenile, and cul-de-sac play areas and end of street or stub-street play areas, and its application to all streets or cul-de-sacs, noting cul-de-sacs vary in width normally 80 to 100 feet and then discussed distance away from intersections; play areas were defined as 100' from the end of pavement of the cul-de-sac and not located within 100' of an intersection.

Section 18-11 civil penalties for parents and guardians were addressed related to a juvenile's violation of the section for obstructions in the streets.

Attorney Fordham indicated with respect to Section 20-143 riding bicycles on sidewalks, he would need to do further research because of a possible conflict between a state statute and the proposed amendment to Section 20-143. Parking and enforceability without signage was discussed. Council Member Jones felt there was a general lack of understanding regarding the proposed and felt the matter should be explained to citizens, noting same hard to understand and enforce. Mayor Weatherly referred the matter to Council.

Action: Council Member Schulze made the motion to approve ordinance amendments to Sections 14-28, 18-11 and exclude 20-143; in Section 14-28(b) hours be 7:00 a.m. to sunset, (c) cul-de-sacs be 100' from the end of cul-de-sac and 100' from intersections; (b) direct supervision be parent, guardian, or authorized person to supervise child; Section 18-11 (c) child age be 15 or under. Council Member Olive felt the time should be stated as 7:00 a.m. or sunrise whichever is later to sunset. Council Member Schulze restated the motion regarding the time as stated by Council Member Olive. Council Member Olive made the second to the motion. Vote on the motion was 4 and 1 with Council Member Jones voting no. Motion carried. Attorney Fordham advised he would bring the final ordinance for approval as a consent item August 2, 2011.

End of Old Business

Mayor Weatherly called for a recess at 8:00 p.m. and Council reconvened at 8:05 p.m.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

New Business 01

Director of Public Works Tim Donnelly

Possible motion to enter into Developer Agreements and Associated Easement Procurement Agreements with Parkside Development Group, LLC for the purposes of constructing a Town of Apex waterline in exchange for water acreage fee credits. If approved, the motion should authorize the Town Manager and Town Attorney to make minor modifications to the Agreements, and authorize Town Manager to execute same.

Parkside and Bella Casa developers designed a waterline along Evans Road and Humie Olive Road that will benefit town water customers and improve fire flow in that area. Waterline will utilize easements that are required for town power lines. Estimated cost \$260,000 with water only acreage fee credits of \$179,936 being requested. In addition to acreage fee credits, staff asked Council approve a developer agreement allowing staff to negotiate all water easements on behalf of the developer, but require developer to pay easement costs, legal costs and if eminent domain is required, court costs. Staff recommends approval as it would be a good use of public money and the waterline would front the proposed school site in the area. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve staff's recommendation. Council Member Jones made the second to the motion. Motion carried unanimously 5-0.

Consent Agenda 5 moved to New Business

Resolution No. 2011-0719-10 authorizes condemnation related to the Old Raleigh Road sidewalk project for improvements of Town street system in that a third parcel is needed to complete the project; other easements have been acquired by agreement. Staff continues to negotiate however would like to proceed with the project. Adoption of the resolution would be in the public's best interest and the landowner would be compensated; Attorney Fordham would give details if eminent domain is necessary. Mayor Weatherly called for a motion. **Action:** Motion by Council Member Jones to adopt the resolution. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to go into Closed Session at 9:40 p.m. to discuss potential litigation related to proceeds from a letter of credit issued to provide security from defects in storm drainage. **Action:** Council Member Jones made the motion to go into Closed Session. Council Member Jensen made the second to the motion. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to go back into Regular Session at 9:52 p.m. Council Member Jones made the second. Motion carried.

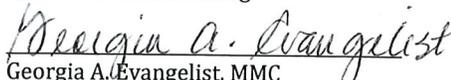
WORK SESSION

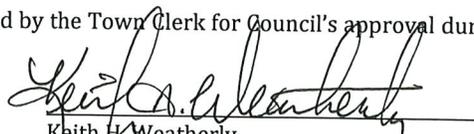
There were no Work Session items to be discussed.

ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 9:52 p.m. **Action:** Council Member Jensen made the motion to adjourn.

The minutes of July 19, 2011 Council Meeting were submitted by the Town Clerk for Council's approval during their August 2, 2011 Council Meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for August 02, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 02, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze
Council Member Schulze was absent.

COMMENCEMENT

Call the meeting to order

Invocation

Pledge of Allegiance

Welcome

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Council Member Jones asked consent 8 be considered separately and was considered as Old Business. Attorney Fordham presented substitute resolutions for consent 9 and consent 10. The Consent Agenda was set as amended and Mayor Weatherly called for action. **Action:** Council Member Jones made the motion to approve Consent Agenda 1-7 and 9 and 10 with the substitute resolutions. Council Member Jensen made the second to the motion. Motion carried unanimously 4 and 0.

1. Minutes for Council meeting of July 19, 2011; Minutes for Council July 19, 2011 Closed Session (separate cover).
2. Statement of Council and Ordinance for Rezone #11CZ13, Glenda Toppe, Glenda Toppe and Associates, petitioner, for the property located on Laura Duncan Road between US64 Highway and Ramblewood Road.
3. Statement of Council and Ordinance for Rezone #09CZ07, Tom Hendrickson, Lookout Ventures, Inc., petitioner, for property located west of NC55, south of US1, north and adjacent to proposed NC540 (Veridea).
4. Set Public Hearing August 16, 2011 for various amendments to the Unified Development Ordinance.
5. Municipal Agreement with State of North Carolina Department of Transportation for inspection of Town owned bridges as required by Surface Transportation Act 1978.
6. Supplemental Agreement with NCDOT for Old Raleigh Road sidewalk project EL-5100 DA and authorize Town Manager to execute same: updates schedule in municipal agreement to match what was approved by NCDOT and does not affect current progress funding or obligations.
7. Award construction contract for 2011 Roadway Rehabilitation Project to Gelder & Associates, Inc. \$646,117.83.
8. Ordinance to amend Town Code Sections 14-28 and 18-11 to allow options for responsible recreation use of streets (moved to Old Business).
9. Resolution authorizing condemnations related to the Church Road water and electric extension project.
10. Resolution authorizing condemnations related to the Center Street and Salem Street sidewalk project.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Meeting Agenda to be set prior to taking action. Town Manager Radford asked to include a resolution regarding the North Carolina Governor's Highway Safety Program: Traffic Safety Funding. Attorney Fordham asked Council hold a Closed Session prior to considering Old Business 3 to receive legal advice. **Action:** Council Member Olive made the motion to amend the Regular Meeting Agenda as stated. The Regular Meeting Agenda was set as amended. Council Member Jones made the second to the motion. Motion carried unanimously 4-0.

PUBLIC HEARINGS

Public Hearing 01

Council adopted Resolution No. 2011-0621-09 scheduling public hearing regarding closure of a portion of Broadstone Way; proper notice was given and proposed street closing signs posted and abutting property owners notified.

Public hearing and possible motion to approve an Order for Closing a Portion of Broadstone Way located in Broadstone Station and reserving utility easement: Kite Realty request the closure: a development plan will incorporate the remaining segment of roadway into the residential portion of the Broadstone project and the larger segment of the right-of-way will not be needed. Access to the town's lift station will be needed which requires an easement once the right-of-way is vacated; a closing of the portion of Broadstone Way would facilitate implementing the plan. The Town will reserve the public utility easements within the area to be closed to maintain the pump station. Matter has been reviewed by Technical Review Committee and is in agreement with the request. Mayor Weatherly opened the public hearing and with no one addressing the item, closed the hearing and referred the matter to Council. **Action:** Council Member Gossage made the motion to adopt the Order closing the portion of Broadstone Way as presented. Council Member Jensen made the second to the motion. Motion carried unanimously 4-0.

End of Public Hearings

OLD BUSINESS

Old Business 01

Director PR&CR John Brown

Possible motion to approve construction contract for Phase I of Seagrove's Farm Neighborhood Park: bids were opened July 7, 2011. Staff recommends award of contracts for General Contractor and the Boardwalk and Pier Contracts be awarded separately. \$360,000 was allocated for the project: General Contractor – Modern South Construction Company \$260,000; Boardwalk and Pier Contracts \$86,495; Planning and Design - Haden-Stanziale \$8,600 for a total \$355,095. **Action:** Council Member Olive recommended the awards of contracts as stated. Council Member Jones made the second to the motion. Motion carried unanimously 4-0.

End of Old Business 01

Old Business 02

Attorney Hank Fordham

Possible motion to approve amendments Town Code Section 20-143, Riding Bicycles on Sidewalk: Attorney Fordham presented an ordinance previously reviewed by Council and postponed the adoption to allow the Attorney to review state law on riding bicycles on sidewalks. Attorney Fordham concluded state law does not address whether bicycles are allowed on sidewalks, which means Council may allow or prohibit bicycling on sidewalks as it determines is in the public interest. Also inclusive noted juveniles were considered 15 years of age or under. Ordinance clarifies residential sidewalks are sidewalks adjacent to residences. Sidewalks adjacent to nonresidential structures or uses are not residential sidewalks. Structures or uses that are mixed: nonresidential and residential are deemed nonresidential structures. Member Jones questioned whether sidewalks connected with greenways would be considered residential sidewalks. Staff noted there may be some multi-use paths, with Council Member Jones stating this may need to be considered as well. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to adopt the ordinance amending Town Code Section 20-143 Riding bicycles on sidewalks including the juvenile age as noted. Council Member Jensen made the second to the motion. Motion carried unanimously 4-0.

End of Old Business 02

Old Business 03

Attorney Hank Fordham

Findings of Fact and Conclusions of Law with respect to the denial of site plan approval for the proposed amendment to the Major Site Plan for Beaver Creek Commons Phase 1 for the McDonald's at Beaver Creek. Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney. Council Member Gossage and Council Member Olive had recused themselves from participating and voting during the previous public hearing for McDonald's site plan and remained so. **Action:** Council Member Jones made the motion to move into closed session at 7:17 p.m. Council Member Jensen made the second to the motion. Motion carried with a vote on the motion 2-0. Closed Session minutes are recorded separate. **Action:** Council Member Olive made the motion to move back into regular session at 7:20 p.m. Council Member Jensen made the second to the motion. Motion carried with a vote on the motion 4-0.

Old Business 03 continued

With Council being seated in regular session Attorney Fordham asked Council be allowed to read the Findings of Fact and Conclusions of Law with respect to the denial of site plan approval for the proposed amendment to the Major Site Plan for Beaver Creek Commons Phase 1 for the McDonald's at Beaver Creek. After Council had read the document, Mayor Weatherly referred the matter to Council. **Action:** Council Member Jones made the motion to adopt the Findings of Fact and Conclusions of Law and Decision. Council Member Jensen made the second to the motion. Motion carried with a vote of 2-0.

End of Old Business 03

Old Business Add-On: Consent Agenda 8

Council Member Jones asked to consider for separate vote the Ordinance to amend Town Code Sections 14-28 and 18-11 to allow options for responsible recreation use of streets, as he had voted against the Council's decision during the July 19, 2011 meeting. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to adopt the Ordinance as presented. Council Member Jensen made the second to the motion. Motion carried with a vote of 3-1 with Council Member Jones voting no.

End of Old Business Add-on

Old Business 04

Manager Radford introduced a Resolution regarding a North Carolina Governor's Highway Safety Program: Traffic Safety Funding. Council previously considered the project and referred decision to the Personnel Committee who met April 25, 2011 and recommended approval of moving forward in the application process for federal funding related to Apex Police Department in the amount of \$98,690 to assist in defraying costs and the Town would formally appropriate a cash contribution of \$17,416 as required by the project contract. Application has been accepted and adoption of the resolution allows the Police Department to proceed to the next stage of the funding process. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to adopt the resolution that would allow moving forward in the funding process. Council Member Jones made the second to the motion. Motion carried unanimously 4-0.

End of Old Business 04

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

There were No New Business Items to be considered.

CLOSED SESSION

There were no additional Closed Session items to be discussed.

WORK SESSION

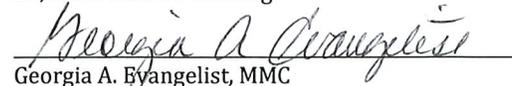
There are no Work Session items to be discussed.

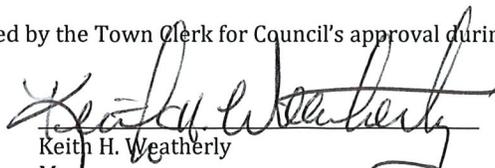
ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 7:28 p.m.

Action: Council Member Jones made the motion to adjourn. The Council stood adjourned.

The minutes of August 2, 2011 Council Meeting were submitted by the Town Clerk for Council's approval during their August 16, 2011 Council Meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for August 16, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 16, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze
Council Member Jensen was absent.

COMMENCEMENT

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance. Mayor Weatherly noted this Council Member Jones last meeting with the Council.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments to the consent agenda and it was set. **Action:** Council Member Jones made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously 4-0.

1. Minutes for Council meeting of August 2, 2011; Minutes for August 2, 2011 Closed Session (separate).
2. Budget Amendment for contract building plan review and inspection services for Village Summit Apartment Project.
3. Resolution No. 2011-0816-13 Intent to Consider Closing a Portion of Apex Peakway near its intersection with Laura Duncan Road and setting date of public hearing to be held on September 20, 2011; notice will be published in the Apex Herald for four successive weeks and Town of Apex website; abutting property owners will be notified by Certified mail, public hearing notices will be posted on the site.
4. Resolution No. 2011-0816-15 calling for public hearing for extension of bond authorization for wastewater and parks and recreation bonds and setting date of public hearing to be held on September 6, 2011; notice will be published in the Apex Herald and Town of Apex website.
5. Tax Report for Apex approved and accepted by Wake County Board of Commissioners during their regular session held on August 1, 2011.
6. Resolution No. 2011-0816-16 regarding North Carolina Governor's Highway Safety Program, Traffic Safety Funding Program and authorizing Mayor to execute same.

End of Consent Agenda

Web

PUBLIC HEARINGS

Public Hearing 01

Public Hearing and possible motion for various amendments to the Unified Development Ordinance: Principal Planner Brendie Vega presented UDO amendments included in the staff report and are incorporated as a part of the minutes. Planning Board met August 8, 2011 and recommended approval. Mayor Weatherly opened the public hearing at 7:10 p.m. With no one addressing the amendments, closed the public hearing and referred matter to Council. Discussion evolved around cutting of vegetation and landscape requirements, cutting near monument signs; agreed that topographical errors could be corrected at staff level. **Action:** Council Member Jones made the motion to approve the UDO amendments as presented. Council Member Schulze made the second to the motion. Motion carried unanimously 4 and 0.

End of Public Hearings

OLD BUSINESS

Old Business 01

Director of Construction Management Kent Jackson presented a Utility Relocation Agreement between Town of Apex and Progress Energy for TIP Project U-5118 AB, for realignment of Lufkin Road and asked authorization for Manager to execute same. Total estimated cost \$59,863; Agreement would authorize payment with Town share of 20% with costs factored into the project budget. **Action:** Council Member Schulze made the motion to approve the agreement and authorize Manager to execute same. Council Member Jones made the second to the motion. Motion carried unanimously 4 and 0.

End of Old Business

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.**

NEW BUSINESS

New Business 01

Mayor Weatherly offered Resolution No. 2011-0816-14 Honoring the Dedicated Service of Council Member Michael L. Jones 1988-August 2011 and regretfully consenting to his resignation August 31, 2011, because of a career move. **Action:** Council Member Schulze made the motion to adopt the resolution. Council Member Gossage made the second to the motion. Motion carried unanimously 4 and 0. A copy of the resolution was presented to Council Member Jones and a reception held in his honor. Mayor Weatherly and Council in response to the resolution stated their appreciation and well wishes to Council Member Jones. Angela Reincke, Parks and Recreation Commission Chair presented Council Member Jones with a plaque for his service as liaison. Council Member Jones made parting remarks.

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 7:37 to discuss eminent domain settlement. **Action:** Council Member Jones made the motion. Council Member Gossage made the second. Motion carried unanimously 4-0. **Action:** Council Member Olive made the motion to move into regular session at 7:40 p.m. Council Member Schulze made the second. Motion carried unanimously 4-0.

WORK SESSION

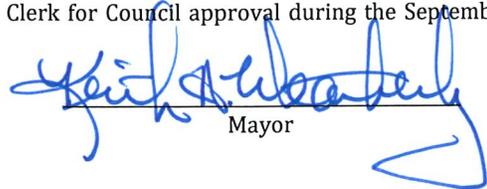
There were no Work Session items to be discussed.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:41 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second. Motion carried 4-0.

Minutes of the August 16, 2011 meeting were submitted by the Town Clerk for Council approval during the September 6, 2011 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for September 6, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 6, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze, (one vacant seat)

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation and extended a welcome to those in attendance. Pledge of Allegiance was led by a Scout from Troop 209.

PRESENTATIONS

Proclamation 01

Mayor Weatherly presented a Proclamation designating Neighbors Helping Neighbors Month, September 2011. Western Wake Crisis, Becky Spell accepted it; WWC served over 300 families needing assistance in paying their utility bills and offers a variety of opportunities in which Apex residents/businesses can participate in this effort.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Manager Radford asked to pull #7 as it would not be considered. Council Member Jensen asked to pull #3 for discussion (new business 04).

Action: Council Member Jensen made the motion to amend the Consent Agenda as requested. Council Member Schulze made the second to the motion. Motion carried unanimously 4-0.

Action: Council Member Schulze made the motion to approve the consent agenda as amended. Council Member Jensen made the second to the motion. Motion carried 4-0. The consent agenda was set as amended.

1. Minutes for Council meeting of August 16, 2011; Minutes for August 16, 2011 Closed Session (separate cover approved and sealed).
2. Budget Ordinance Amendment for Governor's Highway Safety Fund Grant to fund two officers and two vehicles accepted by Council August 16, 2011.
3. Approve purchase of riparian buffer and stream mitigation credits from Forrest Creek Stream and Riparian Buffer Mitigation Bank in the amount of \$91,761.36, NCDOT reimbursement under the existing municipal agreement for the Lufkin Road realignment project will amount to \$73,409.09 leaving the balance of \$18,352.27 to be covered by the Town's existing project budget (new business).
4. Set Public Hearing September 20, 2011 Council meeting for Rezone #11CZ14 Knowles, from B1-CU to TF-CZ district 2.94 acres located at 6003 Old Jenks Road.
5. Approve changes to Parkside Group, LLC Developer Agreement previously approved by Council July 19, 2011 and authorize Town Manager to execute same.
6. Resolution No. 2011-0906-17 establishing policy that closed session minutes related to the location or expansion of businesses or industries in Apex are open after such minutes may no longer be withheld under the Open Meetings and Public Records laws.
7. Consideration to waive inspection fees for Apex Rotary Club Kyle Byrd Memorial Car Show (pulled).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda for consideration and with the amendment to the new business section to consider Consent Item #3 and it was set prior to taking action.

PUBLIC HEARINGS

Public Hearing 01

Lee Smiley Director of Finance: Council adopted Resolution 2011-0816-15 and set public hearing; Clerk certified to the publication of public notices.

Public Hearing and possible motion to adopt two resolutions authorizing extensions for the Parks and Recreation and Wastewater bonds: Director Smiley stated referendum for approving general obligation bonds is valid for 7 years, but allows for an extension of 3 years when there are unforeseen delays. Public hearing is required. Council has opportunity to approve extension of these bonds by adopting the orders for the bonds: \$13 million Parks and Recreation bonds with original order approved in 2004 and with only \$6 million of those bonds remaining unsold; would be the amount that would be extended. Council also has opportunity to approve extension of \$35 million of Wastewater bonds, with none of the original order having been sold, could extend the full amount, with expected sell of these bonds in 2012. Mayor Weatherly opened the public hearing at 7:10 p.m. and with no one addressing this issue, closed the public hearing and referred the matter to Council.

Action: Council Member Jensen made the motion to approve the orders authorizing the extension of the aforesaid bonds. Council Member Olive made the second to the motion. Motion carried 4-0.

End of Public Hearings

OLD BUSINESS

Old Business 01

Tim Donnelly Director of Public Works: Council considered this request June 21, 2011 and directed staff to investigate.

Director of Public Works Donnelly asked Council's direction regarding request from Matt Kirkpatrick, Manager Colvin Park, LLC, to allow him to build a Town of Apex maintained sewer pump station and pump to Town of Cary's sewage collection system. Proposed would require an Interlocal Agreement between the two towns. Colvin Estate homeowners would pay rates that are combined Apex water rate and Cary sewer rate, plus \$2.00 per thousand gallons to defray costs to operate the pump station and collection system for the subdivision. Council asked staff to investigate whether or not Cary would consider refund of sewer impact fees if the pump arrangements lasted less than 20 years and Donnelly advised Cary does not support such an arrangement. Donnelly in his presentation asked if the following was acceptable to Council:

- 1) 5000 gallons of usage: Apex homeowners pay \$61.84/Colvin Estates homeowner pay \$78.64.
- 2) Since Cary does not support a refund of impact fees to Apex, staff believes sewer capacity fees should not be forgiven because the pump station at some point should go offline for Apex collection system efficiency and for a cost savings. Kirkpatrick proposes to pay current sewer capacity fees after 20 years at \$3.08 interest - \$382,500 normally due. Payment would be \$208,517 and due proportionately with each recorded phase of the subdivision.
- 3) Kirkpatrick plans to pay water/sewer acreage fees to Apex as he develops his subdivision. He requests water acreage fee credits for the waterline that he must extend to his property.

Kirkpatrick presented his request was based on cost to extend sewer lines to the proposed subdivision and concluded due to the greater distance to pump sewer to Apex, would develop a pump station and had ask Cary to consider this arrangement; Cary would not commit to a 25 year arrangement and felt Apex should be compensated fair and equitably; this would leave fees to be paid by developer. He stated the boundary agreement between Apex and Cary would not need to be modified; stated rates, fees, billing would be inclusive in a onetime agreement, with full fees being paid to Cary. He addressed items noted in the previous information: sewer capacity fee rates when the project comes online would be for 20 year arrangement at 3.08% interest and would be approximately \$208,000 and to him was fair and equitable now and could pay capacity fees when it comes online in 20 years. He asked for waterline acreage fee credits and if this were equitable; Cary will charge retail rates. Noted concern expressed in notifying purchasers of the higher rates and advised it would be confirmed in the property deed and HOA covenants acknowledging there would be higher rates billed to these homes above what other homeowners in Apex would pay.

Donnelly restated Kirkpatrick would build the pump station, would pump sewer to Cary; Cary would charge one bill for sewer at the residential rate; would add \$2 per 1000, voiced he was not comfortable with the rate disparity for these homeowners.

Mayor Weatherly felt this would set precedent and there may be others to come with similar requests. Donnelly gave examples: Apex served a Cary park; St. James Village as it was easier to sewer to Cary, also served the end of Laura Duncan Road; noted NC55 and Jenks Road had asked to change their boundary and Council had said no; noted sewer was precious at the time and Apex took care of their own.

Donnelly indicated the risks were not too great in creating another small pump station, in that the regional plant would allow pump stations to be taken off line, and use the master collection system; noted Apex has a good relationship with Cary, however these citizens would pay a higher bill than others in Apex and felt all should be treated the same. In discussion regarding capacity fee arrangement, and what if there are changes in the future, Donnelly stated there was some value long term; it's an imperfect situation but reasonable to get some pay, but little risk dollar value.

Kirkpatrick stated visitors to these homes would be made aware of the sewer arrangement and was a matter of economics and has to be disclosed, and would be written into deeds, indexed in its own line, with closing documents, disclosed in the HOA documents, and there would be no way to miss the difference in the sewer rates; this would be written in the developer agreement and he further expressed his willingness to process it back to the town. Kirkpatrick stated he had worked on this for a year and had done so with forethought and voluntary; noted both Towns welcome the opportunity and would continue to work on this. Mayor Weatherly noted this clearly was a voluntary acceptance on their part, with Kirkpatrick indicating his goal was not to have Council address this in the future and was trying to conduct business in a challenging economy.

Donnelly expressed he saw no legal reason not to allow for this with Attorney Fordham commenting on the uniqueness of the request and there could be others similar. Donnelly stood firm with the establishment of a utility rate and felt should stick to it; Council felt this would be adequately communicated and wanted to see it written as stated, so there would be no problem with the homeowners in the future and that they know up front.

Donnelly advised he was satisfied with the capacity fees arrangement. Council Member Jensen expressed he was ok with this. Council Member Gossage felt this couldn't be over communicated and was clearly going to be stated in multiple documents, and if staff was content with this, he was ok with this. Council Member Schulze was opposed to setting precedent and felt should charge the same fair rate and this may not be agreeable for everybody, noting the pump station could be a maintenance nightmare; in his view, this was doing a favor for them, and sets precedent; he was opposed to this long term. Council Member Olive wanted to assure all was covered; had no problem with this circumstance and noted there may not be others, Cary after 25 years could be taken back; he was comfortable with this and long term temporary was only temporary.

Manager Radford addressed the economic conditions and noted there were lots that are not being built on, with greatest barriers being water/sewer and required capacity fees payable when lots are plotted; noted town has to answer to all, and asked to not do it based on present value, normal interest rate at best; sewer rate should go up. Donnelly stated as far as escalation, would add \$2.00 per 1000 to defray costs and would be adjusted yearly.

Kirkpatrick stated he was in agreement with this and that the published rate would be adjusted with Cary's, but this is based on today's rates, but will change. Council Member Jensen stated capacity fees have been pretty much paid up front and this would be a problem. Council Member Gossage supports No. 1 and noted a good point made by the Manager on No. 2, and No. 3.... Council Member Jensen interjected, he would pay capacity fees that would not be used for awhile and was hard pressed to justify not charging full fee, however agreed with 1 and 3.

Kirkpatrick felt the calculations were fair based on 20 years; in 20 years capacity fees would be paid for. Council Member Gossage noted the paid for capacity would not be used at this time, with Kirkpatrick responding this was correct. Council Member Jensen noted \$208,000 paid up front, could charge capacity fees on per house sale, asking why charge a sum; takes sharpness of balance act. Council Member Gossage noted other developers pay up front and will use their capacity and he's not going to use his capacity for 20 years; other developers could be irritated at this. Kirkpatrick felt the 3.08% yield, if needs to be higher, proposed it be paid with the permit of each home. Council Member Jensen felt this would stretch out the money and not be coming out of the developer's hands, money we don't need to collect now; had sold to those developers because the town was running out of capacity at the time, felt if subdivision was not built out in 20 years, something's wrong.

Donnelly noted there was lots of interest in growth to the west of Apex and it may take 20 years; and with No. 2 this was the practice that had been done in the past. Kirkpatrick stated No. 1 and No. 3 were ultimately the same. Council Member Jensen had no problem with this, if same used Bella Casa as an example, and they were ok with granting credits. Kirkpatrick stated No. 3 stretched out, and would pay when they pulled the permit. Donnelly stated the fees would be due before CO, if they did not chose to prepay; noted there would be the complex agreement with Cary, Developer Agreement, LLC would build the waterline and acquire fee credit; would need to put people on notice of the rate disparity and rate adjustments, also additional capacity fees would need to be paid; and with the builder would create problems; proposal as he explained it would be complex.

Council Member Gossage addressed discounted capacity fees if they were not used for 20 years. Donnelly responded that if they were paid at CO, it would create another fee for Colvin Park. He expressed he would do what Council wants; he himself would publish rates and enforce them and felt there would be similar situations. Manager Radford commented on a situation where Green Level residents had asked to be moved on Cary's boundary and Council had said no; advised Cary had built a pump station on Apex side of the boundary. He noted an Agreement has to be formalized and asked Council direct staff to bring the document back for their consideration.

Council Member Jensen looking closer at No. 2, called it "a honeymoon situation" where Kirkpatrick had been led on this path, and he himself can go along with this, but has a problem with No. 2. Donnelly noted there was the prepay situation or could pay before CO for each house; if they don't get the plat signed, they don't pay fees; could publish the rate. If they go with Council Member Jensen's proposal, a specific capacity fee rate for Colvin Estates, he had rather collect at plat, and make it clear about the developer agreement. Mayor Weatherly noted to charge the normal rate at CO would satisfy this and there would be no separate rate schedule, and would take No. 2 off the table. Noted No. 3 was no issue; was satisfied with No. 1 and full disclosure, thinks this is good.

Kirkpatrick advised he would prepare disclosure documents for staff's review, inclusive deed and HOA documents. Manager Radford confirmed capacity fees for sewer would be paid prior to CO and handled as standard practice; noted it would be the builder's costs and there was no problem with that. Kirkpatrick stated he would make that concession. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve the agreement as stated inclusive of No. 1 and No. 3 and exclusive of No. 2. Donnelly asked they direct staff to prepare a developer agreement. Council Member Gossage amended his motion to add direction for staff to prepare a developer agreement for Council's consideration. Council Member Jensen made the second to the motion. Vote on the motion was 3 and 1 with Council Member Schulze voting no. The motion carried.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

New Business 01

John Brown Director of Parks and Recreation

Possible motion to approve improvements/conversion of Kelly Road Park Tennis Courts: Director Brown presented this was an opportunity to resurface the tennis court; staff had been searching for funding over the past three years. Cy King, USTA shared interest in partnering USTA and Western Wake Tennis Association together with Town to convert two tennis courts at Kelly Road Park to accommodate 10 and under Tennis, noting it a perfect site for the community. The interest comes with a \$10,000 grant which would totally resurface the courts and renovate them to include 4 courts explaining the conversion. The estimated cost is \$11,500 which would leave the Town to provide \$1,500 to supplement the grant. Parks and Recreation staff and Parks, Recreation and Cultural Resources Advisory Commission endorse this effort and unanimously agree this conversion would not only allow for much needed repair to the tennis court but also enhance and expand the town's youth and adult tennis programs. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the recommendation. Council Member Jensen made the second. Motion carried unanimously 4-0.

End of New Business 01

New Business 02**Kent Jackson Director of Construction Management**

Possible motion to amend the Town Code of Ordinances Sec.20-162 to eliminate eight hour parking rule in marked parking spaces as recommended by Police Department and Town's Traffic Engineer. Director Jackson recommended the ordinance amendment to this section, noting the request to amend had originated from a complaint from Scotts Mill and has become an enforcement issue; amendment would not impact downtown. Other aspects should the ordinance be adopted was addressed: vehicle storage, advertisement vehicles, and future time restriction issues. Mayor Weatherly referred the matter to Council. **Action:** Council Member Schulze made the motion to approve the amendment. Council Member Jensen made the second to the motion. Vote on the motion was two voting for Schulze and Jensen, and two voting against Gossage and Olive. With the vote being a tie, Mayor Weatherly cast the vote for approval. Motion carried with a vote of 3 to 2 with Council Member Gossage and Olive casting no votes.

End of New Business 02

New Business 03**Bruce Radford Town Manager**

Discussion and possible motion regarding the process for appointing a new Council member: Manager Radford stated staff was directed to design a process for selection of a new Council member to serve out the remaining two year term of the seat held by Mr. Jones. The proposed open process would allow citizens to apply for the vacant Council seat, using the application process that includes answering questions. Press release would be issued and process with application would be placed on town's website. Citizens can apply online to the Town Clerk by Monday September 19 at close of business day. Applications would be given to Council on September 20, 2011 for review prior to the October 4, 2011 Council meeting; Council may choose to select a nominee at that meeting or another time of their choosing. Council agreed to the open process and the timeline stated by the Manager. Attorney Fordham advised applications would not be public record, protected by confidentiality unless one consented to making their application public. Council consensus was to amend the application to allow persons applying to choose whether to make their application public. Mayor Weatherly referred the matter to Council.

Action: Council Member Gossage made the motion to approve the application process with the option for applicant to have their answers disclosed during the process as soon as the application is submitted. Council Member Olive made the second to the motion. Motion carried unanimously 4-0.

End of New Business 03

CONSENT AGENDA #3

Council Member Jensen asked to discuss the approval of purchase of riparian buffer and stream mitigation credits from Forrest Creek Stream and Riparian Buffer Mitigation Bank in the amount of \$91,761.36, NCDOT reimbursement under the existing municipal agreement for the Lufkin Road realignment project will amount to \$73,409.09 leaving the balance of \$18,352.27 to be covered by the Town's existing project budget. He noted streams in Town that need repair and hates to see money go elsewhere instead of spending it on Town streams; recommends an in-house program and maybe postpone approval so staff could look into setting aside money in our own bank to mitigate streams in Apex, as we do roads. Manager Radford explained the federal programs are designated to serve streams, and asked Council not put off the approval of this invoice. Mayor Weatherly added this could be addressed in a future package and referred the matter to Council. **Action:** Council Member Jensen made the motion to approve the invoice as requested. Council Member Gossage made the second to the motion. Motion carried unanimously 4-0.

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to go into **Closed Session** at 8:50 p.m. for a status update on pending litigation entitled, "Town of Apex v. Jones & Cnossen Engineering f/k/a Jones, Cnossen & Dolle Engineering, PLLC, 10-CVS-021136 (Wake Co. Superior Court). **Action:** Council Member Olive made the motion to go into closed session for the purpose stated. Council Member Gossage made the second to the motion. Motion carried unanimously 4-0. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to go back into regular session at 9:15 p.m. Council Member Olive made the second to the motion. Motion carried unanimously 4-0.

WORK SESSION

There were no Work Session items to be discussed.

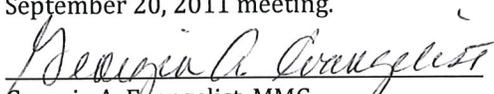
ADJOURNMENT

With Council back in Regular Session, Manager Radford asked Council to consider a question regarding the Council application process. He advised if interested persons should agree to have their applications made public and the applications became public as soon as they came in to the Town, every person coming behind those applicants would have an advantage of looking at those responses before submitting their own responses. He felt this might encourage every person to wait until the very last minute before submitting their application. Council directed Manager Radford to make public the applications of those individuals that agreed to make it public by noon on September 20, 2011.

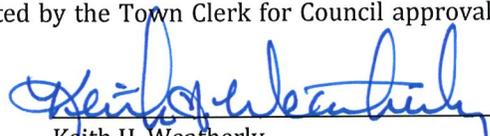
End of Regular Session

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:16 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Olive made the second. Motion carried unanimously 4-0.

Minutes of the September 6, 2011 meeting were submitted by the Town Clerk for Council approval during the September 20, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for September 20, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 20, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance, and extended a welcome to those in attendance. Invocation was given by Council Member Olive. Council Member Gossage was absent. One Council seat remains vacant.

PRESENTATIONS

There were no Presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments to the Consent Agenda and it was set. **Action:** Council Member Jensen made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously 3-0.

1. Minutes for September 6, 2011 Council meeting; Minutes for September 6, 2011 Closed Session (separate cover approved and sealed).
2. Annexation Petition #464 Motiva, 10.302 acres 2300 Ten-Ten Road; 1) Resolution directing Clerk to Investigate Petition, 2) Certificate of Sufficiency by Clerk, 3) Set Public Hearing October 4, 2011; public notice posted to Town of Apex website.
3. Resolution No. 2011-0920-18 Intent of the Council to Consider Closing a Portion of the Apex Peakway near its intersection with Laura Duncan Road and set Public Hearing November 1, 2011; publication in Apex Herald, October 6, 13, 20, and 27, and to Town of Apex website; notice shall also be posted in two places at the Peakway.
4. Settlement Agreement of road construction dispute among Town of Apex, Developers Diversified Realty Corporation (DDR), and Ramey Kemp & Associates, relating to elevation error in construction of Beaver Creek Commons Drive Extension to be upon the principal terms stated and authorize Town Manager and Town Attorney to negotiate final terms and authorize Town Manager to execute same.
5. Street closures for Apex High School Homecoming Parade October 7, 2011, 4:00 p.m. to 5:00 p.m.
6. Wake County Tax Report for Apex approved by Wake County Board of Commissioners during their meeting held September 6, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the Regular Meeting Agenda and it was set as presented.

PUBLIC HEARINGS

Public Hearing 01

Brendie Vega Principal Planner

Public Hearing and possible motion regarding Rezone #11CZ14, Portia Knowles, PGK Properties, LLC applicant, seeks to rezone 2.94 acres from (B1-CU) Neighborhood Business District Conditional Use district to (TF-CZ) Tech/Flex Conditional Zoning district for property located at 6003 Old Jenks Road between N. Salem Street and Davis Drive. Staff presented the planning report and is incorporated as a part of the minutes. Parcel is currently occupied by a vacant building, formerly occupied by Action Glass and has two frontages; homes in the area are being moved.

Planning Board met September 12, 2011 and recommended approval of the rezone with conditions and uses agreed to by the applicant and staff stated the uses permitted and those not permitted; Planning Board asked applicant remove certain uses and those were stated by staff, and also those uses applicant agreed to remove and those applicant did not agree to remove were stated by staff. Those uses applicant did not agree to remove were: automotive paint or body shop, car wash and auto detail, and warehouse. Planning Board did not see these as compatible uses with the surrounding area; no neighbors came to speak at Planning Board. Applicant offered and agreed to the condition: any mature trees on the site removed for development shall be replaced with a large-type tree in the nearest street yard buffer. Staff recommended approval of the rezone with uses and conditions originally proposed by applicant; stated rezone is consistent with 2025 Land Use Plan designation Office Employment and includes Tech-Flex with uses allowed under this designation; noted staff recommendation is in conflict with Planning Board recommendation.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Portia Knowles, PGK Properties, LLC spoke in support of the rezone as she has interest to lease the building for office and warehouse use, and offered the building could be broken into components should one not desire the entire building, with interest in 4000 sq. ft. but maybe not 8000 sq. ft., and due to economic conditions to remove the three uses she did not agree to remove would limit opportunities to lease the building and she felt warehouse use should be allowed; also expressed she has had interest as well for a paint and body shop; noted the surrounding area was mostly commercial with homes being removed; building is currently vacant and stated previous Action Glass did repair work and are asking same with no plans to expand the existing building.

No one spoke against the rezone. Council began discussion regarding conflicting recommendations between staff and Planning Board, and in discussion regarding the three uses applicant does not want to remove, noted area light industrial uses and proximity to residential homes to the north and the impact these uses may have on the neighborhood: noise, odor, traffic and operations exterior and interior of the building. Arial view of the vacant building shows it 150' off Davis Drive right of way; discussion evolved around visibility of building from Davis Drive and buffering warehouse use to protect the entry corridor into Town which currently has an E Buffer along Davis Drive. Council agreed if the warehouse was expanded it should not be closer than 100' from Davis, with Council Member Jensen offered office was more compatible. Carolantic Realtor Scott Haley noted these uses appropriate for the area, with building office space up front and warehouse space to the back, calling attention to the value of warehouse use and with the smaller size lot no major expansion request would be reasonable; any other use would come back before the council. Justin McNeal addressed parking, with staff noting parking was sufficient for warehouse use.

Attorney Fordham restated the condition Council would like to have in place: warehouse use would not be permitted within 100' of the right of way of Davis Drive. Mayor Weatherly closed the public hearing at 7:35 p.m. and referred the matter to Council.

Action: Council Member Schulze made the motion to approve the rezone request submitted by applicant, and with applicant agreeing to the condition regarding the trees for development and would no longer restrict the warehouse use, but with modifications regarding 100' condition of the warehouse, as stated by the Attorney.

Council continued discussion regarding the two uses that remained in question. Council Member Olive addressed concern the area has a good chance to develop more residential as things build out and too close to residential; noted auto paint or body shop potential for odor and noise and car wash and auto detail outdoor noise as well, agreeing with Planning Board on these two; warehouse he could agree to. Council Member Schulze felt the noise ordinance and building code would address concerns of the two.

Knowles noted Action Glass had been a good tenant and in speaking with neighbors would find a good tenant and didn't understand the concerns. Council Member Jensen noted the commercial site across the street and no residential, noted Jenks at Davis was commercial, the location of the church, and light industrial use for a good part of the area however, wanted to see quality industrial use; restated this was a major entry into town. Mayor Weatherly noted Apex Steal location and didn't see much area left for residential development. Council Member Schulze didn't see residential development happening, what's being asked already exists and was too tight a property and lends to commercial development.

Council Member Olive referenced the 2025 Land Use Plan and stated on a smaller size property, high-density is not hard to sell and location was not far from downtown; someone could do mixed use and to allow this use could be objectionable to residential and was setting themselves up for complaints. O&I was fine; Apex Steal was next to US64 and sound muffled by cars; north - mixed use gas/shops and pizza on corner for travelers; unless planning takes high density or residential off the mixed use, asked why allow uses that can cause problems in the future; wants this to move forward however has concerns, staff recommendation differs from Planning Board, and request wants planning board to allow tech-flex use but he has a hard time with carwash and auto detail.

Mayor noted these uses are permitted in tech-flex and consistent with 2025 Land Use Plan. Council Member Schulze asked if car wash would be allowed to the south in B1, and were asking applicant give up these uses. Staff responded these uses were not allowed in B1. Examples where commercial is mixed with residential and where residential neighborhoods live harmoniously: City Welding located on Chatham Street and Fussell Tire located on Center Street Council Member Olive stated residents had asked when they would go away and have put up with them.

Mayor Weatherly stated the motion was to approve the rezone as recommended by Planning Board with the exception of adding the uses with the warehouse condition.

Council Member Jensen too had concern with noise of the other two uses, thinking office or making a change on the 2025 Land Use Plan; he agreed with the warehouse condition and if they were to agree to set the other two uses set no closure than 50' from Davis Drive, he could agree with this. Attorney Fordham noted change in the conditions of the previous motion adding new conditions. Mayor Weatherly restated a motion was on the table, asking if there were a second, and with no second, Mayor Weatherly stated the motion died for a lack of a second. Knowles asked for a better understanding of the conditions on the other two uses. Mayor Weatherly restated the distance from Davis Drive, 50' for the automotive paint or body shop, car wash and auto detail, and 100' for the warehouse. Knowles and her realtor had a brief discussion and Knowles agreed to the additional conditions. Mayor Weatherly asked if there were another motion.

Action: Council Member Jensen made the motion to approve the rezone with the original conditions and the additional conditions for the distance from Davis Drive, 50' for the automotive paint or body shop, car wash and auto detail, and 100' for the warehouse. Council Member Schulze made the second to the motion. Vote on the motion was 2 in favor and 1 opposed with Council Member Olive voting no. Motion passes.

End of Public Hearing 01

Public Hearing 02

Lauren Simmons Planner

::Planning Board met September 12, 2011 and recommended approval with conditions.

Quasi-judicial Public Hearing and possible motion regarding a Major Site Plan for Columns at Broadstone, ECI Group/Craig Duerr, PE, applicant Wake Broadstone Associates, LLC, proposes a 300 unit multi-family complex within Broadstone Station, and located at 1000 Broadstone Way near corner of Apex Peakway & South Hughes Street, containing 18.75 acres, and density is 16 units per acre.

ALL PERSONS GIVING SWORN TESTIMONY MUST SIGN IN WITH THE TOWN CLERK:

All persons speaking during this *Quasi-judicial public hearing* must give sworn testimony limited to the issues that are related to the major site plan, and must be administered an Oath by the Town Clerk prior to speaking. All materials submitted to the Apex Town Council prior to the hearing are available at the Apex Planning Department for review by the public.

All staff and proponents were administered an oath by the Town Clerk. There were no opponents. Mayor Weatherly introduced the legislative process for the quasi-judicial hearing to consider facts and hear public testimony in order to formulate a recommendation. Mayor Weatherly asked Council to disclose any contacts, with all Council disclosing they had not had contact regarding same. Lauren Simmons, Town Planner presented the planning report for the major site plan for Columns at Broadstone, ECI Group/Craig Duerr, PE, applicant for proposed 300 unit multi-family complex within Broadstone Station and located at 1000 Broadstone Way near corner of Apex Peakway & South Hughes Street, containing 18.75 acres, with a of 16 units per acre; proposes 24 garages, clubhouse (standards for clubhouse are not clear) and recreation center and pool. Planning report is incorporated into the minutes; noted related PUD Rezone 10CZ10 and noted plan is consistent with PUD standards; 2025 Land Use Plan designation: Mixed Use-Medium & High Density Residential, Office Employment & Commercial. Adjacent zoning and land uses were noted and contained in the report; aerial view of the site shows as part of Broadstone Station PUD and vacant and is shown as multi-family. Parking calculations shows a 7% reduction; 3-story elevations using brick and hardi-plank in warm and neutral tones; site is bordered by 2.95 acres of RCA and recorded as 22.5 acres required in Broadstone Station PUD; all buffers and landscape meet UDO and PD Plan requirements. Multi-family apartment complex was included in the PUD Traffic Impact Analysis and an additional TIA is not required. Applicant agreed to lighting plan and will be a condition of approval and approved by staff prior to signature of construction plan. Site is served by Apex water and sewer; public works will assure all requirements are met as far as grading and drainage and will utilize and improve existing stormwater facilities; are committed to 25 year storm event. Applicant meeting was held July 27, 2011, with one property owner attending and there were no concerns raised and no changes made to site plan. Parks and Recreation Advisory Commission reviewed project August 31, 2011 and unanimously recommended:

- 1) Payment of fee in lieu based on 300 multi-family units x \$1,756.96 = \$527,088.
- 2) Two green space flat open lawn areas, approximate 3/4 acres: 1/2 on east side of site with tot lot and outdoor patio area, surrounded by parking and slopes gently from north to south; trees will surround perimeter of green space; and 1/4 acre of flat lawn area on the west side of site with outdoor patio area; located between apartment buildings and slopes gently from east to west; landscape will be provided at rear of apartment buildings. Staff submitted building elevations are consistent with Broadstone Station. Council members expressed they had not seen the building elevations and would like to see them prior to the meeting, agreeing power point PDF view was best; staff noted this an over-site. Staff continued: the proposed is consistent with the 2025 Land Use Plan designation for mixed use, including High Density Residential and consistent with Apex Transportation Plan.

Council Member Jensen noted this would back to Norris Park and expressed desire for greenways and connectivity between the housing and work, desperately needed, and would work well in the design function, helping even if piece by piece; even though not connected stated it needs to be and viewed it as a quality of life issue that is needed throughout town.

Mayor Weatherly opened the hearing at 8:10 p.m.

Jason Barrow, Attorney, introduced his team, with all having signed in and sworn by the Clerk, to present evidence that would comply with site plan ordinance, complementing staff and noting same required major site plan approval, submitting evidence, and hoped for approval. Seth Greenberg, ECI Capital, Inc, Marietta, Georgia offered the development project for Columns at Broadstone located at the end of Broadstone Way and Apex Peakway; is a marketed apartment complex nearer Wal-Mart and zoned for out parcels, highways and downtown access, noted sidewalk connectivity to shops and restaurants and offices, and sufficient parking for the current and future projects. Council had no questions.

Craig Duerr, PE, LEED AP, WSP Sells, Cary, gave a project report and presentation, noting proposed development is part of approved Broadstone Station PUD formerly Peakway at 55 and will abandon a portion of Broadstone Way to allow for construction of the 300 multi-family residential apartment complex located on the uncompleted portion next to Wal-Mart, commercial tracks were flipped with the rezone, all conditions of the original PUD remain in tack; noted stream buffer and RCA and buffer meeting requirements, and out parcels to the north; site plan has been submitted and the 14 buildings-3 story units with one, 2 and three bedroom units, and entrance through Broadstone Way; a second access tying into Wal-Mart parking lot; 7% reduction for parking was based on building types and their locations balanced across site; stormwater management is designed for a 25 year storm event (operating sediment basin will convert to stormwater wet-pond). Site has been cleared and will be re-graded with limited clearing removing a few trees for street design; site has limited steep slopes, retainer walls, and will maintain access to Wal-Mart.

Site development will depend on existing drainage and will tie into existing pump station that's been in operation for several years; will loop waterline, and use onsite utilities for water and sewer, with approval of public works, and will following light plan. Site will adhere to the parks and recreation fee in lieu with requirements for the open space requirements stated by staff; amenities include clubhouse, pool, tot lot playground, patio areas, out-door grill and gazebo, with additional green spaces, play areas, and gathering spaces; mail kiosk, waste and recycle compactor/recycling center, berms and undisturbed buffer; noted location of the 28 garage units, offered as an amenity if residents want to pay, being van accessible; noted with connectivity are working with staff to address any concerns; confident they will agree and noted plan meets the UDO requirements.

Questions: 34 yard compactor/recycle center will be served by Waste Industries and will serve at entry/exit points not wanting to drive through the community; parking spaces are available and residents could walk there.

Attorney Barrow made closing comments, being satisfied the project is compatible and meets the zoning requirements and grading will be minimal, with roadway improvements and requirements of the site being met.

Questions: parking reductions compared to other complexes indicates; noted Village Summit received a 10% parking reduction; staff agrees with the 7% reduction in parking; and noted most are over capacity and underutilized, exceeding the UDO, have more parking spaces than needed; noted UDO allows the Planning Director to adjust parking reduction up to 10%, and no problem if the parking spaces are in the right place and noted this plan does that.

Mayor Weatherly asked the Attorney if the legislative process had been met during the quasi-judicial hearing, with Attorney Fordham stating it had.

Mayor Weatherly closed the public hearing at 8:40 p.m. and referred the matter to Council.

Action: Council Member Schulze made the motion to approve the major site plan as submitted for Columns at Broadstone with the lighting plan condition to be approved by staff at the construction plan phase and with the parking reduction of 7% as stated. Council Member Olive made the second to the motion. Motion carried unanimously 3-0.

End of Public Hearing 02

OLD BUSINESS

There were No Old Business items to be considered.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Tom Williford, Funeral Director, Fuquay, addressed council regarding the road block to open the prior Ocean Stars restaurant, having had zoning revoked, additional expenses, inspector and health code issues, not being able to satisfy completely all issues. Manager Radford stated he would address the issue with Mr. Williford, had returned his call, and asked if he would meet with him, they would discuss the issues; he noted the work had started without permits and vegetation had been cut away and would have to discuss health issues with the county.

End of Public Forum

NEW BUSINESS**New Business 01****Lauren Simmons Planner****::Planning Board met September 12, 2011 and recommended approval with conditions.**

Possible motion regarding Manors at Bella Casa Phases 5 & 6 Master Subdivision Plan, Stuart Jones/JVI Construction, Inc. applicant, 19.12 acres located near Evans Road, connecting to existing Napoli Drive. Staff presented the Planning report and is incorporated as a part of the minutes; proposed includes 37 single family lots with a density of 1.9 units per acre. RCA is not required, but stream buffers and open space are included. Project will utilize existing and up-grade public utilities; sewer lines will utilize Kelly Road pump station. Storm drainage will comply with UDO and PD Plan; grading plan is acceptable; architectural standards were noted, and Parks, Recreation and Cultural Resources Advisory Commission met Monday, September 19, 2011 and recommends fee-in-lieu; plan is consistent with apex Transportation plan; plan includes a street stub to two properties to the west and has connections to Evans Road and Napoli Drive; cul-de-sac length exceeds because of stub streets provided to the west; staff recommends longer cul-de-sac or "branching cul-de-sac" because with it, one stub street would have to be taken off the layout and development of adjacent properties would discourage connectivity. Pedestrian access is provided; developer did not choose to have access over the pond, and chose to pay fee-in-lieu. Plan complies with the UDO. Planning Board met September 12, 2011 and unanimously recommends approval with conditions: 1) All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles. Covered porches are required on the front façade of each single family residential structure facing the public right of way. All residential units shall require a crawl space or a minimum of two steps to the front door and 14 inches to the front door. 2) The developer provides an easement and pays fee-in-lieu for construction of a pedestrian connection to the Lee property; 3) Town Council to approve the branching cul-de-sac length of Napoli Drive. Staff recommends approval with the conditions. With no further discussion, Mayor Weatherly referred the matter to Council.

Action: Council Member Jensen made the motion to approve the master subdivision plan for phases 5 & 6 with conditions stated. Council Member Schulze made the second to the motion. Motion carried unanimously 3-0.

End of New Business 01**New Business 02****Mark Haraway Fire Chief and Lee Smiley Director of Finance**

Fire Chief Haraway recommended approval of the lease/purchase of an E-One/EMAX Fire/Rescue Engine and the execution of related documents, a three surplus vehicles for one replacement vehicle; oldest unit had failed for the fourth time and repair costs had totaled \$24,000. Director of Finance expanded on the terms of the lease/purchase: equipment cost \$399,000 with trade in of \$37,000 – amount to be financed \$362,000. Lease term: 3 years with first payment due 7/19/2012 at a lease rate of 2.81% and could pay off this amount in the next budget year, and save on interest and reduces main costs. Council Member Olive questioned the reliability of the vehicle traded in, should another town purchase it. Manager Radford explained the town is not responsible for the purchase, just the trade in; noted the town interested was aware of the condition noting full disclosure and were eager to get it. Mayor Weatherly referred the matter to Council. Manager Radford would complete the execution of the documents.

Action: Council Member Jensen made the motion to approve the lease/purchase of the fire apparatus as stated. Council Member Schulze made the second to the motion. Motion carried unanimously 3-0.

End of New Business 02**New Business 03**

Lee Smiley Director of Finance explained the Budget Ordinance Amendment for increased Powell Bill spending, improvements to Kidstowne playground, and resurfacing of Kelly Road Park tennis courts.

Action: Council Member Olive made the motion to approve the Budget Ordinance Amendment. Council Member Schulze made the second to the motion. Motion carried unanimously 3-0.

End of New Business 03**End of New Business**

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

There were no Work Session items to be discussed.

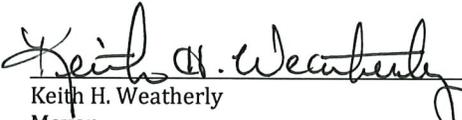
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:00 p.m.

Action: Council Member Jensen made the motion to adjourn. Council Member Schulze made the second. Motion carried 3-0.

Minutes of the September 20, 2011 meeting were submitted by the Town Clerk for Council approval during the October 4, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for October 4, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 4, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze

COMMENCEMENT

Mayor Weatherly called the meeting to order, with all Council present and with one seat vacant.

Mayor Weatherly gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Manager Radford introduced department heads and supervisors for introductions of newly hired Town of Apex employees. Manager Radford read Resolution No. 2011-1004-21 in Recognition of Town Employees Deployed to Eastern North Carolina in response to Hurricane Irene. Mayor Weatherly called for a motion to adopt the resolution. **Action:** Council Member Schulze made the motion to adopt the Resolution. Council Member Olive made the second to the motion. Motion carried unanimously 4-0.

Mayor Weatherly presented former Council Member Mike Jones a plaque of the news article recognizing his dedicated service with the Town of Apex. Council Member Jones accepted graciously.

End of Presentations

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Manager Radford offered a substitute of final parade route for consent 4. **Action:** Council Member Schulze made the motion to approve the Consent Agenda with the substitute parade route. Council Member Olive made the second. Motion carried unanimously 4-0.

1. Minutes for Council meeting of September 20, 2011.
2. Statement of Council and Ordinance for Rezone #10CZ06, Jones & Cnossen Engineering, PLLC, petitioner for the property located at 2709 Evans Road, Apex approved by Council December 21, 2010.
3. Lease agreement between Town of Apex and Government Capitol Corporation for in-car camera purchase and authorized Manager to finalize and execute same.
4. Request from Rotary Club of Apex to close certain streets for Apex Christmas Parade December 3, 2011, and coordinate all activities with the Chief of Police, and with finalized street closures agreed to by Rotary Club.
5. Resolution No. 2011-1004-19 Promoting North Carolina Public Power during Public Power Week, October 2-8, 2011 with Public Power Day on Thursday, October 6, 2011.
6. Resolution No. 2011-1004-20 Accepting Offer of Dedication of 20' Utility and Greenway Easement and a 20' Drainage Easement and Declining Offer of Dedication of 0.144 acre of Public Open Space located in Haddon Hall Subdivision.
7. Authorize and approve Encroachment Agreements for Town of Apex utilities to encroach on electric power rights-of-way of Progress Energy, and for the Mayor to execute same.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. With no amendments the Agenda was set.

PUBLIC HEARINGS

Public Hearing 01

Director of Planning Dianne Khin

Public Hearing and possible motion regarding Annexation #464 Motiva Enterprises, LLC, owners/petitioners, petitioning to annex 10.302 acres, contiguous to the Town's corporate limits and located on 2300 Ten-Ten Road, Apex. Staff presented the report, orienting to the site that houses Motiva, and annexing to receive public services, recommending approval. Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing the petition, closed the public hearing at 7:20 p.m. and referred the matter to Council. **Action:** Council Member Jensen made the motion to adopt the ordinance to extend the corporate limits. Council Member Schulze made the second to the motion. Motion carried unanimously 4-0.

End of Public Hearings

OLD BUSINESS

Old Business 01

Mayor Keith Weatherly

Town Council will consider applicants for the vacant Council seat; appointment to the seat may be made. Mayor Weatherly offered 17 applicants filed application for the vacant Council seat. Council Member Schulze asked to be recognized and made the following motion. **Action:** Council Member Schulze noted the impressive group of applicants and nominated Terry Rowe to fill the council seat, noting his Apex Planning Board experience since 1995 and chair a good amount of the time, and noted he has the most experience in the Veridea review process and qualified to fill the seat. Council Member Jensen made the second to the motion and noted others that too were on his list, however Rowe's Planning Board experience and the Kidstowne project, has a long time working with the Town, and had stood up for his principals in Planning Board matters; noted there were many good people and regrets there could be only one; hopes others have opportunity to serve in other areas and regrets he couldn't nominate others. Council Member Olive felt there were others that could do a good job; unsure between motions and nominations and nominated Emily Grasso who could offer diversity of thought to the Council that he felt they could use. Mayor Weatherly noted the motion for nominee was on the floor and his offer to nominate failed. Mayor Weatherly called for a vote on the motion to appoint Terry Rowe to fill the vacant Council seat; vote in the motion was Council Member Schulze and Council Member Jensen voting in favor of Terry Rowe to fill the vacant Council seat; Council Member Gossage and Council Member Olive voted no. With a tie vote of 2 in favor and 2 opposed, Mayor Weatherly cast his vote in favor; motion carried 3 in favor and 2 opposed. Mayor Weatherly stated the appointment of Terry Rowe to fill the Council seat. He expressed his appreciation to the applicants for their interest in Apex and will have plenty of opportunity to serve in Apex, and on the council if they choose to run in the future for this office, noting this a unique opportunity to appoint; noted many have given dedicated service and obviously qualified. (Terry Rowe will take his Council seat October 18, 2011 and will be sworn in).

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
Comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during Public Forum.

NEW BUSINESS

There were no New Business items to be considered.

CLOSED SESSION

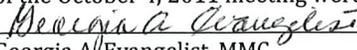
Mayor Weatherly called for a motion to move into Closed Session at 7:25 p.m. to discuss release of Closed Session Minutes from August 2, 2011 and March 15, 2011 Closed Sessions. **Action:** Council Member Jensen made the motion to move into Closed Session. Council Member Schulze made the second to the motion. Motion carried unanimously 4-0. Minutes of Closed Session are recorded separate from the regular minutes. **Action:** Council Member Schulze made the motion to move out of Closed Session at 7:40 p.m. Council Member Olive made the second to the motion. Motion carried unanimously 4-0.

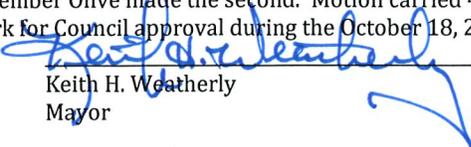
WORK SESSION

There were no Work Session items to be discussed.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:40 p.m. **Action:** Council Member Schulze made the motion to adjourn. Council Member Olive made the second. Motion carried 4-0. Minutes of the October 4, 2011 meeting were submitted by the Town Clerk for Council approval during the October 18, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for October 18, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 18, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze, Terry Rowe

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Mayor Weatherly introduced newly appointed Apex Town Council Member, Terry Rowe; Town Clerk Georgia A. Evangelist, MMC administered his Oath for public office. Council Member Rowe took his seat, filling the vacated Council seat of former Council Member Mike Jones for an unexpired term through 2013. Council Member Rowe expressed he was honored to have the opportunity to serve Apex.

PRESENTATIONS

Presentation 01: Mayor Weatherly recognized Mike Sayers, American Legion Post 124 District Post Commander, noting that he was awarded the N.C. State District Post Commander of the Year. Commander Sayers presented Matt Hoina, Apex Firefighter, the award for American Legion Post Fire Fighter of the Year Award; Hoina expressed appreciation and thanked the Fire Department for their support.

Presentation 02: Mayor Weatherly read a Proclamation Recognizing the Apex Peak City Singers as winners of the Raleigh-Wake Senior Games State Finals Silver Arts follies competition for their performance of the Irvin Berlin song, "I Love a Piano." accepting Peggy Shelvock. Director Jill Smith led the 25 member choir ranging in ages 64 to 89, noting they won best in show for the entire county which qualified them to compete for the state title in the vocal large group category.

End of Presentations

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments to the Consent Agenda. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Rowe made the second. Motion carried unanimously 5-0.

1. Minutes for Council meeting of October 4, 2011; Minutes for Council Closed Session of October 4, 2011 (Closed Session minutes were approved by Council and sealed under separate cover).
2. Ratify release of Public Records for Closed Session minutes of March 15, 2011 and August 2, 2011.
3. Statement of Council and Ordinance for Rezone #10CZ14, Knowles, petitioner for the property located at 6003 Old Jenks Road, Apex and approved by Council September 20, 2011.
4. Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the Regular Meeting Agenda and it was set as presented.

PUBLIC HEARINGS

There were no Public Hearings.

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during Public Forum

NEW BUSINESS

New Business 01

EMS Chief Nicky Winstead and Director of Finance Lee Smiley: Council Member Schulze requested an update on Apex EMS Services: their operations and finance status. Chief Winstead presented the 1st Quarter EMS Operations Report, noting Council voted June 19, 2011 to continue Apex EMS services, and that all positions were filled and training continues for the newly hired employees that filled the six vacated positions. Stated service levels are where they should be with 904 transports in the 1st quarter; the remounted truck was now in service and saved the Town an estimated \$60,000 vs. purchasing a new truck at \$140,000. Finance Director Smiley gave the 1st Quarter EMS Finance overview noting revenues and expenditures to date and within budget: Wake County funding (\$269,337) will be adjusted by \$15,000 through year end from \$89,779; and other revenues (\$108,080) were collected for calls prior to June 30 and will continually drop thru year end and would then function solely on County revenues. Council accepted the EMS operations and finance status updates.

End of New Business 01

New Business 02

Director of Finance Lee Smiley

Review of 1st. Quarter FY11-12 Financial Summary: Benchmark for the 1st Quarter financial performance is 25% for revenues and expenditures and is where expected; significant variances were noted; General Funds and Utility Funds are on target for 1st Quarter. Council accepted the finance summary for the 1st Quarter.

End of New Business 02

End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 7:32 p.m. and stated the purpose to discuss potential release of Closed Session Minutes from November 16, 2010, December 7, 2010, January 11, 2011, January 18, 2011 and March 1, 2011 Closed Sessions. **Action:** Council Member Rowe made the motion to move into Closed Session for the purpose stated. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Closed Session minutes are recorded separate. **Action:** Council Member Gossage made the motion to move out of Closed Session back into Regular Session at 8:10 p.m. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

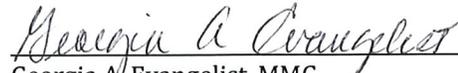
WORK SESSION

There were no Work Session items.

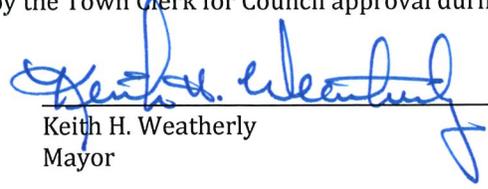
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:12 p.m. **Action:** Council Member Rowe made the motion to adjourn. Council Member Jensen made the second to the motion. Motion carried 5-0.

Minutes of the October 18, 2011 meeting were submitted by the Town Clerk for Council approval during the November 1, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for November 1, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 1, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze, Terry Rowe

COMMENCEMENT

Mayor Weatherly called the meeting to order and gave the Invocation.

Pledge of Allegiance led by Scout Troop #226, and with special recognition of Scout Troop #131.

Mayor Weatherly extended a welcome to those in attendance. Council Member Olive was absent, attending a school meeting.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Attorney Fordham asked that #6 and #7 be pulled. Council Member Jensen ask to comment on #5 Agreement with Raleigh and noted with the renewal came opportunity to purchase nitrate credits and an alternative to the amount paid to build in CPI for inflation; asked authorization for Manager to negotiate same. The Consent Agenda was set as amended.

Action: Council Member Schulze made the motion to approve the Consent Agenda less #6 and #7, and with the amendment to #5 and authorization for Manager to proceed with negotiations and execute same. Council Member Rowe made the second to the motion. Motion carried unanimously 4-0.

1. Minutes for October 18, 2011 Council Meeting; Minutes for October 18, 2011 Closed Session (separate cover).
2. Set Public Hearing November 15, 2011 to consider Rezone #11CZ15 for 19.5 acres located on Milano Avenue between Evans Road and Mt. Zion Church Road from Rural Residential district to Medium Density Conditional Zoning district.
3. Set Public Hearing November 15, 2011 to consider Rezone #11CZ16 for 0.2 acres located south of 1610 North Salem Street from Residential Agricultural district to Neighborhood Business Conditional Zoning district.
4. Resolution No. 2011-1101-22 Intent to consider closing a portion of Forest Grove Drive adjacent to that certain parcel of land designated as PIN 0742-90-2295 within The Groves II development, and set Public Hearing December 6, 2011.
5. Authorize Town Manager to negotiate and execute Amendment No. 1 to Apex/Raleigh Intermunicipal Sewer Service Agreement.
6. Resolution No. 2011-1101-__ Authorize Eminent Domain Proceedings: Old US1 Electric Line Extension Project. Pulled
7. Resolution No. 2011-1101-__ Authorize Eminent Domain Proceedings: Evans Road Water and Electric Line Project. Pulled
8. Release and Assignment Agreement with Travelers Casualty and Surety Company of America related to Phase 1A of Miramonte Subdivision in the amount of \$11,105 and to authorize Town Manager to execute same.
9. Set Public Hearing November 15, 2011 to consider various amendments to the Unified Development Ordinance.
10. Possible motion regarding Annexation Petition #465 Louise S. Beck Living Trust, Louise S. Beck and Renee R. Fletcher property owners/petitioner, petitioning to annex 0.83 acres contiguous to the Town's corporate limits, and located on 1000 North Salem Street, Apex, NC; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to schedule date for public hearing November 15, 2011.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action.

PUBLIC HEARINGS**Public Hearing 01****Attorney Hank Fordham**

Public hearing and possible motion to approve Order Closing a Portion of the Apex Peakway Upon Occurrence of a Condition Precedent. Attorney Fordham presented the Order and background information regarding the request for closure of the portion of the Apex Peakway near its intersection with Laura Duncan Road shown on the right-of-way abandonment plat, and no longer needed. The Order provides the closing is contingent on the Town's acquiring alternative right-of-way for the Apex Peakway shown in the exhibit.

Mayor Weatherly opened the public hearing at 7:08 p.m. No one addressed the closure and the public hearing was closed. Mayor Weatherly referred the matter to Council.

Action: Council Member Jensen made the motion to approve the Order Closing a Portion of the Apex Peakway. Council Member Gossage made the second to the motion. Motion carried unanimously 4-0.

End of Public Hearing

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

There were No New Business Items.

CLOSED SESSION

There were No Closed Session items.

WORK SESSION

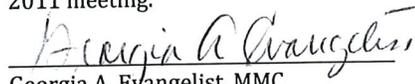
There were no Work Session items.

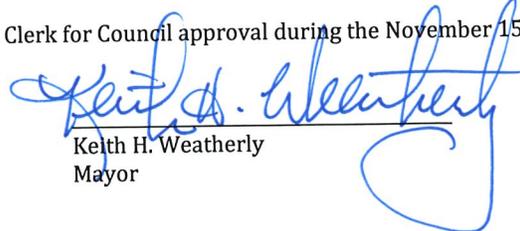
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:10 p.m.

Action: Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried 4-0.

Minutes of the November 1, 2011 meeting were submitted by the Town Clerk for Council approval during the November 15, 2011 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for November 15, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 15, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze, Terry Rowe

COMMENCEMENT

Mayor Weatherly called the meeting of the Town Council to order with all Council Members present. Invocation was given by Council Member Gossage. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

There were no presentations.

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. With no amendments to the Consent Agenda Mayor Weatherly called for a motion. **Action:** Council Member Gossage made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

1. Council Meeting Minutes for November 1, 2011.
2. Resolution No. 2011-1115 -23 asking for assistance from N.C. Department of Environment, Health and Natural Resources in controlling various noxious aquatic weeds at Apex Community Park Lake and ponds located at Salem Pond Park and Seagroves Farm Park.
3. Award construction contract for EL-5100 DA Old Raleigh Road Sidewalk Project to Lanier Construction Company, Inc. \$183,355.20, and authorize Town Manager to execute same.
4. CSX Wireline Crossing Agreement #CSX-679174 and authorize Town Manager to execute same.
5. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their regular session on November 7, 2011.

End of Consent Agenda

Statement by Mayor Weatherly

Mayor Weatherly expressed appreciation for the support he had received during the election campaign, noting it unfortunate that there was a level of division in this campaign that they had, and appreciates the community rising above that, and the level of distortion and outright non-facts that the people were able to see through and he really appreciated all those and certainly appreciates all the support to bring this community together and as we always have to make this certainly a better place in which to live.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. Manager Radford asked to amend the agenda to include an Encroachment Agreement within Citiside at Beaver Creek Crossings. Mayor Weatherly called for a motion to amend the meeting agenda. **Action:** Council Member Rowe made the motion to amend the Regular Meeting Agenda to include the add-on New Business item as stated. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

PUBLIC HEARINGS

Public Hearing 01

Lauren Simmons Planner

Planning Board will review this item November 14, 2011 and staff will report the recommendation.

Public Hearing and possible motion for Rezone #11CZ15, Stuart Jones/Travis Richardson, applicant/owner, request to rezone from Rural Residential district to Medium Density Conditional Zoning district, for 19.5 acres located on Milano Avenue between Evans Road and Mt. Zion Church Road.

Staff presented the Planning Report that is incorporated as a part of the minutes, orienting to the site adjacent to the Apex Nature Park and Park Side at Bella Casa Subdivision with request to rezone as stated. 2025 Land Use Plan identifies the proposed site for Medium Density Residential and proposed rezone is consistent with the Plan. Neighborhood meeting was held with one attending but did not express concern. Planning Board and staff recommends approval with the conditions offered and agreed to by the applicant and offered in the application: Architectural conditions are consistent with others of the Parkside Subdivision and the Bella Casa Subdivisions. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles. All residential buildings shall have a covered porch on the front façade facing the public right-of-way. All residential buildings shall have a crawl space or a minimum of two steps or 14 inches to the front door. Applicant has also agreed to limiting uses to the following: Single-Family Residential Park, active; Botanical Garden Park, passive; Recreation facility, private Greenway.

Mayor Weatherly opened the Public Hearing at 7:05 p.m. with Pete Cnossen, Jones and Cnossen, stating support of the continuation of Park Side Development. With no further comments, the Public Hearing was closed at 7:06 p.m. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve Rezone #11CZ15 with the conditions and recommended by the Planning Board. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing

Public Hearing 02

June Cowles Senior Planner

Planning Board will review this item November 14, 2011 and staff will report the recommendation.

Public Hearing and possible motion for Rezone #11CZ16, Mark Frazier, applicant/owner, request to rezone from Residential Agricultural district to Neighborhood Business Conditional Zoning district, for 0.2 acres located south of 1510 North Salem Street.

Staff presented the Planning Report that is incorporated as a part of the minutes, orienting to the site noting the on-ramp of US64 with request to rezone, and noted the house at this location, and stated the parcel is triangle-shaped lot fenced along North Salem Street and driveway into Mulch Masters. Request for rezone would provide a parking lot for the adjacent lot, 1510 N. Salem Street. The owner wants to lease out the building to a business that requires seven parking spaces. Located between the proposed rezone lot and N. Salem Street is a North Carolina Department of Transportation right-of-way (NCDOT ROW) that has been used in the past for the parking for 1510 N. Salem Street. However, the NCDOT ROW cannot be used for parking and therefore the applicant wants to use the proposed rezone lot as the parking area.

The proposed rezone lot is part of the North Salem Street Corridor Plan adopted June 2004. Property to the north, 1510 North Salem Street is owned by same owner as proposed rezone site. The 1510 N. Salem Street includes a historic house, a barn, and several storage sheds. 1510 N. Salem Street was rezoned December 1995 as B1-CU (Neighborhood Business Conditional Use) and permits all B1 uses except the following: Gasoline and motor fuels sales with vehicle repair, Laundromat, Video sales, Car and other vehicle washing facilities, Glass shop, Game rooms. Permitted uses in the Neighborhood Business district are listed in the report.

In 1996 the North Salem Street was downgraded from a major thoroughfare, five lane section, by the Apex Board of Commissioners. The goal from their resolution states as follows: "Whereas the Town of Apex desires to maintain the elements of the landscape that contribute to the attractiveness and historic character of the Town; and, Whereas the current classification of a major thorough fare would, if built, destroy important historical homes and forever ruin an important gateway to the Town". In keeping with this 1996 resolution, the overriding intent and goal of the North Salem Street Corridor Plan is to ensure that the cultural and environmental resources that comprise the character of this primary entrance corridor into Apex are maintained.

One of the B 1 zoning district permitted uses is restaurant with a drive-thru. Staff recommends that the restaurant drive-thru be omitted. The restaurant drive thru would negatively impact the cultural character of the primary entrance corridor into Apex and the appearance of the historic house. As stated earlier in this report the proposed rezone lot is intended to be used as a parking lot for the 1510 N. Salem Street historic house which does permit a restaurant drive thru use as zoned in 1995 before the North Salem Street Corridor Plan was adopted. By omitting the restaurant drive thru use on the proposed rezone lot that is intended to become a parking lot for the historic house, the lot could not be used for a parking lot for a restaurant drive thru use at 1510 N. Salem Street.

A neighborhood meeting was held on October 15, 2011; concern: parking on nearby cement road but were fine with parking in the lot. Clarity: applicant consented to make the rezone piece for parking for required seven spaces for this use; staff can't sign off without approval from NCDOT in writing that they were fine with the parking. Planning Board met November 14, 2011 and gave unanimous approval with the staff recommendation to omit restaurant with drive-thru.

Mayor Weatherly opened the Public Hearing at 7:10 p.m. with applicant, Mark Frazier stating he was trying to keep the same land use with the two pieces, using scenario should a tornado come through, and was not opposed to omitting the restaurant with drive thru. Mayor Weatherly asked if he agreed to the condition to omit restaurant with drive-thru. Johnson McMillan, York Properties, stated it was agreed to at the Planning Board meeting, and was making his point, not making a lot of sense then, but thinks they agree to it. Frazier then stated he was in agreement with everything. With no further comments, the Public Hearing was closed at 7:15 p.m. Mayor Weatherly referred the matter to Council. **Action:** Council Member Jensen made the motion to approve Rezone #11CZ16 as recommended and agreed to. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing

Public Hearing 03

Brendie Vega Principal Planner

Planning Board will review this item November 14, 2011 and staff will report the recommendation.

Public Hearing and possible motion for various amendments to the Unified Development Ordinance.

Staff presented amendments outlined in the staff report that is incorporated as a part of the minutes. Planning Board and staff recommend approval with condition to allow unenclosed porches to encroach a50% into front building setback Section 5.2.2(B)(4) – chart). Revised staff report and ordinance was presented.

Mayor Weatherly opened the public hearing at 7:22 p.m. A business owner downtown voiced support asking Council add this as a permitted use, the drop-in daycare in the downtown, noting it a positive for businesses and learning facility for children while parents shop, eat and visit downtown. With no further comments, the Public Hearing was closed at 7:23 p.m. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the amendments to the UDO as recommended. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 03

Public Hearing 04

Dianne Khin Director of Planning

Public Hearing and possible motion regarding Annexation Petition #465 Louise S. Beck Living Trust, Louise S. Beck and Renee R. Fletcher, property owners/petitioner, petitioning to annex 0.83 acres contiguous to the Town's corporate limits and located on 1000 North Salem Street, Apex. Staff oriented to the site, former Freckled Frog, Oasis, and now Carolina Pet Spa, and petitioning to annex to receive water service. Mayor Weatherly opened the public hearing at 7:25 p.m. With no further comments, the Public Hearing was closed at 7:25 p.m. Mayor Weatherly referred the matter to Council. **Action:** Council Member Jensen made the motion to approve Annexation #465. Council Member Gossage made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing 04

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Jeff Roach, Parks Recreation and Cultural Resources, asked support in efforts for upgrade of the Baucom Playground, noting the Town uses this playground and asked for support by a text to Pepsi Refresh Project for grant money opportunities that would show support for the project, and could check out the website, and also affords opportunity to buy engraved bricks or donate to the school-wide initiative. Council consensus was that the initiative information and allow others of such nature linked to Town use be placed on the Town website, linking same to the Baucom PTA site; Manager will comply with Council's direction.

End of Public Forum

NEW BUSINESS

New Business 01

Lauren Simmons Planner

Master Subdivision Plan (Parkside at Bella Casa Phase 3) located on Milano Avenue between Evans Road and Mt. Zion Church Road. Staff presented the planning report and is incorporated as a part of the minutes. Applicant requests the rezone with conditions as stated in the report and includes 35 single-family lots; density 3.03 units per acre; neighborhood meeting was held with no concerns expressed; RCA is 3.12 acres, with stormwater BMP included in the calculations, requiring a landscape plan for construction plan phase; will utilize and upgrade existing utilities; is located in the primary watershed protection overlay district and will comply with UDO requirements; less than 30% of the lots will be graded; all residential units will have a crawl space, minimum of two steps and 14 inches to the front door; PR&CR recommends payment of fee-in-lieu \$2,980.04 per lot and require a 30' wide public greenway easement in a location that would facilitate a future greenway connection to the American Tobacco Trail from the Apex Nature Park and to be located where it best fits on the property, and providing a western entrance/trail head/connection to the park; plan is consistent with the apex Transportation Plan and provides a 60' easement for a future town collector. Planning Board met November 14 and recommended approval with conditions agreed to by the applicant. Plan includes a street stub to the west that connects to the adjacent land-locked property; allowed cul-de-sac length is exceeded because of this stub street - staff recommends approving the longer cul-de-sac because the eventual development of the adjacent property remedies the length issues in Parkside at Bella Casa Phase 3. Staff recommends approval with conditions. Council Member Jensen asked clarity regarding the RCA to the west, and staff gave clarity to the BMP storm water and undisturbed area. Council Member Rowe questioned the way in which the cemetery would be addressed if discovered. Staff advised the developer/property owner was unaware of the cemetery, family was aware, and the developer will excavate the area and will move same to nearby Christian Chapel as the remains were members there; the Town's position has been addressed and the language covers permission of the property owner. Director of Planning Khin stated the Town would need a joint sewer and greenway easement to allow for flexibility in placing the greenway and noted the applicant is willing to do so. Attorney Fordham asked this be included as a part of the council's motion and that it be placed on the plat for recording. With no further comments, Mayor Weatherly referred the matter to Council. Action: Council Member Jensen made the motion to approve the Master Subdivision Plan for Parkside at Bella Casa Phase 3 and with a joint sewer and greenway easement for the area north as recommended. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

End of New Business 01

New Business 02 - Add-on

Manager Radford advised Council of a proposed Encroachment Agreement between Town of Apex and Beazer Homes Corporation, with described Lot 12 of the subdivision within the Citiside at Beaver Creek Crossings and shown on a recorded plat as a residential lot address of 874 Queen City Crescent, Apex. He noted the constructed corner of the front porch of the house encroaches into the Town's storm drain easement and was unintentional; with the home under contract, this agreement would allow the homeowner rights to exist in the encroachment with maintenance and repair outlined in the agreement, with homeowner agreeing to provide \$10,000 insurance to cover potential injury to Town's utility facilities located in the easement. He asked Council's approval. With no further comments, Mayor Weatherly referred the matter to Council. **Action:** Council Member Schulze made the motion to approve the Encroachment Agreement as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of New Business 02

End of New Business

CLOSED SESSION

There were No Closed Session items.

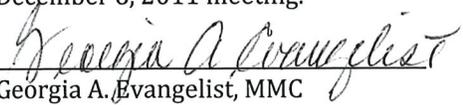
WORK SESSION

There were no Work Session items.

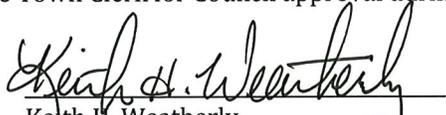
ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 7:45 p.m. **Action:** Council Member Olive made the motion to adjourn. There was no second to the motion. Motion carried 5-0.

Minutes of the November 15, 2011 meeting were submitted by the Town Clerk for Council approval during the December 6, 2011 meeting.



Georgia A. Evangelist, MMC
Town Clerk



Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for December 6, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 6, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Lance Olive, Gene Schulze, Terry Rowe

COMMENCEMENT

Mayor Weatherly called the meeting to order with all Council present and with Council Member Elect Scott Lassiter. Welcome was extended to those in attendance with special recognition of former Council Member Mike Jones and former Commissioner Clarice Atwater, both having served as Mayor Pro tempore; also the Honorable Mark D. Martin, North Carolina Supreme Court Justice. Invocation was given by Reverend Dr. Classy Preston, Pastor of Pleasant Grove Church. Scout Troop 209 presented the Colors and led the Pledge of Allegiance; attendance recognition was given to Scout Troop 211.

PRESENTATIONS

Presentation 01

Mayor Weatherly recognized the service of Council Member Bryan Gossage to Town of Apex December 2003–December 2011 and presented him with a plaque as he departed the Council seat. Council Member Gossage expressed appreciation for the opportunity to have served and for the support received from Town citizens.

Presentation 02

Mayor Weatherly presided over the Induction of the Elected Officials and the Administering of the Ceremonial Oaths.

Keith H. Weatherly took his Oath for Public Office of Mayor and with his Oath administered by The Honorable Mark D. Martin, North Carolina Supreme Court Justice, signed the Oath with the Town Clerk and took his seat.

Council Member Scott R. Lassiter took his Oath for Public Office of Council Member and with his Oath administered by The Honorable Mark D. Martin, North Carolina Supreme Court Justice, signed the Oath with the Town Clerk and took his seat.

Council Member William S. Jensen took his Oath for the Public Office of Council Member and with his Oath administered by Georgia A. Evangelist, MMC, Town Clerk, signed the Oath with the Town Clerk and took his seat.

Mayor Weatherly stated appreciation for the support he had received and the expressed excitement in serving the next years to come.

Mayor Weatherly open the floor for nominations for Mayor Pro tempore. **Action:** Council Member Rowe nominated Council Member Schulze. Council Member Jensen made the second to the motion. Mayor Weatherly then closed the nominations and called for a motion to appoint Council Member Gene Schulze Mayor Pro Tempore. Motion carried unanimously 5-0.

APPOINTMENTS OF STANDING COMMITTEES AND LIAISONS

Mayor Weatherly made the following appointments to Standing Committees and Liaisons.

COMMITTEES**ECONOMIC DEVELOPMENT:**

Council Member Jensen Chair, with Council Member Rowe and Mayor Weatherly

FINANCE:

Council Member Schulze Chair, with Council Member Lassiter

PLANNING:

Council Member Lassiter Chair, with Council Member Jensen

PERSONNEL:

Council Member Rowe Chair, with Council Member Schulze

LIAISONS

APEX CHAMBER OF COMMERCE: Council Member Rowe

APEX FIRE ADVISORY BOARD: Council Member Schulze

APEX PARKS, RECREATION, and CULTURAL RESOURCES ADVISORY COMMISSION:

Council Member Lassiter

TRIANGLE J COUNCIL OF GOVERNMENTS:

Council Member Olive, Delegate; Council Member Jensen, Alternate

TRANSPORTATION ADVISORY COMMISSION AND ALTERNATE:

Mayor Weatherly, Delegate; Council Member Schulze, Alternate.

END OF THE ORGANIZATIONAL MEETING.

CONSENT AGENDA

All Consent Agenda items are considered routine to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. Council Member Olive asked to consider items 6 and 7 separately. **Action:** Council Member Olive made the motion to do so, with Council Member Jensen making the second to the motion. Motion carried unanimously. **Action:** Council Member Jensen made the motion to approve items 1-5 of the Consent Agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

1. November 15, 2011 Council Meeting Minutes.
2. Budget Ordinance Amendment for Wake County Grant and additions to Construction Management Department budget for Contracted and Professional Services.
3. Wake County Service Agreement, White Goods Grant Program and authorize Town Manager to execute same.
4. CSX Wireline Crossing Agreement #CSX-687247, and authorize Town Manager to execute same and to deliver Agreement to CSX only after Town acquires necessary insurance required by the CSX Agreement.
5. CSX Wireline Crossing Agreement #CSX-683782 to reroute service to existing signalization, and authorize Town Manager to execute same.
6. Resolution No. 2011-1206-24 Authorizing Eminent Domain related to the Old US1-New Hill Holleman Road water line and electric line extension project. **New Business Item 1**
7. Resolution No. 2011-1206-25 Authorizing Eminent Domain proceedings related to the Evans Road water and electric line project. **New Business Item 1**

End of Consent Agenda

REGULAR MEETING AGENDA

Regular Meeting Agenda was set prior to taking action with the amendment of Consent items 6 and 7 moved to New Business.

PUBLIC HEARINGS

Public Hearing 01

Mayor Weatherly stated the Public Hearing would be opened and continued to December 20, 2011.

Public Hearing and possible motion to adopt Ordinance No. 2011-1206-09 amending the designation of a historic landmark in Apex, the Harward-Bagley House, located at 209 East Chatham Street near downtown. Mayor Weatherly opened the Public Hearing at 7:14 p.m. **Action:** Council Member Jensen made the motion to continue the hearing to December 20, 2011 Council meeting. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 01 remains open and continued to December 20, 2011

Public Hearing 02

Mayor Weatherly stated the Public Hearing would be opened and continued to December 20, 2011.

Public Hearing and possible motion to adopt an Ordinance No. 2011-1206-10 for the designation of a historic landmark in Apex, the Seagroves Farm, located at 1617 Center Street. Mayor Weatherly opened the Public Hearing at 7:15 p.m. **Action:** Council Member Olive made the motion to continue the hearing to December 20, 2011 Council meeting. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 02 remains open and continued to December 20, 2011

Public Hearing 03

Mayor Weatherly stated the Public Hearing would be opened and continued to December 20, 2011.

Public Hearing and possible motion to adopt an Order Closing a Portion of Forest Grove Drive. Mayor Weatherly opened the Public Hearing at 7:16 p.m. **Action:** Council Member Schulze made the motion to continue the hearing to December 20, 2011 Council meeting. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

Public Hearing 03 remains open and continued to December 20, 2011

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

NEW BUSINESS

New Business 01 – Consent Agenda Items 6 and 7

Council Member Olive asked Attorney Fordham for a status report regarding the two consent items:

6. Resolution No. 2011-1206-24 Authorizing Eminent Domain related to the Old US1-New Hill Holleman Road water line and electric line extension project.

7. Resolution No. 2011-1206-25 Authorizing Eminent Domain proceedings related to the Evans Road water and electric line project.

Attorney Fordham advised resolutions were authorization for eminent domain negotiations for the water line and electric line extension projects; attempts to settle had not been reached. **Action:** Council Member Schulze made the motion to adopt the resolutions. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Attorney Fordham stated item 6 remains unresolved, however, with item 7, asked a motion be made to delete the first two entries for Wake County Pin # 0721-70-7475 and #0721-70-8602 as there had been a resolve. **Action:** Council Member Jensen made the motion to delete the two noted entries. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of New Business

CLOSED SESSION

There were no Closed Session items to be discussed.

WORK SESSION

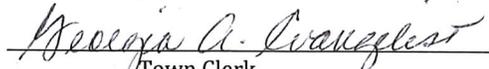
There were no Work Session items to be discussed.

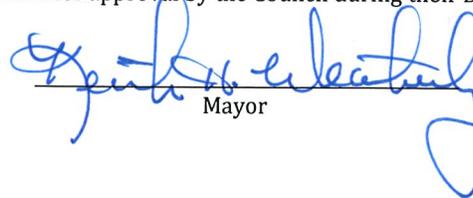
ADJOURNMENT

Mayor Weatherly asked newly elected Council Members if they wished to speak. Council Member Jensen expressed appreciation for the opportunity to serve an additional 4 years; noted the future good for Apex and very rewarding to serve in a wonderful town and its people.

Mayor Weatherly called for a motion to adjourn at 7:20 p.m. **Action:** Council Member Jensen made the motion to adjourn. There was no second to the motion. Motion carried 5-0.

Minutes of the December 6, 2011 meeting were submitted by the Clerk for approval by the Council during their December 20, 2011 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for December 20, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 20, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order, extended a welcome to those in attendance, and gave the Invocation. Special welcome extended to former Mayor Everette Edwards. Pledge of Allegiance was led by Troop 224 Scout Noah Dunbroski.

PRESENTATIONS

Presentations 01

Lauren Simmons Planner presented the December 2011 Winter Appearance Awards winners. Mayor Weatherly presented the awards: Residential to Johnny and Sydney Deal, 215 E. Chatham Street; Residential Property Rehabilitation to Leland Builders, Lee and Gretchen Williams for 215 E. Chatham Street; Commercial to Sonja Ward, 122 & 124 N. Salem Street.

End of Presentations

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.

Mayor Weatherly presented the Consent Agenda to be set prior to taking action. There were no amendments and the Consent Agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for December 6, 2011 Council Meeting.
2. Amendment No. 2 to April 26, 1988 Agreement between Town of Cary and Town of Apex for the Cary/Apex Water Treatment Facility.
3. Identity Theft Prevention Program Annual Risk Assessment 2011.
4. Wake County Tax Report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments and the Meeting Agenda and was set.

PUBLIC HEARINGS**Public Hearing 01**

Public Hearing continued from December 6, 2011 and possible motion to adopt Ordinance No. 2011-1220-09 amending the designation of a historic landmark in Apex, the Harward-Bagley House, ca. 1901, located at 209 East Chatham Street near downtown. Planner Lauren Simmons and Gary Roth, Capital Area Preservation presented historic data and stated the recommendation to amend the designated historic property boundary by .24 acres. Full copy of the report was presented; public hearing was duly advertised. Mayor Weatherly opened the public hearing at 7:15 p.m. Doug and Pam Boyette, owners, are proud of the historic property and appreciates being part of the community. Mayor Weatherly closed the public hearing and referred the matter to Council. **Action:** Council Member Olive made the motion to adopt Ordinance No. 2011-1220-09 to be recorded. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #01

Public Hearing 02

Public Hearing continued from December 6, 2011 and possible motion to adopt an Ordinance No. 2011-1220-10 for the designation of a historic landmark in Apex, the Seagroves Farm, located at 1617 Center Street. Planner Lauren Simmons and Gary Roth, Capital Area Preservation presented historic data and stated the recommendation for the historic landmark designation and contributing structures, and noting the development section for a Town park. Full copy of the report was presented; public hearing was duly advertised. Mayor Weatherly opened the public hearing at 7:25 p.m. Jim Properties LLC is the owner, and houses offices of Bill Cotton who stated he was proud of the project and was looking forward to the park. Mayor Weatherly closed the public hearing. **Action:** Council Member Jensen noted it an outstanding restoration project and made the motion to adopt Ordinance No. 2011-1220-10 to be recorded. Council Member Olive made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #02

Public Hearing 03

Public Hearing continued from December 6, 2011 and possible motion to adopt an Order Closing a Portion of Forest Grove Drive that runs through the Groves II located on SR1010. Town Manager Bruce Radford introduced the designated portion being considered for closing to allow for reconfiguration of the roads and to facilitate in implementing the approved development plan; portions of Forest Grove Drive to the east of the portion under consideration were previously closed; public hearing was duly advertised. Mayor Weatherly opened the public hearing at 7:25 p.m. No one spoke. Mayor Weatherly closed the public hearing. **Action:** Council Member Schulze made the motion to adopt Order. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #03

Public Hearing 04

Senior Planner June Cowles

Public Hearing and possible motion to approve the Apex Hazard Mitigation Plan Annual Report. Senior Planner June Cowles stated the 2010 update requires an annual report outlining progress on the Mitigation Action Implementation; the goals and objectives address current and expected conditions; that other departments and agencies participated in the process; updates members; full copy of the report is incorporated with the minutes. Planning Board recommends approval. No mitigation action is noted for earthquakes, however notes the fault. Mayor Weatherly opened the public hearing at 7:30 p.m. No one spoke. Mayor Weatherly closed the hearing. **Action:** Council Member Jensen made the motion to approve the report. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

End of Public Hearing #04

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.**

Comments must be limited to 3 minutes to allow others opportunity to speak.

Tom Williford, Apex Banquet Hall requested consideration for a rezone in the B1 district and issuance of a special use permit to allow for Bingo. Williford was directed to address the matter with the Director of Planning and the process will elevate to Council along with staff recommendation.

End of Public Forum

NEW BUSINESS

New Business #01

Mayor Weatherly recommended for Council's consideration, appointments to the Apex Planning Board and Apex Board of Adjustment and Parks and Recreation Advisory Commission.

Planning Board

Reappoint Graham Wilson as Chair – Chair term is for one year and expires December 2012
 Appoint David Hooks as Vice Chair – Vice Chair term is for one year and expires December 2012
 Appoint Chad Price for a 3 year term – term expires December 2014
 Reappoint Tom Colhoun ETJ for a 3 year term – term expires December 2014 (with WC Board concurring)
 Appoint Beth Godfrey for a 3 year term – term expires December 2014

Action: Council Member Lassiter made the motion to approve the Planning Board appointments. Council Member Schulze made the second to the motion. Motion carried unanimously 5-0.

Board of Adjustment

Reappoint Craig Hardee for a 3 year term – term expires December 2014, and
 Reappoint Craig Hardee as Chair - Chair term is for one year and expires December 2012
 Reappoint Larry Harris ETJ for a 3 year term – term expires December 2014 (with WC Board concurring)
 Reappoint Alternate Perry Cox for a 3 year term – term expires December 2014

Action: Council Member Schulze made the motion to approve the Board of Adjustment appointments. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

Parks and Recreation Advisory Commission

Appoint Michael Kanters to fill unexpired term of Scott Lassiter - term expires May 2012

Action: Council Member Jensen made the motion to approve the Parks and Recreation appointment. Council Member Lassiter made the second to the motion. Motion carried unanimously 5-0.

End of New Business #01
End of New Business

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session to receive legal advice on potential litigation and provide direction to attorney. **Action:** Council Member Schulze made the motion to do so at 7:40 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0. Minutes of Closed Session are recorded separate from the regular meeting minutes. **Action:** Council Member Olive made the motion to move out of closed session into Regular session at 8:05 p.m. Council Member Rowe made the second to the motion.

WORK SESSION

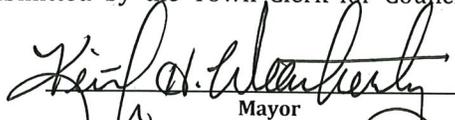
There were no Work Session items.

ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 8:06 p.m. **Action:** Council Member Schulze made the motion to adjourn. There was no second to the motion. Motion carried unanimously 5-0.

The minutes of December 20, 2011 were submitted by the Town Clerk for Council approval during the January 3, 2012 meeting.


Town Clerk


Mayor