

## TOWN OF APEX, NORTH CAROLINA

The Regular Meeting of the Apex Town Council was held Tuesday, January 15, 2008, at 7:00 p.m., in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

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

### PRESENTATIONS

Mayor Weatherly presented the Appearance Awards for the first quarter of 2008:

- o **Tree Award** for American Holly: Ronald and Crystal Ragland, 203 E. Chatham Street.
- o **Residential Award** for house and property having been very well maintained and embodies the characteristics of the small town atmosphere: James and Deborah Douglas 211 S. Mason Street.
- o **Non-residential Award** to Salem Street Arboretum, 1930 N. Salem Street, for having maintained a natural setting and developed by Sam Ashford.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve.

Council Member Sutton asked item 5 be considered under New Business # 4.

**Action:** Council Member Sutton made the motion to do so. Council Member Schulze made the second to the motion. Motion carried unanimously.

**Action:** Council Member Jensen made the motion to approve the consent agenda as amended. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of December 18, 2007 Council meeting.
2. Annexation Petition # 425, James & Delores Davis, owners/petitioners, petitioning to annex 2.01 acres into the Town's Corporate limits, located on Holt Road (SR1612); 1) Resolution directing Clerk to Investigate Petition and Resolution; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set a Public Hearing for February 5, 2008.



Consent Agenda continued

3. Findings of Fact and Conclusions of Law and Ordinance: Rezoning Case # 07CZ17, Pierce Hardy Limited Partnership, petitioner for property located at 5524 Eddie Creek Road, changing zoning classification of lands from R-30 (Wake County Zoning Designation) to B1-CZ (Neighborhood Business Conditional Zoning District); Wake Acquisitions, LLC/84 Lumber.
4. Findings of Fact and Conclusions of Law and Ordinance: Rezoning Case # 07CZ18, White Oak Foundation, petitioner, for the property located at 1109 Markham Street, changing zoning classification of lands from LI (Light Industrial) to PUD-CZ (Planned Unit Development Conditional Zoning District).
5. Budget Ordinance Amendment No. 9 for Police, Fire, and Recreation Grants and related Capital Projects Ordinance Amendments (2) for improvements at Apex/Cary Water Treatment Plant (**New Business 4**).
6. Release of Liability permitting Town of Apex Fire Department to conduct training at property owned by Hendrick Automotive Group, Laura Duncan Plaza.
7. **Ordinance No. 08-0115-01** Section 18-6(a) Standard Specifications and Details adopted by reference.
8. **Resolution No. 08-0115-01** and Interlocal Agreement pertaining to building plan review, permitting and inspections for Wake County School System Projects and authorize the Mayor to execute the ILA.
9. **Resolution No. 08-0115-02** regarding request to honor retiring Apex Police Corporal Jack Edwards, Jr. with his badge and service side arm used by him during his service with the Town of Apex, and declaring his side arm surplus property and giving authorization for Town Manager to proceed with procedures as defined in the General Statute.
10. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners 01/07/08.

End of Consent Agenda

## REGULAR MEETING AGENDA

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

## PUBLIC HEARINGS

### **Public Hearing # 01 - FY2008-2009 Annual Budget**

Mayor Weatherly opened the Public Hearing to receive citizen input regarding formulation of the Fiscal Year 2008-2009 Annual Budget at 7:10 p.m. having been properly advertised. With no one addressing this item, Mayor Weatherly closed the public hearing. The budget hearing will be held June 3, 2008 with adoption of the budget ordinance June 17, 2008.

End of Public Hearing # 01



**Public Hearing # 02 - Trackside South Phase II Major Site Plan**

Continued from December 18, 2007 Council meeting; Planning Board considered this major site plan January 14, 2008. Public hearing and possible motion regarding Trackside South Phase II Major Site Plan; 5.67 acres located on the West side of Laura Duncan Road, inside the future Apex Peakway for proposed retail space and specialty grocery store.

Presenter: Amy Sadler, Planner presented the staff report which is attached and incorporated as a part of the minutes. Acreage is proposed PUD-CZ for commercial use and consistent with the 2025 Land Use Plan. Proposed use: 53,450 square feet of retail space including a 21,200 square foot specialty grocery store. Staff has worked with the applicant on the layout of the site and complies with design control standards as part of Trackside PUD rezone, includes an increase in parking spaces due to several restaurants that may be included; conforms with design control for stormwater detention pond (does not drain into Shepherds Vineyard Subdivision) and construction of the Peakway, extension of sidewalk along Laura Duncan Road, and multi-use path for connectivity. Four property owners attended neighborhood meeting; concerns were with stormwater pond, traffic and over-crowding of schools. Planning Board met January 14, 2008 and unanimously recommended approval. Staff recommends approval based on proposed use of the land and compatibility with surrounding land uses.

Mayor Weatherly opened the public hearing at 7:15 p.m., and having been properly advertised.

Rhett Butler, BBM & Associates, gave a presentation of this proposed "Villages of Apex, Trackside South Phase II" which includes four buildings showing elevations and architectural design, noted location of retention pond designed for 25 year storm events, hardscape, sidewalk, and multi-use path, and proposed school.

Kent Jackson Director of Construction Management updated the plans for the Peakway were being submitted to CSX for roadway and bridge (Salem to Shepherds Vineyard); project let October/November 2008; completion date 2010.

With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:20 p.m. and called for a motion.

**Action:** Council Member Sutton made the motion to approve Trackside South Phase II Major Site Plan. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

**Public Hearing # 03 - Conditional Zoning # 07CZ25**

Planning Board met December 10, 2007 and unanimously recommends approval. Staff recommends approval. Public hearing and possible motion regarding Conditional Zoning # 07CZ25, CJS Apex, petitioner, seeking a conditional zoning from (RA) Residential Agricultural to (MD-CZ) Medium Density Residential Conditional Zoning and (B1-CZ) Neighborhood Business Conditional Zoning, for property located off S. Salem Street and Tingen Road.

Presenter: Dianne Khin, Director of Planning, presented the staff report which is attached and incorporated as a part of the minutes, noting this a portion of the former Salem Village proposal; no PUD, and no TIA required; proposed for medium density residential conditional zoning (MD-CZ) 127.96 acres and neighborhood business conditional zoning (B1-CZ) for 8.73 acres, located in the Apex ETJ, with annexation petition having been submitted. Adjacent zoning and land uses were noted; proposed uses and conditions were stated. Three persons attended the neighborhood meeting with focus on the infrastructure and no suggestions made to change the proposed rezoning.



Planning Board met December 10, 2007 and unanimously recommended approval. Staff recommends approval as proposed as is consistent with the 2025 Land Use Plan.

Mayor Weatherly questioned availability of sewer capacity and the condition for the limited 85 residential units per year and understanding the wait for the Western Wake Water Reclamation Facility, concerned with approval of the rezone, with this condition and several years out on the sewer facility, not having sewer available, did not want this misconstrued. Public Works Director Tim Donnelly stated he has tracked the availability of sewer. Attorney Fordham advised, approval of the rezone does not guarantee sewer capacity; the prepay of capacity fees does not guarantee sewer, but puts them ahead of those that had not prepaid sewer capacity fees for an approved 30,000 gallons, and added utilities have to be provided for at the site plan review. Mayor Weatherly continued there is no promise of sewer, this is simply to rezone and would look further at the site plan and address the sewer issue at that time, and did not want to give the impression there was guaranteed sewer.

Council Member Schulze shared concern with the build out of 508 residential units (4 units per acre) and the transportation issues which will be addressed at site plan. Council Member Sutton addressed the condition regarding building of the Peakway. Khin stated the condition: prior to platting of the 341 residential lots, connection of the Peakway to South Salem Street shall be completed, unless there is an agreement that says differently. Council Member Jensen addressed the condition of connection of the Peakway to South Salem being completed before issuing certificate of occupancy for the commercial portion, wanting to balance jobs with residential and did not make sense to not allow the availability of the commercial and wanted to give them the option, viewing Apex heading towards being a bedroom community.

Mayor Weatherly opened the public hearing at 7:35 p.m.

Jason Bertoncino, Withers and Ravenal, represented the applicant and addressed concerns of Council. He stated the number of units were not viewed as a right or grant, 100 units or 30,000 capacity, it was to try to restrict and not supersede any other; he certainly understands and was doing their part to restrict themselves. He viewed the Peakway connection, done or not done, a joint project and looking for solutions and there was no easy process. He noted the Town had negotiated to the north of Town, and has great reservations, whatever the grade, he understood and respected and was trying to move forward with some of the project. If the restriction should be removed, he would welcome that. He recognizes the Peakway as fundamental and needed, and they can't do it by themselves, and needs the Town's cooperation; hoped the condition allows the project to move forward, while working together for the connection to happen. He noted this was a part of the original Salem Village - 40% in size, he had met no opposition, having received a unanimous vote by Planning Board, and recommended by staff. He noted site plan, studies, and utilities can be met without the Peakway, not an access restriction, and resolution or not, work with the Town, looking for partial entitlement, placing a cap on themselves. He offers a 25 year storm design on the retention pond. He noted they were not required to do a TIA, however did with Kimley Horn and if the Peakway was not in place, maybe there's other offsite improvements at Tingen and Salem, and will come back with this at site plan.

Ben Gentry, CPA, commercial broker and developer stated the Prince family has 68 acres, 18 being purchased by the developer and plans to reside on the remaining acreage. Developer participated in the planning elements of the project, and they are uniformly in favor of this development and support it.

Mike Horn, Kimley Horn, addressed the transportation issue, having conducted three separate studies, that of Tingen Road and Peakway; project scaled back from 1000 units to 340 units; impacts are substantial without the connection of the Peakway across the railroad to Salem; predicts short to moderate delays and does not warrant a signal, and will operate well.



He does not like North Tingen at Salem Street; proposal says re-align with Lynch street and when warranted do a signal – this recommendation the developer says yes; to pursue crossing the railroad takes money and if you can't get the crossing, need to move to here and move forward with the identified, may close the crossing, will come with site plan review; noted turn lanes improvements at Perry Road; Peakway at NC55 maintains a Level Service D. Amount of traffic would be minor compared to Wal-mart, but Level D Service works with 340 units. Mayor Weatherly stated this would be scrutinize at site plan.

No one spoke in opposition.

Council Member Sutton saw this problematic with the infrastructure, wastewater and transportation, desperately needing the Peakway, and understands, thinking it borderline to let the development get ahead of infrastructure. Mayor Weatherly noted construction was in accordance with the land use plan, and would deal with these concerns at site plan; noted the situation may change and depends on time for review of the site plan.

Council Member Jensen recalled the limited certificates of occupancy with James Street Station until there was another connection, and may want to take this into account with this one as well. Council Member Jones agrees with what was being said and added they may want to see the TIA at site plan which includes the surrounding area; agrees with Council Member Sutton on the infrastructure and sewer cap, and was noted it does not go to Kelly Road; he is comfortable with the rezone and was a timing status with the infrastructure. Council Member Schulze was ok with the rezone, felt the same concerning infrastructure, however with the lots approval, and with one way in and one way out saw it problematic and has reservations, and would be reviewing this at site plan.

Council Member Jensen went back to condition # 5 with the retail portion, asking if consideration could be given to a trade allowing up to 300 vs. 341 units, thinking the balance works better and gives opportunity to build and not as much impact on traffic. Mayor Weatherly commented on the commitment to build, not wanting to hold them hostage, however there was no control of the time. Mike Horn felt this may be a valid idea, however, fact that most likely retail would not be viable until the crossing is made. Council Member Jones, asked what if it were not retail, but there were something else that serves others on the Peakway, anything in B1 other than retail.

Bertoncino was hearing the general desire regarding condition # 5 in the commercial portion to go away, and not restrict in any form. Second part: 300 residential units cap if there was development of the business site, if not 341 residential units and deal with the rest with the crossing. Council Member Jensen confirmed 341 with no business, 300 with business and not impact traffic any worse. Council Member Jones added not tying this to a number of homes, taking this condition out; time would not allow something that causes this condition. Attorney Fordham advised once the property is rezoned, then the discussion at site plan would be limited, and if meets the UDO, there would not be a lot of discretion to deny the site plan. Bertoncino stated there was no problem on the restrictions, and that the Town felt strongly about the connection. Dianne Khin, Director of Planning and Russ Dalton, Transportation Engineer commented on the idea of the traffic, built without a connection would come from the neighborhood and would not be the problem; concern was with the James Street connection, and cut throughs. Mayor Weatherly called for a motion. Attorney Fordham advised the condition for the 25 year storm design for retention ponds on both the residential and commercial should be agreed to as a condition 6. Bertoncino verbally agreed to this condition for both.

**Action:** Council Member Jones made the motion to approve conditional zoning case # 07CZ25, removing condition 5 in the BA-CZ zone, and adding condition 6 regarding the 25 year storm design in both the MD-CZ district with 341 residential lots, and the B1-CZ district. Council Member Sutton made the second to the motion. Motion carried unanimously.

**Public Hearing # 04 - Conditional Zoning # 07CZ26**

Planning Board met December 10, 2007 and unanimously recommends approval. Staff recommends approval. Public hearing and possible motion regarding Conditional Zoning # 07CZ26 Jones and Crossen Engineering, petitioner, requesting rezone of 2.62 acres located at 2524 and 2528 Schieffelin Road from (PC) Planned Commercial to (LI-CZ) Light Industrial Conditional Use.

Presenter: Amy Sadler, Planner presented the staff report which is attached and incorporated as a part of the minutes. She noted the request to rezone and amend the 2025 Land Use Plan rezoning from Planned Commercial (PC) to Light Industrial – Conditional Zoning (LI-CZ); amendment is consistent with surrounding land uses and more appropriate given industrial developments in this area. The two parcels are partially wooded with two single family homes and small pond. A neighborhood meeting was held and no one attended. Restrictions and conditions proposed by applicant are included in the report and per the UDO. In addition, the clad on the building will not be metal; the front façade and 25% of the sides will be masonry. The building roof can be metal but the walls must be masonry – split face block or brick, staff prefers split face block or brick. Applicant is requesting a reduction in buffer; staff recommends approval of the reduction. Planning Board met December 10, 2007 and unanimously recommended approval. Staff recommends approval.

Council Member Jensen was not in agreement to restrict manufacturing and processing, as there were machine shops in the area, asking if machine shops were a part of manufacturing with Sadler answering yes; reducing the use to light industrial vs. a more intense use; Council Member Jensen did not want to restrict this. Council Member Schulze addressed reduction in buffer. Staff agreed with the reduction due to the slope of the site and US 1 steep grade, and would work at a potential realignment. Russ Dalton, Transportation Engineer noted the site more restrictive to the need for large trucks to enter the site, is 65 wide and 25 when graded, with restored buffers.

Mayor Weatherly opened the public hearing at 8:05 p.m. and with no one addressing the item, closed the public hearing and called for a motion.

**Action:** Council Member Jensen made a motion to remove the restriction of Manufacturing and processing; felt it was allowable under light industrial. Dianne Khin Director of Planning stated applicant Stuart Jones was not present, however, noted this less restrictive, and could not be a negative. Attorney Fordham agreed this to be true; could not impose a condition without the applicants consent, however to remove a condition was lawful. Council Member Schulze added neighbors may have a problem, not to presumptuous to remove it, with Council Member Jones adding if there were an issue, felt the neighbors would have brought it to their attention. **Action:** Council Member Jensen withdrew his motion.

**Action:** Council Member Jensen made the motion to approve the rezone # 07CZ26 and land use plan amendment. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 4

End of Public Hearings



**OLD BUSINESS**

**Old Business # 01 – Police Department Headquarters Facility**

Mayor Weatherly requested Council consideration to conduct a work session to consider the details surrounding the new Police Department Headquarters Facility, suggesting Wednesday, January 23, 2008 at 6:00 p.m. **Action:** Council Member Jensen made the motion to set the date for the work session as suggested. Council Member Jones made the second to the motion. 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. **Your comments must be limited to 3 minutes to allow others opportunity to speak.**  
*No one spoke during public forum.*

**NEW BUSINESS**

**New Business # 01– Ordinance Related to Open Burning**

Presenter: Chief Mark Haraway, Apex Fire Department

Chief Haraway presented an Ordinance amendment to Chapter 9 of the Apex Town Code which addresses Open Burning within the Town Limits of Apex noting it does not have any impact on the Extra Territorial Jurisdiction.

Mayor Weatherly noted this proactive and not wanting to eliminate small backyard campfires explaining the enjoyment received by such, with Chief Haraway responding campfires were one of his biggest complaints; some had gotten out of hand and under the amendment, can't use campfires as a recreational fire; does not apply to grilling or cooking using wood.

Chief Haraway stated the department does not patrol areas looking for issues, however would like capability to deal with complaints when received. Complaints are also received from wood burning fire places; does not fall under any definition within the ordinance. Dianne Khin Director of Planning noted Beaver Creek Crossings plans show out-door fireplaces.

Attorney Fordham advised campfires could be allowed for recreational purposes, opposed to cooking, and cost of response could be enforced, if illegal and in violation of the ordinance, could charge for the visit; advising they should enforce the ordinance completely. Chief Haraway continued if they respond to smoke alarm, could charge the "fire suppression costs" and was referring to off-truck costs, not fuel if they were in violation of the ordinance. Attorney Fordham noted the ordinance as presented defines the definitions and gives citizens more parameters, however could be revised and with given certain criteria, would be a better ordinance for enforcement of the regulations in the building and fire codes

Council Member Schulze understood if burning debris, but should allow smaller camp fires, and allow patio type fire places with chimney, used on decks all with reasonable precautions. He questioned the use of the cooper bowls, with Chief responding these type bowls were not certified as safe.

**New Business # 01 continued**

Mayor Weatherly voiced he didn't agree with the restriction of smaller campfires, patio wood burners if on non-combustible surfaces, and using mats. Staff was directed to revise the ordinance, giving criteria to small back yard fires within certain distances from properties, patio wood burning and combustible surfaces, outdoor fire places with chimneys, , burning of combustible materials, considering striking text, within a building. Chief Haraway commented from what was heard, he may as well take out the text within a building and maintain current services; commented on restrictions within the state park, out door fire places, chimneys, decks, and fire protection. Mayor Weatherly also commented on luminaries, a decorative open fire that hand not been allowed due to the burning band, an issue within the section of the state fire code, and having come after adoption of the Luminaria resolution by local authorities, and noted town had jurisdiction and no problems had come from this. Revisions will be brought back for Council's consideration.

End of New Business # 01

**New Business # 02– Ordinance Related to Enforcement of State Fire Code**

Presenter: Chief Mark Haraway, Apex Fire Department

Chief Haraway presented an Ordinance amendment to Section 5-9: State Building Code, Fire Code of the Apex Town Code adapting the IFC (NC State Fire Code) and Appendices B, C, E, F, G and H as listed with the IFC, regarding enforcement, compliance issues and timing.

**Action:** Council Member Schulze made the motion to approve the Ordinance related to enforcement of State fire code as presented. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02

**New Business # 03– Green Energy Program**

Council Member Jensen made a request to consider a program allowing utility customers to participate in Green Energy Initiative Program, explaining it would be voluntary, with money donated to purchase necessary equipment for town buildings, with possible grants (tax incentives if qualified). Mayor Weatherly supported the concept, noted as far as tax credits, we are not taxed. There was discussion and agreement to remove references to "global warming" on the insert due to its controversial nature.

**Action:** Council Member Sutton made the motion to approve the concept with the deletion of references to "global warming". Council Member Jensen made the second to the motion.

**Action:** Council Member Schulze made the motion to exclude references to, "elimination of tons of carbon dioxide that would enter the atmosphere." There was no second on the motion; motion failed.

Council Member Sutton commented this was a philosophical change; Town was encouraged to buy electricity and now are considering conservation of energy, having good water conservation measures in place, and time is here to do so. Mayor Weatherly stated any expenditures of Town monies would come back before the Council. Council Member Jensen stated costs to the town would be printing and insert costs in utility billing, and would seek volunteers for distribution and explanation of the program and would save the town money in the long term. Motion carried unanimously on the original motion.

End of New Business # 3



**Consent Agenda Item # 5**

Budget Ordinance Amendment No. 9 for Police, Fire, and Recreation Grants and related Capital Projects Ordinance Amendments (2) for improvements at Apex/Cary Water Treatment Plant. Mike Wilson, Assistant Town Manager stated the grant monies were received, and specified the projects in which they money would be spent. **Action:** Council Member Sutton made the motion to approve the item as explained. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business

**WORKSESSION**

There were no Worksession items to be discussed.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session for the following:

- 1) Discussion of possible condemnation actions related to water line and electric project.
- 2) Discussion of possible legal action to collect civil penalties from Liberty for sign/zoning violations.

**Action:** Council Member Gossage made the motion to move into closed session at 9:05 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move out of closed session at 9:20 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. With Council having moved back into regular session the following action was taken:

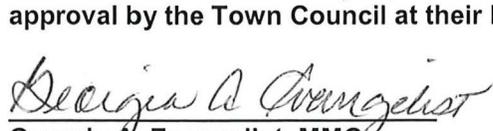
**Action:** Council Member Jones made the motion to adopt the Resolution authorizing eminent domain proceedings related to the New Hill water line and electric line extension project for the improvement of the Apex water and electric systems and authorize Manager or designee to pursue the acquisitions through eminent domain and/or negotiation as necessary. Council Member Schulze made the second to the motion. Motion carried unanimously.

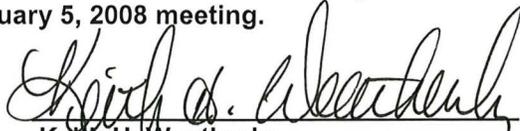
End of Regular Session

**ADJOURNMENT**

With no further business to come before the Council, Council Member Sutton made the motion to adjourn at 9:25 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the January 15, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their February 5, 2008 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk

  
Keith H. Weatherly  
Mayor

## TOWN OF APEX, NORTH CAROLINA

A special meeting of the Apex Town Council was held Wednesday, January 23, 2008, at 6:00 p.m., in the Third Floor Training Room of the Apex Town Hall, 73 Hunter Street, and Apex Town Campus. Mayor Keith H. Weatherly presided over the meeting, calling the work session to order, giving the Invocation and extending the welcome to those in attendance. Council Members Jensen, Gossage, Jones, Sutton and Schulze were present.

Apex Town Council at their January 15, 2008 meeting had voted to call for a special meeting to conduct a work session, Wednesday, January 23, 2008 at 6:00 p.m. to consider details surrounding the proposed Police Department Headquarters facility, and the financial measures for capital outlay items. Manager Radford presented the agenda and supporting documentation being presented regarding detailed construction and financing plans for the Police building renovation and expansion project at a proposed cost of \$8,750,000 and hopes to move forward with the bid process and financing arrangements.

Marty Mitchell Facility Services Director gave an overview of physical deficiencies identified in the 1979 Town Hall building, and renovated Police building in 2002: HVAC, plumbing, cooling tower, electric Tran closure, roof, mold, generator, finish items, walk-bridge, and elevator. Work order costs in FY2006/2007 totaled \$18,000 and into 2008 - \$11,000.

Chief Jack Lewis, Apex Police Department gave an overview of functional deficiencies of the 14,000 square foot facility related primarily to security and functionality. Executive Summary of the 2004 Facility Utilization Study by Heery International, PC of Raleigh, NC identified general findings related to inadequate work areas, storage space, training and meeting room spaces, suspect and witness areas, lockers, OSHA and fire violations, break areas, toilet facilities, appearance, and security. The projected design costs for the proposed 33,000 square foot facility was \$6 million. Temporary relocation options have been considered: dance studio, Helm Building, Clark Building, Pinnacle Park and Norris Park space; none of those spaces have met required needs either economically or practicality wise. The facility was a necessary project and if given approval for the proposed design and facility, current best relocation option: modular units on site of parking lot remains most cost effective with minimum impact to the downtown parking.

Council Member Sutton stated there was no question for the need, however, noted accommodations as designed would house 80 to 100 officers over 20 year period, and questioned the need for the 33,000 square foot facility, suggesting a portion of the space be built to last ten years and consider an annex at a later point in time. Chief Jack defended need for the entire facility as designed due to anticipated growth from proposed I-540, Regional Wastewater Treatment Facility, and the expanded ETJ service area.

Jim Stewart and Philip Fieler, Architects, Stewart Cooper Newell presented proposed building elevation design, reviewed existing conditions, proposed site plan, and proposed floor plans (lower level, main and mezzanine level, and upper level). Stewart stated 95% of the construction documents were complete and close to being ready for bid proposal. Plans are to keep the main foot print of the existing building located in the downtown and remove the front portion and building a new two story front, keeping access entrances as are. Council Member Jones asked why not build over the existing portion of the building. Fieler responded there are multiple levels, only one portion of the building or 2800 square feet was designed for future expansion; building code changes over time; with future ability to expand and taking consideration of study, best option was to remove the portion upfront and build the new addition.

Council Member Sutton asked, why build the facility now, vs. building a portion of facility and additional space come later? Fieler: Plans reveal 85% to 90% of space being utilized now as designed; additional personnel need to be arranged by department; there was no space to take away and not much space planned for projected growth; noted it a fundamental issue and building an annex would split personnel from work groups, causing lots of duplication in personnel and equipment, and at this point was not cost effective.

Mayor Weatherly questioned cuts to get back to the previous estimated cost of the facility and even the fact the facility may not be sufficient for today's needs at an estimated build-out of 45,000 population, and things that are foreseen on the horizon. Stewart: Sees the area for most growth in the patrol section, and building size being driven by costs and would last for sometime and was a good solution; is a good time to bid as interest rates have dropped, economy has slowed down, and they can't do a lot with the existing site limitations. Chief Lewis defended a cut from the proposed plan; that it doesn't make good prudent judgment and was not reasonable to build less, commenting on two employees per 1000 capita, and could put them over 100 employees at sometime; this gets them to where they need to be with 80 employees. Fieler: Didn't know what could be cut from the design as he doesn't know of any space that would not be utilized when the building is commissioned.

Council Member Schulze asked if there were consideration to shrinking operations perhaps in this building or for sub-stations. Chief Lewis responded off-site personnel increases numbers in needed personnel and in operational costs, and doesn't see it as a way out.

Council Member Sutton stated he wanted a new Police Department, and with design costs from \$6 million to \$9 million, seems to him one-third of the square footage 22,000 square feet, if properly designed would double the size of use; seems logical that they could fit into this space. He would not count on a good bid with construction costs on the rise 50%. He noted the police department was not the only project that needed to be done, not only a fire department, and included the 7700 square foot public works building and have to do something with that.

Council Member Jensen questioned use of the 2800 square feet designed on the upper level plan that had been built out for future space? Fieler: There's a concrete roof slab with roof; floor height is lower than second floor elevation, shallow floor height, some vertical access would be needed perhaps stairwell, and was not practical. Design of the facility provides direct access to the parking lot, and elevator access would be needed to all levels and according to building codes, an additional elevator would be required for accessibility.

Council Member Sutton questioned constraints on site and were plans to vacate the site, and asked why not level the site, fill in and provide proper drainage and build what they want. Stewart: Had looked at all scenarios and found the building to be structurally sound and was feasible to go back to the structural steel and foundation and use the main portion of it, and build the new addition to the front. Fieler: Commented on budget estimates, and if torn down the square footage construction costs would be significantly higher perhaps \$600,000 to \$700,000.

Marty Mitchell presented the project cost analysis: low and high estimates for base building costs, total building costs, total design fees, total furnishings estimates, and total modular unit cost with a total project costs: \$8 million to \$9 million. Stewart: Commented on competitive bidding prices in other areas, and land costs with 5 acres were up to \$175 square foot.

Council Member Jones supported the need, and commented on current construction costs, and noted additional money would be needed to purchase additional acreage, and were looking at six to seven acres, and that the design fees were \$400,000 and this package was almost ready for bidding. Mayor Weatherly stated Council had given the o.k. for the design two years ago, keeping the building in the downtown, with Council Member Jones agreeing to keep the building in the downtown.

Lee Smiley, Director of Finance presented the financing plan proposing the police building expansion at \$8.75 million, key borrowing assumptions, and other capital improvement projects, including the proposed Fire Station # 4 \$1.65 million, and preliminary funding analysis revealing a one time tax rate increase in FY 2009 at an estimated 3.8 percent. Total proposed debt service: Principal \$25,310,000, Interest \$14,465,325 for total debt service \$39,775,325. The Performing Arts Center expenditure had been removed anticipating compensation at some point for long term capital money.

Council Member Jensen asked if they vote for the building project, then they vote for a tax increase? Manager Radford responded to fund the police facility and the fire station which had not been called, to off set the debt costs for 20 years would require 3.8% tax increase in the upcoming fiscal year budget; over a 30% increase in total value projected \$2.7 million to \$3.4 million. Council Member Jensen's response was, they were voting for a tax increase. Mayor Weatherly added that's what was said, absolutely; advised the public hearing for the upcoming budget will be held June 3 with adoption of the budget ordinance June 17. He noted it would be made known the revenue neutral figure 40¢ and any adjustments necessary. They would be laying out the plan to vote to approve the Police and Fire facilities, Capital Expenditures, and comes with an increase cost and increased amount of debt service and the way to cover it is with an increase in tax rate, and could tinker with other budget costs.

Council Member Schulze questioned the fire facility costs estimates and also the increase in base cost from \$6 million to \$9 million (base building and extra costs and 5% contingency) and if there were any unexpected costs, not wanting the same with the fire station facility? Manager Radford noted the land swap was underway and there was no additional land costs involved in this cost estimate. Fieler: Presented a facility summary of total square footage of space, 9,757 square feet, alternate building and third bay space, two elevations and different type construction, two estimates at costs in the \$1.951 million/\$2.244 million range, and did not include design, contingency, and lot estimates for base building costs (presented past copy of finances). Smiley gave an explanation, and presented the comparisons, and identified the primary differences of an installment purchase contract funding approach vs. a general obligation bond funding approach and stated there was not much difference in the two. Manager Radford added this was done primarily from a request of Council Member Gossage.

Council Member Sutton questioned a projected tax increase, noting Finance Committee review of 3.19¢ and with police facility from \$6 million to \$9 million, now the tax increase is at 3.8%; Finance Committee meeting another scenario offered was to delay increase in property tax for four or five years would be greater. Council Member Jones commented on other financial points reviewed by the Finance Committee and ended up being more. Council Member Sutton continued this proves they did not have to have the tax increase now, and would come through in a few years and a bigger amount, asking if this were not correct with Smiley responding yes. Manager Radford added by adding a greater contribution on the front end of on-hand general fund reserves. Council Member Jones added we delay the increase in property tax revenues by spending reserves that we have now which has implication on bond ratings, with Manager Radford adding \$4 million with High adding you use your own cash on hand now, there are some reserves to build in on, with Council Member Sutton adding they are building up now. Council Member Sutton added that was his opinion on the bond rate, the more money you have in the bank the better change of keeping the bond rate? Bob High, First Vice President, Davenport and Company, LLC stated yes, and probably getting more like than then in past, becoming a big issue, so having reserves are strong, with Council Member Sutton asking that he didn't know for sure that reducing the reserves would reduce the bond rating, with High responding he would not say that, however bond rating can be based on many factors, and not sure which one would bring it down. Council Member Sutton stated Town Bond rating went to "AA" and we spent money on this building and didn't have a lot there, and didn't know that that rate would go down if general fund was used; he wanted to be honest about the entire thing, that they didn't have to raise taxes now, could wait four or five years and take some out of general fund, we have \$10 million in general fund, and noted there was an option.

Mayor Weatherly added this was a decision they could make at budget time, as far as committing to build this project now, before them tonight, with potential implication to the tax rate, with Council Member Gossage adding the financing plan was part of it, Mayor Weatherly continued, we do not have to decide how to finance it, still was still an option on the table, with Council Member Sutton adding there was an option, no one was saying there was no option, and the Manager proved going out for contract, would have to raise the taxes and not exactly true.

Council Member Jones added that assuming they move forward, wanted everyone to know this would increase in debt and the impact it would have on the property tax rate, and if nothing changes, with Council Member Sutton adding or if we do not go to general fund reserves, Council Member Jones continued this was the worse case, and there were several options and whatever direction, and would hear about the finances at the retreat.

Manager Radford commented without argument, liquid assets are viewed to be favorable by the bond rating agent; can't decided it's negative to have excess cash and on the other view it as negative to have to spend it, redundant, one or the other, and understands one question bond rating agencies ask is how much money they have on reserve, and this savings of retention of \$4 million is important for unanticipated future expenses, and why they applied the idea to this or commercial funding.

Mayor Weatherly asked if he wanted to pose the question, automatically entails 3.8 percent increase on tax rate, or, the issue before them was to commit to the construction, and then there are options staff would present at budget determining how they would pay for it. Manager Radford responded his greatest fear is if they don't commit to the 3.8% increase, that when he presents the budget that comes with natural increases in expenditure for the coming year, that those natural increase in expenditures they experience each year, will be held hostage in favor of being able to fund this and reduce those things they know will come. Mayor Weatherly stated they way he looks at this, sees a desperate need for this facility, and then would decide how to finance it; in his mind he arrived with the need for the police facility first, and then justification as they the level of expenditure is appropriate, so then once he has made this decision, he goes to the next decision as to how to pay for it; without making a decision on the need for the project, seems convoluted to him to say we are not going to raise taxes at all, so, forget whatever we need, no matter what they come up with would always be the argument with the current financial structure and the need for debt, the necessity of debt incurrence that you could come up with anything, and that argument would always be standing there, that we are not going to raise taxes, so we are not going to do it. We first must arrive at the necessity for the expenditure, then move into the most fiduciary responsibility for the tax payers, and pay for it, in that manner; if we can get a concurrence on that process, then could move into discussion of the need for the facility, the comfort level they have for the plans being presented, and then the time they want to devote to the financing; will separate those issues and they way he prefers to proceed, asking for comment.

Council Member Schulze stated yes, he has come to a conclusion of the need for the facility, and the problem is the price tag on it; the only way he would turn it down is if he said there were no other viable funding options, clearly not the case, option of a tax increase, cutting budget elsewhere; his feelings could sort out those details at a later date, but is confident they will come to some funding option so his opinion, he is ready to move forward with the police station, and figure out the details of funding at a later time. Council Member Sutton asked what about at the retreat; Council Member Schulze felt it could be a long and controversial subject that could go on forever. Council Member Sutton was thinking about what the Manager said, if built in the tax rate increase into the budget, Council Member Schulze had rather have the budget discussion ahead of the retreat, so going into the retreat wouldn't have that. Mayor Weatherly added they wouldn't know the budget until Manager gets operational end and is talking about potential bump of 3.8%. Manager Radford clearly wanted some comfort level that this particular project, and there is a formula by which to do it. Mayor Weatherly wanted to arrive at what the majority believes to be a need for the building facility and then we go forward from there.

Council Member Gossage didn't know that everyone approaches it the same way as the Mayor did, but he sees a difference in the financing mechanism and the financing plan; the financing plan presented tonight as part of the action item, he didn't agree with, where the financing mechanism would be the same. What he can't differentiate like him was that if they went with the financing plan, that he's more comfortable with, that was rejected in a bond referendum, but staff take action between now and May to spend funds, then you would have the voters saying don't do that, but it would be too late.

Mayor Weatherly's response was that he would hope he wouldn't support going into a referendum until he personally supported the project; that shows total lack of leadership to say, we will just bump the decision to the people, and his hands are clean, you would have to be able before, he would ever move something to the people for a referendum, is something he could advocate and could go out and push the project and encourage people to vote for it, he would never just pass the buck onto the voters without himself being personally supportive of it.

Council Member Gossage responded he thinks one of the things this Council in particular has been critical of other decisions from boards is a lack of options, thinks that's more than the trouble with this going back a year and going back a year; one of the first things he did after his election was to tour the Police facility when Boone was hired, and met with him, and is aware of the needs, but still differentiate between the Capital Improvement Project and the financing mechanism and would want to see the financing plan include the availability for voters to look at the financing mechanism. He thinks you can be for one and not for the other, and he and the Mayor disagree; clearly he wanted to see was more than what they saw tonight, what he asked for was not just a police station and station # 4 Fire station but also a station # 5 more long term planning than being done tonight and thinks that would make a bond referendum more justifiable, but that option was never.... With Mayor Weatherly interjecting that has nothing to do with the financing ....with Mayor Weatherly interjecting does not as far as the cost is concerned, we don't save any money doing it that way as opposed to the other as they are being told, with Council Member Gossage interjecting the financing plan details, with Mayor Weatherly interjecting not General Obligation Bonds as opposed to other major financing, has a negative effect, isn't that what they were just told, with Council Member Gossage, stating comparing what they have tonight, but he was asking for more than what just th police station and the fire station 4, but also see a fire station 5, more long term planning because that would even make a bond referendum more justifiable. Mayor Weatherly didn't know why he would want to add more to this tonight, asking for a consensus, if there was a body of support for having a police station or not, and then talk about how to pay for it before June. Mayor Weatherly stated, there was nothing else to talk about if there was only three votes to do a police station, could adjourn now if there are not three votes to do the police station; we don't need to talk about financing if we are not going to build it. Council Member Sutton assured he had three votes.

Council Member Jensen stated he was looking at smaller, but from Stewart's presentation, and what was said, he agrees doing the whole thing at this point is the right way to go and thinks we may get better prices six months out, and convinced we are coming into a notch that is good for us to go with. Mayor added he was surprised at the condition of the building and through the vision of the former manager we build this nice facility because they knew it to be necessary, and built larger, recalling his eyes was big at the space for this number of employees at the time, and lots of room to spread, and then said through Council Member Jones and others, built the third floor would be penny wise and town foolish not to do that, but in his mind, he wouldn't be involved, and buried by the time there was a need for the third floor, and by gosh, if we didn't have the third floor would be in a jam if we had to retrofit or find other facilities; the chief has come to us, and not sure we are preparing for the future, the way we did for this building, talking 90 sworn officers for 45,000 people, he's more efficient with his officers; a scenario barely sufficient to meet what they know is coming then what they are talking about tonight; anything we may be second guess fifteen years from now, causing future boards to meet with a terrible situation, an inadequate police station then, but this is what reality speaks tonight and thinks if anything are behind a couple years in being where they are tonight; he doesn't want to waste anytime in getting this project underway; anyone knows any speech in the last years, he's talked about the lowest property tax in Wake County and proud to say that, but comes a time they have to raise property taxes, and deferred to Council Member Jones, certainly not in the last twenty years, readjustment with the reevaluation, but no increases, living off the pie, not expanding, and have critical needs police and fire and anything local government provides to its citizens and that they take for granite, the leadership here has to recognize the needs for public safety and there want be anyone on the street to say, I'm glad we have a new police station, but when they need an officer to help them, we need to provide a place for them.

Council Member Sutton asked if he needed a motion to go out for construction. Mayor Weatherly response was he did. Council Member Sutton made the motion to go out for construction bids on the police station as presented. Council Member Jones made the second to the motion. Mayor Weatherly stated they were talking about proceeding only with construction. Council Member Gossage asked construction for what. Council Member Sutton added with the police building as presented as currently designed. Manager Radford in the motion interjected Police Station and Fire Station. Council Member Gossage stated just for the police station. Manager Radford responded that was not what he said, but heard it from somewhere. Council Member Sutton clarified the motion was for construction of the police station. Mayor Weatherly wanted to leave it at that. Manager Radford stated he could live with that. Mayor Weatherly stated there was a motion and a second. He continued there were two different price tags on the fire department and was not comfortable entertaining a motion on that.

Council Member Jones added he was comfortable with having talked about this for two years, that there was a need, and heard some of the same petitioned issues regarding that building for two years, and comfortable the guys have designed a building that is not over kill, and doesn't see any surplus space anywhere, and will grow into all of it over the next five, ten and fifteen years; 33,000 square feet is not grandiose; he tends to think now is a good time to go out for bid and one thing he does know is that its not going to be any cheaper six months or three months. Council Member Jensen added it might be, with Council Member Jones not thinking so; he's not seen any thing in material or construction costs go down, speaking of that and based on the marketing calls from general contractors over the last few weeks is a good time to go out for bid.

Council Member Gossage added that he still thinks they should be looking at doing more than this and look at a financing plan that includes General Obligation Bonds and looking out further than they are looking out; the need is clear for more than that.

Mayor Weatherly stated the motion was to proceed with construction bids, and would have more than ample time. Council Member Gossage stated this locks in the financing mechanism, and locks in the financing plan. Council Member Sutton noted they could go out for bid on the facility, and \$12 million may have all that same feeling, and Council Member Gossage added, start spending money when, when will it happen, with Council Member Jones adding once they takes bids and comes back to Council for consideration of bid. Council Member Gossage asked the time limit, with Council Member Jones guessing within 60 days. Council Member Gossage added general obligation bonds would have to go to referendum in May so.....with Mayor Weatherly interjecting that's not a problem there would be ample time for him to discuss and try to get support for any additional kinds of financing talked about tonight, and maybe more out there, but promised he would be given every opportunity to debate or discuss, adding a # 5 fire station if he wanted to add that into the mix, and go to referendum or whatever, but the issue in front of them now was for upcoming vote of whether the police needed a new facility and whether they would proceed with the design of the department design.

Lee Smiley stated he did want to address Council Member Gossage; he spoke with bond attorney and for a referendum May 1st action would need to be made in the first meeting in February. Previous discussion, he had thought they were talking about a tax increase and did not understand to differentiate between the two. Council Member Gossage stated his point was they were locking themselves into a financing mechanism and financing plan tonight, that he doesn't agree with; obvious need is more than they are addressing tonight and to expand beyond need of this building.

Mayor Weatherly commented Council Member Gossage had gotten a report from the finance department, with Council Member Gossage stating it was incomplete then and incomplete now; it doesn't include everything he had asked for which would include Station 5. Mayor Weatherly added no one had proposed that; not even talked about building five and had to build 4 first before there is a 5; he didn't understand. Council Member Gossage added it was long range planning.

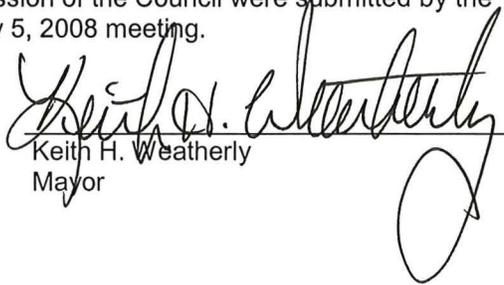
Mayor Weatherly asked if there were further discussion, and restated the motion to proceed with plans and bids project presented and as stated. Vote on the motion was 4 in favor to 1 opposed, with Council Member Gossage voting no. Motion carried. Manager Radford expressed appreciation to staff, and knew there was sticker shock associated with the project, and added they could have rolled forward with a presentation to show the great need for Fire Station 4, response times, ISO numbers, etc., but didn't want them to loose focus that Station 4 is a vital importance, began discussion before the police station and has to bring this back to them.

Mayor Weatherly added he was exactly right, and that his comfort level went down when two sites were given and with presentation of drawings, etc. didn't think he was at that comfort level, but maybe thirty minutes for a similar presentation. Manager Radford: stated the discrepancy in the reduction for the Fire Station # 4 \$1,650,000 for construction which is down from \$1,950,000 as a result of Rescue Squad contribution of \$300,000 as the EMS will be co-located in this facility. Mayor Weatherly noted the focus on the Police facility and would come back to focus on the fire facility. Mayor Weatherly asked he return this as quickly as possible in a regular meeting.

With the work session concluded, and no further discussion the meeting adjourned at 8:20 p.m.

The minutes of the January 23, 2008 Work Session of the Council were submitted by the Town Clerk for approval by the Town Council at their February 5, 2008 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk

  
Keith H. Weatherly  
Mayor

## TOWN OF APEX, NORTH CAROLINA

### Meeting Minutes of February 5, 2008

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 5, 2008, was held at 7:00 p.m. in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting. Council Members Jensen, Jones, Schulze and Sutton were present. Council Member Gossage arrived at 7:40 p.m.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

Mayor Weatherly called the meeting to order.  
Council Member Jones delivered the Invocation.  
Pledge of Allegiance was led by Scouts from Troop # 212, Saint Michaels Church.  
Mayor Weatherly extended a welcome to those in attendance.

### RECOGNITIONS

Mayor Weatherly presented Resolutions for adoption by the Town Council recognizing:

- 1) J.C. Knowles appointed as Town of Apex Ambassador, and
- 2) The "Rusty Bucket" as the National Country Retailer of the Year: Owners Mack and Pam Thorpe.

**Action:** Council Member Jones made the motion introducing the Resolutions for adoption. Council Member Schulze made the second to the motion. Motion carried unanimously with a 4 – 0 vote.

End of Recognitions

### PRESENTATIONS

#### **Presentation # 01 - FY 07-08 Financial Summary**

Presenter: Lee Smiley, Director of Finance: Review of 2<sup>nd</sup> Quarter FY07-08 Financial Summary. Significant remarks were noted: 50% majority of property taxes have been collected and noted less than last couple of years; sales tax payments are lagging where expected to be at this point; commenting on the growing population and the economy. Rest of revenues are where they should be at this point, with expenditures are where they are expected to be. Review of the Utility commenting on power consumption; Water/Sewer Funds and cost of water, commenting on reductions in water consumption, noting conservation efforts and water restrictions during the draught. Mayor Weatherly commented on the Governors request for reduction in water usage and was reduced by 44% and should be reflected in revenues received with Manager Radford adding, minus the continued growth. The report was well received by the Council.

End of Presentations



## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve. He asked staff expand on bus shelter project, Item # 11. Dianne Khin, Director of Planning stated this was a past Appearance Commission project that Council had approved the location of bus shelters for Lake Pine Plaza and Galaxy Foods.

**Action:** Council Member Sutton made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Motion carried unanimously with four votes as Council Member Gossage had not arrived.

1. Minutes of January 15, 2008 Council meeting.
2. Minutes of January 15, 2008 Council Closed Session (recorded separately).
3. Minutes of January 23, 2008 Council Work Session: Apex Police Facility.
4. Annexation Petition # 426, Plan Development, LLC., owners/petitioners, petitioning to annex 51.08 acres into the Town's Corporate limits, located on Laura Duncan Road ; 1) Resolution directing Clerk to Investigate Petition and Resolution; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set Public Hearing for February 19, 2008.
5. Annexation Petition # 427, KC2 Enterprises, LLC, owners/petitioners, petitioning to annex 2.81 acres into the Town's corporate limits, located on US64; 1) Resolution directing Clerk to Investigate Petition and Resolution; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set Public Hearing for February 19, 2008.
6. Findings of Fact and Conclusions of Law and Ordinance: Rezone Case #07CZ25, CJS Apex, petitioner, for property location: South Salem and Tingen Road; approved 01/15/08.
7. Findings of Fact and Conclusions of Law and Ordinance: Rezone Case # 07CZ26, Jones & Crossen Engineering, petitioner, for property located at 2524 and 2528 Schieffelin Road; approved 01/15/08.
8. Budget Ordinance Amendment for repairs to Fire Department vehicle: insurance money has been received.
9. Request for approval of street closings for 2008 Peak Fest May 2, 2008 and 4<sup>th</sup> of July 2008 festivities on Salem Street and associated streets and lots.
10. Request for Salem Street Arts Festival, October 4, 2008, and closure of Salem Street from Chatham Street to Center Street, festival hours 9 a.m. to 4 p.m.; request banners/signage to be displayed in accordance with temporary sign restrictions September 15, 2008 through October 6, 2008, and coordinate with necessary Town departments.
11. Award Construction Contract for Bus Shelter Project: Little Mountain Builders Inc. \$15,190.50: S. Hughes Street (Galaxy Foods) and Lake Pine Plaza (Shepherds Vineyard Drive).

End of Consent Agenda

## REGULAR MEETING AGENDA

There were no amendments to the Agenda, and was set prior to taking action on the following items.

### PUBLIC HEARINGS

#### Public Hearing # 01 – Annexation Petition # 425

Presenter: Dianne Khin, Director of Planning: Annexation Petition # 425, James & Delores Davis, owners/petitioners, petitioning to annex 2.01 acres into the Town's corporate limits, and located on Holt Road (SR1612). Well had failed and petitioners are asking annexation for hook up to town water; property is not contiguous to, however, within 100 feet of the corporate limits. Mayor Weatherly opened the public hearing, and with no one addressing the petition for annexation, closed the hearing at 7:20 p.m. and called for a motion.

**Action:** Council Member Jensen made the motion to approve annexation petition # 425 by adopting an ordinance to extend the corporate limits for the 2.01 acres. Council Member Jones made the second to the motion. Motion carried unanimously with a 4 – 0 vote as Council Member Gossage had not arrived.

End of Public Hearings

### OLD BUSINESS

#### Old Business # 01 – AT&T Cellular Antenna

Presenter: Attorney Hank Fordham and Tim Donnelly, Director of Public Works: Consideration of possible co-location agreement with AT&T for the location of cellular telephone antennas on the above ground Water Tank located on South Salem Street and the starting of the upset bid process for leases lasting longer than 10 years.

Previous direction had been given to staff to look into the amount being paid to other municipalities for such leases, and addition of language stating the coral would be owned by the Town and could be sub-leased by Town, and showing photos of antenna's being connected for cellular providers; sub-tenants would pay back a pro-rata share to AT&T for initial construction cost of the coral. An upset bid process would apply as any lease lasting longer than 10 years for real estate must go through upset bid procedure.

Director of Public Works Donnelly reported his findings: payment for lease by other municipalities, WRAL TV, and having found Wake County at \$2,800 month, and proposes same with proposed agreement which further reflects 10% increase with each renewal. Another party has expressed interest in another tank or possible co-locating on this tank, with coral photos being shown; if agreement is accepted, parties will have to submit a site plan, with engineer review of the structure, and generator must meet noise ordinance standards. Noted: # 4: discrepancy in proposed agreement should read \$2800. Discussion followed regarding coral structure height, size, paint color (match existing tank color), route of coax, etc. after antenna connection which is limited by the post size. Donnelly noted nothing esthetically pleasing about the way the coral looks, however, there is nothing in the contract that would not allow approval of it as far as esthetics; preliminary plans were presented and tower elevations were shown. AT&T representatives answered questions and showed photos of other tank installations. Donnelly stated he does not anticipate any operations interference from locating the coral, connection of the antenna and coax, noting with monthly generated revenue was a plus to the Town, and that esthetics was the only concern. Attorney Fordham advised the 2007 General Assembly Bill did not take away the Town's authority to zone and regulate with respect to cellular sites in allowed zoning districts related to cellular towers. Mayor Weatherly preferred to see antenna located on tanks vs. free standing towers, and with improved service, called for a motion.

**Action:** Council Member Sutton made the motion to approve the proposed Lease Agreement, and adopting a Resolution # ~~02~~-0205- 04 declaring Leasehold Interest Surplus, and adopting a Resolution # ~~02~~-0205 - 05 authorizing Lease of Town Real Property and Upset Bid Process. Council Member Jensen made the second to the motion. Motion carried unanimously with 4 – 0 vote as Council Member Gossage had not arrived.

At this point, Director of Public Works Donnelly reported Jordan Lake is 95% full and Apex water supply is fine; drought should break eventually. Further: City of Durham does not have a direct way to draw water from Jordan Lake and gets water allocation from Town of Cary, and has expressed interest in getting more allocation from Cary; Cary has asked Apex's pleasure to help the sister city with this additional allocation, and he agrees that Apex should help sister communities.

End of Old Business # 01

*Council Member Gossage arrived at 7:40 p.m.*

**Old Business # 02 - Fire Station # 4 Project**

Presenter: Bruce Radford, Town Manager: Presented construction plans and a financing plan for proposed Fire Station # 4, location NC55 South Town owned property, adjacent to Bojangles Restaurant.

Philip Fieler and Bill Beyoung, Stewart Cooper Newell, Architects presented design plans for proposed project; gave a cost analysis. Base Bid plan designs were presented for a pre-engineered 10,179 square foot two bay facility and optional three bay public safety facility; proposed facility would be shared with EMS and Police and offered it economical to take the three bay facility design option as its is already covered as a part of the base bid, showing pre-engineered elevation drawings, and offered the three bay facility option fits appropriately on the proposed site owned by the Town; offered his recommendation of the pre-engineered construction design over the conventional construction design (drawings were shown and differences explained including esthetics and additional building costs incurred - \$30 square foot or \$305,000); shared architectural materials, and noted a land-swap had allowed the town to own the property for the location of the proposed facility; asphalt materials will be used; proposed is subject to water quality retention; noted force mains are located on site, buildings will not be located on force main areas, however drives and concrete aprons will cover some of the force main areas. Cost analysis for Public Safety Station # 4 Project: low estimate \$2,338,924 and high estimate 2,467,064; EMS contribution: low \$537,220 high \$561,793, with Manager Radford noting current EMS contribution: \$535,000. Proposed space allocations: 74.6% Fire, 21.4% EMS and 4% Police.

Council Member Schulze asked questions regarding proposed pre-engineered design vs. conventional construction design, and asked if EMS would contribute to the yearly costs. Fieler noted town buildings had established language in design that reflects town character, particularly drawn from the depot architectural design and gets into esthetics and cost. Manager Radford reported yes to the EMS contribution question.

Council Member Jensen asked if building design was built to energy standards, noting available grants for energy standards. Fieler responded no; offered Stewart Cooper Newell does not offer a lead accredited project (Carrboro is working on a project to meet that standard paying extra design fees for this certification); their product provides an energy efficient design which was general practice, built to code as a certified project and cost effective, while putting more sustainable funds into the building rather than the certificate, and was not aware of any available government grants for this project, advising most grants are for equipment and training, and hard to find grants for capital expenditures. Council Member Jensen felt if other towns have availability to do accredited projects, then Apex should too. Fieler stated to explore this option would require them to present the design fees increase and projected construction costs; increase on the front end, but might reap benefits energy wise over the long term.

Fieler stated cost analysis reflects pre-engineered design plans, and noted SCN have done both, and has no preference, it would be whatever meets the goals and esthetics of the committee driving the project. Manager Radford stated based on the additional \$305,000 in costs, staff was happy with the pre-engineered building design.

After discussion regarding upkeep of conventional construction vs. pre-engineered materials, Council Member Jones asked Chief Haraway if he supported the pre-engineered design, with Chief responding he was satisfied with the pre-engineered design as it looks more like a fire station, and further recommended the three bay facility design plan, as some equipment must currently sit outside.

Mayor Weatherly commented on the need for the Police and Fire facilities, having approved proceeding with the police facility, and had talked about the need for Fire Station # 4 for over two years, noting impacts in insurance rates and ISO ratings, and reminder from the chief the response time and unserved area this would be located in is critical for fire protection in Apex, and are trying to catch up with those needs, and not long before they begin to think about additional facilities in this regard with public safety, police and fire being the most critical need and urged to move forward on this recommendation made, and get the bid out as soon as possible.

**Action:** Council Member Jones made a motion to approve the design for the pre-engineered version of this building and direct the architects to finish the construction documents such that we can solicit bids along with the previously approved bid solicitation for the police station as this should offers savings to the Town, and if we don't try it, will not get any savings, and move forward with the financing plan as proposed. Council Member Schulze made the second to the motion. Mayor Weatherly asked if there were any discussion.

**Action:** Council Member Sutton offered an amendment to the motion to add the additional 3<sup>rd</sup> bay. Council Member Jones noted he made that as a part of his motion including that as an alternate in the bid package. Council Member Sutton wanted to go ahead and do this, and on the financing package, recalls other projects other than police and fire that went into the financing package; noting NC55 widening, widen Tunstall, widen Chatham and James, Holleman, Seagroves Park Road, totaling over \$ 20 million, including police and fire and was very supportive of all of those. His thought on the proposed motion amendment was to go to referendum General Obligation Bonds in May, rather than borrow money out-right, and the state primary would ensure a good turn out of voters; he has a lot of confidence in the voters and in their judgment, and believes they would approved this, and would know up front that there would be a tax increase and would vote on that too; the finance plan would include a tax increase, if you go to General Obligation Bonds and referendum.

**Action:** Council Member Sutton offered his statement as an amendment to Council Member Jones motion. Council Member Jensen made the second to the amendment to the motion. Mayor Weatherly asked the Manager to give a reading as to what this might do to the construction: Manager Radford stated his primary concern with waiting is that prime construction season comes quickly, and will take about 60 days to get local financing for this project, another 30 days to get the bid back, another 15 days to award, and would like for Council to consider doing this as expeditiously as possible to hit prime construction weather come spring and summer, get out ground as quick as possible.

Mayor Weatherly added he in normal situations welcomes advice from the tax payers, but just feels the critical need for public safety, the dollar amounts talked about, immediate needs for both police and fire station # 4, frankly are trying to play catch-up hopes would get bids out in time to get the underway through the construction season this year, and doesn't believe he would have a problem talking with our constitutes justifying the fact there is no cost savings, as staff has already analyzed between General Obligation Bonds, which would obviously be impact of a referendum approval, and installment purchase structure that has been outlined previously and believes the motion indicated we would approve tonight, there is no benefit to taxpayers in either one of the financing mechanism, so without a benefit, the tax increase will go either way. Point is they have already approved the police an paramount approving the, for the last two years have urged the site selection and other things that would lead up to what they are talking about tonight for fire, have made the decision to build these two structures, so now the decision is how to pay for it, and either way are talking about a 3. something increase, so the voters don't have a decision to make unless for some reason they decide for some reason, certainly they would not, that we don't need enhanced police and fire protection, as far as part of the basic services provided in Apex, and the only reason he would ever potentially give a different opinion than having a voter referendum; there is no doubt in any reasonable mind of the Need, and certainly thinks that all are in strong unanimous agreement here are the needs for both the police and the fire, agree the capital needs are there, agrees he thinks, didn't have any disagreement both financing plans are comparable, or basically exactly the same in each one's potential impact on our revenue, our tax rate, therefore the only impact of a referendum would be for delay, and thinks delay in this case may be so critical that they would want to exercise their prerogative and leadership of this board and move ahead with approving this project, and town citizens he thinks would virtually be in total agreement that was the right decision on their behalf.

Council Member Jones added he would agree with this, and fully confident that our citizens would vote to approve this, and not discretionary in nature at all, it has to be done, and they have all agreed to this. He continued if it were discretionary such as parks, or street improvements, to name the last two bond referendums – put that up for voter referendum, they didn't want it, it didn't have to be done; in this case, that's not the situation and thinks that delaying it for the sake of shifting the responsibility for the tax increase is the wrong thing to do.

Council Member Schulze added that he 100% agrees with what both had said; he has said it before and will say it again, that public safety is paramount for our duties here and critical needs, and can't wait another year and says, we get it done now.

Mayor Weatherly said if the decision was to do one of these projects and some difference of opinion about the need and wanted to defer that to the judgment of the citizens, like was said, parks or street enhancements, that are not a critical needs, then it would be entire appropriate to defer that, but clearly thinks the urgency is so overbearing, they should proceed. Discussion on amendment continued.

Council Member Jensen seconded the amendment because voters had addressed their concern and wanted opportunity to vote; secondly the road improvements, he had thought that was under the previous bond issue. Manager Radford responded it was not, but included in the financing package; the total capital improvements projects list, and saw two weeks ago.

Mayor Weatherly continued to go to referendum in May requires approval by Local Government Commission asking the timing, with Director of Financing responding yes, it is possible but would be on a very tight schedule; and would have needed to take action tonight and had nothing prepared to do so; he thought they could still make the May referendum, on a tight time frame and would have to hold special meetings. Bond Attorney advised they would have to advertise yesterday; at tonight's meeting post date or approve advertising after fact and could work around this if have too.

Mayor commended Council Member Sutton for well intended amendment and a motion to allow for a public referendum, but thinks there are other issues that the referendum by any stretch of imagination would not fail but be strongly approved, with the effect of that being that we had a referendum; it wouldn't lower taxes, it would slow down the bid processes, and maybe miss this whole construction season with the weather and the summer. Council Member Jensen there would be 84 days in delay. Council Member Jones added then you would start the process 90 more days. Director of Finance noted after the referendum, there would be a 30 day challenging period, and couldn't take any action, you probably could go out for bids, process for bond sale is lengthy additional two to four weeks of time; referendum costs about \$20,000; primary ballot is negligible adding another line to ballot, whatever the costs for elections; special election around \$30,000.

Council Member Gossage noted in looking back at the 2004 Bonds, did not have a tax increase, but they put those on the ballot, and these do have a tax increase, and thinks its a good idea to give the voters a chance to look at this, and decide if they want to raise their taxes. Mayor Weatherly asked him if there was a question in his mind that we need the police and fire station. Council Member Gossage responded it was exactly what he said. Council Member Jones asked what the question would be on the ballot.

Council Member Sutton stated to approve bonds in the amount of whatever million it turns out to be for the construction of the police and fire building, and road projects and thinks they would have to put on there, a tax increase. Smiley responded you wouldn't specifically put the words tax increase; the bond attorneys have specific language that has to be on there that the voter agrees to any tax necessary to pay the debt. Council Member Gossage added it would be similar to the language like the Wake County bonds that passed for open space and language mentioned at the end regarding financing mechanism. Council Member Sutton it would be General Obligation Bonds, rather than borrowing the money from an institution, and would be approving a tax increase.

Mayor Weatherly stated he was still not clear as to why do this if they have already decided these capital improvements are critical, absolutely necessary and not discretionary as has been said and either financing mechanism would cost the same as far as the tax increase, then why the referendum? Council Member Sutton responded brought to his mind was the previous referendum the town held; Council Member Jones made a good point, they were for roads and parks, different than public safety \$22.5 million bond and this would be about the same, and was thinking the amount of money involved, and the tax increase, both of which are germane to the public and has all the confidence in the world that th public would approve it but would know what they are getting and why and not a bad thing; he thinks these were good points made as far as construction season.

Council Member Schulze added they only thing he things would come out of that would be for them to possibly turn the bund referendum down, and if they did this, these needs would still be critical and still have to come up with a way to funding them; in the end, it doesn't change anything. Mayor Weatherly commented we would still do it, would we not, if they turn this down, we would still build, with Council Member Schulze responding, right. Council Member Sutton noted this a fair question, thinking what they would be faced with in that event: you would be faced with setting priorities of all the projects listed and would probably have to space them out; probably funding them project by project which would be more difficult if turned down, but would have to acknowledge the voters disapproval of a tax increase; you could not override that and would then have to go into general fund money and some borrowing, a combination and basically do the projects one at a time; it would slow the process down if that occurred, and hopefully it would not occur.

Council Member Jones stated he was still struggling with what would be on the ballot; tax increase or financing mechanism for projects that are on the plan; it was just said we would have to deal with the voter's disapproval of a tax increase; we all disapprove of that; would everybody vote against a tax increase if that was what was on the ballot. Council Member Sutton responded he thought the wording as Smiley had stated, when you have a bond referendum; on the previous one it was on there, no tax increase, or the word was out, no tax increase; it was there on the ballot, with Smiley responding, no it was not on the ballot. Attorney Fordham added that he was not an expert on bonds, the actual ballot question wouldn't involve whether there was a tax increase or not, but all the disclosure statements would have to acknowledge there might be and that the Town in giving information about the effect of it, if you project a tax increase would be required, that would be part of the information given to the public, in other words, the town has the duty to give as much, not as an advocate for or against, the town can officially advocate for or against a bond referendum, but has to give information about it and part of that would be for the finance officer to project your tax rate, but it's not official until its voted on.

Council Member Gossage stated on the Wake County bonds that was passed on parks and open space, and libraries, and what not, there was mention, not recalling the specific wording but talked about the tax implications and was well publicized that that would come along with the tax increase; probably the best explanation he could give

Council Member Jones added at a previous meeting there was a comparison of what it would cost to finance this debt, with general obligation bonds and what it would cost to finance it with the method proposed over long term, asking the Director of Finance Director to refresh his memory on that. Smiley responded the difference in the two was \$30,000 to \$40,000, and Davenport folks had told him that was exactly within their margin for error, so they could go either way; financing with general obligation bonds, at the dollar amount we are talking about, it would be pretty much the same cost, there's no savings. Council Member Jones stated he thought the only risk they were taking was the risk of inflation and it would not cost the tax payers any less to do this with general obligation bonds and referendum, it will cost more.

Mayor Weatherly asked the Manager in the Worksession did they not say, go to bid for police station, with the Manager confirming they did, and Mayor Weatherly continuing so this would delay; the effect of this amendment, then they can't go to bid on the police facility, with the Manager responding that was accurate, that the bids would only be good for 90 days with Council Member Jones adding depending on the timing. Council Member Sutton stated it wouldn't be fair to go to bid, with Mayor Weatherly adding, so they couldn't go to bid on the police station, would be dead in the water on police and fire.

Council Member Gossage clarified that Council Member Sutton was saying about a hundred day delay to get the voter input on tax increase, with Mayor Weatherly adding something clearly they were going to do anyway with the police and fire enhancement; he's still one hundred days for what purpose.

Council Member Jensen asked what the expected savings was for doing both projects together vs. doing them separately. Manager Radford responded chances are there would be two separate contractors anyway, with Council Member Jones adding there's a chance one contractor would bid on both, and if you don't bid them out at the same time, it's not going to happen.

Fielier stated this had been debated through the committee and their discussions of the projects and does feel that it's to their advantage to bid these together as one lump sum project with one general contractor. They typically see that the general conditions of the contract can run 15-18% of project, and with one general contractor on both can afford any amount of savings and with a fairly large project, it's too the betterment; the size of the police department by nature would drive a good size general contractor to bid that project, and would be more than capable of handling the additional work associated with a fire or public safety station those being interchangeable; they do feel it's in their best interest to bid them together as one project.

Mayor Weatherly stated the initial motion was to bid these projects out together, with Council Member Gossage asking if they elude that ability to do that with the amended motion. Mayor Weatherly responded if both were delayed, with Council Member Gossage adding but not the ability to do it.

Council Member Jones called for the question, with Mayor Weatherly asking if there were further discussion, stating the vote is on the amendment which will call for a referendum as so specified, and calling for the vote; the amendment was adopted with a vote of 3 in favor and 2 opposed, with Attorney Fordham pointing out to the Mayor the no votes should be counted, with Mayor Weatherly counting Council Members Jones and Schulze voting no on the amendment.

Mayor Weatherly stated the motion now as amended is to proceed with, he guesses that negates everything other than having a referendum to decide anything. He continued that the amendment is what the legislature calls a catfish amendment that basically sinks everything beforehand; the amendment makes the whole issue of building for police and fire contingent upon adoption of a referendum presumably in May, so that is the effect of the pending motion; asking for all in favor of that motion.... with Council Member Schulze interjecting what about another option, if you were to go ahead with getting public financing now, get the project moving along, and pay that back with potential bond money; in an effort to keeping the projects moving forward, say do bank financing, now, and with the bond referendum pay back the financing with bond money. Manager Radford, stated they don't need the money to go out for bid, they could finish and draw the plan, could put them out for bid; if there were alternate financing methods beyond the ones they have seen, you would not be required to go out after either a general obligation bond or a loan not for the amount of money that they are talking about; you could continue to pursue bids and decide to award construction within a hundred days.

Mayor Weatherly stated unless he had misunderstood the intent of the amendment that was just adopted, it is that they don't proceed without the approval in referendum for building these projects, cause, it was said that obviously either financing structure would cause a tax increase, but not to proceed without voter approval of a tax increase which is either way; that's what has just been adopted, so to try and circumvent that at the intent of what was just adopted. Council Member Jones stated they had not voted on the motion yet, that the motion has been amended, with Mayor Weatherly stated the motion as amended is what is before us now, which is not to go forward without a referendum at the earliest time in May, not to proceed with bidding and all the rest until we get approval by the voters in May to proceed with buildings for police and fire stations that has already been decided separately by this board to proceed over the last two or three years, with Council Member Sutton adding and the roads, and everything else that's on there, with Mayor Weatherly adding, and throwing all of those things, the primary things that precipitated their discussion last time and tonight was whether to build a police station, and a fire station, which has never been a subject of controversy before with this board, whether to proceed with those two projects, but now are taking a step back and not proceeding until we get a referendum.

Council Member Jensen asked which was more important, the roads or fire house and police department, asking what they could put off to get this done. Mayor Weatherly responded to prioritize each of them may come up with their own priorities, but if asking him, he would certainly say that everything is secondary to public safety; there is no greater obligation of municipal government than providing their citizens with public safety, police and fire, everything is secondary. Council Member Jensen agreed with him, but stated what they were talking about is an 80 day delay; he continued the police station was brought up to them last year in a rush deal, looked at using the Rodney building as an alternate police station, and it never happened, and now we are back up today to go ahead with this whole thing and somewhat rush, a rush that was there a year ago, we pushed ahead a year ago with plans to use Rodney's building, it went away; we've been plodding along and he has mixed emotions about making a second to the motion,

Mayor Weatherly stated the architect had brought up a point at the discussion of the police station, and seemed to be with the most recent experience in bidding projects a favorable construction market, and evidence of antidotal of late and in the near future, a favorable market for letting bids, as far as building may miss the window on that too, who knows.

Manager Radford added the reason for the delay here, is they continue to reduce costs of outlay, in upfit costs of Rodney building, and other buildings requiring upfit; now with additional delay, we would have been better off to upfit that building perhaps \$1 million, and gone ahead and proceeded with that project for the amount of money we would have lost, in the eventual long term costs of these two buildings. Council Member Jensen asked as far as delay, what do we loose? Manager Radford stated it's already been one year, and continue to stress staff telling them to reduce costs to as cheaply as possible, and his responsibility and hears that message every month, how much are you willing to spend, how much will it cost, and that was over a year ago, and now that we have lost that year, and now about to loose what has been said another 100 days, and would say probably 170 days by the time they actually get the financing and approval to go.

Mayor Weatherly doesn't question Council Member Jensen about folks asking to vote, but has talked to lots of folks in several meetings we have had recently, and events in Apex and 100% of the folks that have brought this up to him have urged him to move ahead with police and fire, no body has mentioned ... with Council Member Jensen being surprised, and Mayor Weatherly continuing, not one sole to him over hundred of different comments he has had, and some as recent as today in talking with the Chamber, urging to move ahead with police and fire projects.

Council Member Schulze stated his opinion was they can't afford to wait on police and fire, whatever they have to do to keep those projects moving forward, bid them out, find out the cost, then what can we do in the short term to assure financing is in place, and if we have to go out for bond on the other projects, then so be it; it's important to him that they keep the public safety buildings moving forward, asking the options.

Manager Radford responded that he could clearly hear the message that he's giving, if that were the voice of the entire board, and could appreciate that; he continued he clearly doesn't understand if this is the bottom line why or how they continue to delay these projects, that could possibly result in costs savings and have just said regardless of what happens in the referendum and from discussions held earlier, we have prioritized these as our # 1 and # 2 projects, and are going to have to do them anyway; so if it's something they are going to have to do anyway, and are proposing now to going ahead to bid when we have a contractual obligation to a contractor or maybe two, then to fulfill that obligation, you have to pay them, the money has to be there, and in order for the money to be able to be there, we have to have a financing plan, and we have gone around our thumbs to get to our ears. Mayor Weatherly added that he couldn't have said it better himself.

Council Member Jones added if he thought any of the projects were unnecessary, or were spending more money for these projects than we should spend for either of these projects, or thought that they would save money by putting this through a referendum for the taxpayers, which he is one, would save money putting this to a referendum, he would be right in there with him, bottom line, there's a case for all three of those things; we need both of these buildings, and are not going to save any money if they wait.

Council Member Gossage addressing Council Member Sutton, that if they had added in a fifth fire station and had a bond for that issue, and say in four or five years from now, knowing he was not on the Council 2004 but similar to what they did, put bonds on the ballot, and they passed, not all at once but issued over a period of time, and if there had been for example station five in western Apex, which is going to be needed in four or five years, and those bonds were to be issued in four or five years from now to pay for that, then there would be savings to the taxpayers, and would make more sense to go to the bond, at least that's his take on this, but again maybe he had asked for those numbers to see a station five, he's asked for those numbers, but has never seen them; he can only hypostasize, but based on the fact that it is negligible to do referendum vs. traditional bank financing, but the more that goes on with a bond referendum, then the more the savings are incurred, and is the assumption he is making, and thinks it's a valid assumption. Council Member Sutton added, the board can add fire station five to the bond referendum if they wanted to do that, he honestly didn't think about it.

Council Member Gossage continued he had briefly made that comment at the Worksession, and had never heard from the chief as to what the estimated time is for wanting to put a station out in the western part of Apex, that part of town that is growing the fastest, and would imagine in four or five years from now, will have a need, but could always deal with that down the road, to make adjustments to the tax rate down the road as necessary as each project comes along.

Manager Radford asked if it would be sufficient to describe fire station # 5: a \$3.5 million facility, located on two and one-half acres of land, already owned by the Town on Apex Barbecue Road, that would give us access down to Humie Olive by the way of the new park road, so the cost \$3.5 million inclusive of the free land which is the park land, located on the east side Apex Barbecue Road, gives the greatest access to the new park road, to Evans Road Extension to Humie-Olive and down to US # 1 . He and the Chief have talked about that opportunity, and know that exists, it's important. Council Member Jensen asked when this would be needed, five years, it probably was yesterday. Manager Radford noted it soon, with Chief Mark Haraway presenting to Council a third-edition of long range plan, that Council Member Jones recognizing that he had seen it, continuing they had all seen it; last year at the retreat he presented a long-range plan through 2015, that identified through station seven; to be honest, station 5 should already be there; they have over 1200 properties out in that area, that is outside any service response area that is currently recognized by ISO, and is suppose to respond to anyplace within an engine company's response area within 5 minutes, and currently any fire station in Apex is 7.98 minutes, almost three minutes outside the parameters set forth. He continued he was told in 1984 this station needed to be built, told again in 1996, and 2004 lost 15% credit on ISO inspection because of a lack of proper distribution to the east and to the west of town, the two locations four and five; why, because we have built and built outside those areas. To answer the question, both of them should already be there; like the Mayor had stated, they are trying to catch up; so when are they needed, yesterday, if the truth be known; but the plan has been there.

Council Member Gossage stated that's the kind of thing he wants to see on a bond referendum, then you start to see a savings for the taxpayers by going with General Obligation Bonds, and you see a great commitment to public safety; more public safety with more public input he thinks; he thinks that's a great way to approach this. Council Member Sutton asked if he were making a motion to add this to the bond referendum. Council Member Gossage stated they were on a motion that had been amended. Attorney Fordham advised they could make a motion to amend the pending motion. Council Member Jones stated that being the amended motion, how does adding \$3.5 million in debt down the road save the taxpayers money. Council Member Gossage asked in the borrowing with Council Member Jones responding yes, Council Member Gossage responded, its in the method of borrowing because you start to save money on the financing method, with Council Member Jones asked at what point do you start to save money by going to General Obligation Bonds, with Council Member Gossage responding, right where we are at; in fact, if you just do Station 4, that's what Smiley had given them; Station 4 and the Police station, you break even; when you put Station 5 on, now you will start to see, because those rates are lower than general obligation bonds. There were lots of questions all at once, with Mayor Weatherly asking Director of Finance Smiley if he were prepared to answer that and he responded he was not; this is a lot more than we're talking about. Mayor Weatherly continued talking about sinking a referendum, if you add another two cents or so to a potential tax increase, they are clearly talking a fire station, not to judge the need, not on the immediate priority list, but have been talking about this for two years or four, so let's get this one built and start to pay for it, then proceed in future.

Council Member Sutton asked the Mayor if they could take a recess. Mayor Weatherly called for a recess at 8:45 p.m. Mayor Weatherly called the meeting back in regular session 8:50 p.m.

Mayor Weatherly continued the debate on the motion as amended, asking if there were further motions to come from Council.

**Action:** Council Member Sutton stated after further consideration he wanted to make a motion to amend the amendment back to the original motion. Attorney Fordham advised the motion was to amend the pending motion back to the Council Member Jones original motion. Council Member Sutton restated his motion: amend the pending motion back to Council Member Jones original motion. Council Member Jensen added subject to the 3 bay, with Council Member Sutton responding yes. He continued the reason he was doing this was, as he had said, never been on the winning vote before and felt so badly about it; they do have to do the police department, and there is no question about it, so after further consideration – he wanted the people to be able to vote on this, and does not think it's a bad thing when you have a tax increase and a large expenditure, and feels confident they would vote for it; that was his motivation, to let the people have a say. Mayor Weatherly noted this representative democracy and thanked him for his motion, and asked if there were a second to the motion. Council Member Jensen made the second to the motion. He stated in the whole process, fire station 4 or anything else, we need to do things far enough ahead so we don't get into this situation again; we have slogged our way into an awkward situation, where we should go to voters and have the funds to do so; he thinks it's a big mistake that they did it this way, and need to learn from this experience.

Mayor Weatherly thanked both Council members for their motion and a second, but wanted to respond, like if they say, you want to love the law and love sausage, don't see anyone of them being made, the fact about the Police station, and the fire station were not as straight forward deal as maybe the public works, where they bought property and had a design for it, and built it; we are trying to do a refit on an existing building because of the site, having been fits and starts on that, with the rental of another thing, it all slowed down, now this one, if you remember, addressing Council Member Jensen, we were going to use an existing building on the site, and were going to make it work to avoid having capital costs; so then the site got changed by other development going on there, so it hasn't been as far as totally convoluted bad process, as obviously it appears tonight, it's taken so long to get to where we are, he acknowledges exactly what he was saying, but the fact is neither one of these projects have been clean and neat like you would expect to do a project; buying a lot ideally suited for that use and design and build the building; they have been anomaly, both of them.

Council Member Jones added there was discussion of buying this piece of property and using the existing metal building; he couldn't believe they would try to do that, however did appreciate the effort. Council Member Sutton are more, with Mayor Weatherly adding he was exactly right, with Council Member Sutton continuing, maybe they didn't exercise enough over site, he didn't know, or ask for periodic reports, maybe they should have done that. Council Member Jensen agreed they should do more of that.

Council Member Gossage appreciates Council Member Sutton's motion, all the debate and consideration on this tonight, and if he continues to find himself voting against tax increase, and what that means, it does nothing to diminish his support for the fire department and the police department, its only commentary on the planning fore the Capital Improvement projects, he finds himself consistently calling for more long term planning and that involves a different financing plan and a different financing mechanism. He appreciated all the debate and thought it very productive.

Mayor Weatherly asked if there were any further discussion on the pending motion. Mayor Weatherly called for the vote on the pending motion to revert back to the initial motion that was made. Vote on the motion carried unanimously.

Mayor Weatherly then stated now the debate continued on the initial motion, asking if he wanted to recap what was said. **Restated motion:** Council Member Mike Jones let the motion stand as recorded, and restated his motion: to approve the design and plans for building in its pre-engineering fashion to seek bids for the two bay and three bay as an alternate, and was hoping the three bay is the one they can afford, finish the construction documents and package it up with the police station and to have the opportunity for a single contraction, and to finance it in the method that has been proposed in agenda package. Council Member Schulze made the second to the motion. There was no further discussion, and Mayor Weatherly called for the vote on the motion. Vote on the motion was four in favor and one opposed, with Council Member Gossage voting no. Motion carried 4 – 1.

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.  
***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

No one spoke during public forum.

**NEW BUSINESS****New Business # 01 - Signalization of Old Raleigh Road at Apex Peakway**

Presenter: Kent Jackson, Director of Construction Management gave the status of signalization of Old Raleigh Road at Apex Peakway.

Mayor Weatherly called attention to the comments of folks that live on this side of town regarding improvements of this intersection, noting the number of accidents at this location. Engineering staff has reviewed the geometry and noted combination of horizontal and vertical curve on Old Raleigh Road to US64 and a site distance condition, and an extremely expensive fix; more economical for signalization. NCDOT agrees with the data and analysis that this is the appropriate fix, and has this in the funding queue, however did not make the short list January 31; intersections are ranked every 3 months based on updated information; if the intersection is ranked highly enough at that time to be considered by the oversight committee, it could be funded by the Board of Transportation in July, and earliest expected would be late summer 2008. He noted the way to accelerate this is to offer to payback, a loan, with full signalization at an estimated \$90,000, with payback within a year. Council Member Jones asked if paying back keeps us on the same location on the priority list. Jackson responded its technical driven. Mayor Weatherly desires a binding agreement with NCDOT if Council wanted to. Attorney Fordham advised it was possible, and Jackson could address the practicality of an agreement. Jackson didn't think they would enter into a boiler-plate municipal agreement until the project came up in the funding priority list, as that would be committing unbudgeted funds. He thinks the case of this being an intersection of a town street, even though it is an intersection also with an NCDOT street, some grounds for us to spend money for street improvement to the Peakway, and then if Council wishes continue to pursue reimbursement from NCDOT but a more riskier way to go.

Mayor Weatherly asked if this needed to be discussed in the planning retreat, asking how to quantify the need as far as other intersections around town. Manager Radford noted other places where needs of improvement could be made for spot safety, noting places where there is need for a signal, this would be a number one project, with Jackson agreeing with the Manager's assessment and its higher priority placement on NCDOT list solidifies that; accidents are occurring as vehicles make a left turn from the Peak Way onto Old Raleigh Road. Mayor Weatherly frequents this intersection, and didn't see the danger there at all however evidence is with the number of accidents that have occurred. Jackson stated the pursuit of this has been at staff level, project analysis and getting it on the spot safety radar; not looked at options for acceleration. Mayor Weatherly asked level of concern from Council to have staff accelerate this for an action item. Consensus was that staff brings back to Council February 19, with options, and conversation with NCDOT for loan arrangement, payback and signalization timing. Jackson reported signal at Peakway and SR1010 required a Municipal Agreement at a cost of \$80,000 and was three years ago.

Council Member Sutton asked the status of the Peakway at Olive Chapel Road. Jackson responded requests for quotes went out Monday. Council Member Sutton added no one wanted to take over these streets over from NCDOT: Old Raleigh Road, Olive Chapel Road, or Salem Street; if we owned the streets, they wouldn't be in this situation; if we owned the streets, then we would control signalization rather than NCDOT and an advantage. Jackson added the contractor completed any remaining work last week at this intersection as far as paving, so the signal is truly the last part. Council Member Sutton added folks have waited a long time for this, open it up. Jackson understood, and have debated whether to open it or not and it feels too unsafe to open it without a signal.

**End of New Business #01**

**New Business # 02 - Town Council Planning Retreat**

Presenter: Bruce Radford, Town Manager: offered the dates for the Town Council's Planning Retreat for Thursday night February 28 dinner meeting at 6:00 p.m. and presentation at Peak City Grill, and continuing Friday February 29, 2008 at 8:00 a.m. until finished at the Town Hall. Would like specific retreat items they would like to be heard.

**Action:** Council Member Schulze made the motion to set the retreat as recommended. Council Member Jones made the second. Motion carried unanimously.

**End of New Business**

**WORKSESSION**

There were no Worksession items.

**CLOSED SESSION**

Mayor Weatherly presented Closed Session items for consideration, and to take legal advice from the Town Attorney regarding: Liberty Tax Service for sign/zoning violations, and Charleston Village real estate matters. Attorney Fordham advised the item related to Charleston Village was clearly to give full information, and no action will be taken, as the HOA had wanted to be present if they were going to take action.

Mayor Weatherly called for a motion to move into Closed Session as stated above.

**Action:** Council Member Jensen made the motion to move into closed session as stated, with Council Member Gossage making the second to the motion. Motion carried unanimously. Closed session minutes are recorded separately. **Action:** Council Member Jensen made the motion to move back into regular session at 9:45 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

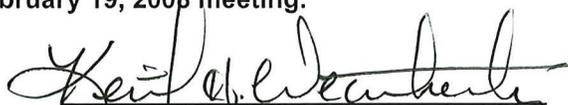
**End of Regular Session**

**ADJOURNMENT**

With no further business to come before the Council, Council Member Schulze made the motion to adjourn at 9:46 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

**The minutes of the February 5, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their February 19, 2008 meeting.**

  
Georgia A. Evangelist, MMC  
Town Clerk

  
Keith H. Weatherly  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**MINUTES OF THE FEBRUARY 19, 2008 MEETING**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, February 19, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jones, Jensen, Schulze, Sutton, and Gossage were present.  
Council Member Gossage arrived at 7:10 p.m.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

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

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve.

**Action:** Council Member Sutton made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Motion carried unanimously with a vote of 4 and 0 as Council Member Gossage had not arrived.

1. Minutes of February 5, 2008 Council meeting.
2. Minutes of February 5, 2008 Council Closed Session (recorded separately).
3. Annexation Petition # 428, Miguel Guerra and Dawanna L. Hogan, owners/petitioners, petitioning to annex 4.05 acres into the Town's corporate limits; property located at 1012 Holt Road; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution to set Public Hearing for March 4, 2008.
4. Findings of Fact and Conclusions of Law and Ordinance: Rezone Case #07CZ15, JVI Development II, Inc., petitioner, for property located at the end of Evans Road, south of Apex Nature Park; approved 12/18/07.
5. Findings of Fact and Conclusions of Law and Ordinance: Rezone Case # 07CZ22, Apex First Development, LLC., petitioner, for property located between Mason Street, Old Raleigh Road and Apex Peakway; approved 10/16/07.
6. **Ordinance No. 08-0219- 03** Amendment to Town of Apex Code of Ordinances related to Open Burning within the Town limits of Apex.
7. Amendment No. 3 to Agreement for Design, Construction, Ownership, Management, and Operation of Western Wake Regional Wastewater Management Facilities.
8. Award construction contract to lowest responsible bidder for: Traffic signal installation Olive Chapel Road at Apex Peakway to Watson Electrical Construction Co. for a total bid of \$61,484.00.
9. Award construction contract to lowest responsible bidder for: Olive Chapel Road sidewalk project – Phase 4 (Bond Project SW2): Narron Contracting for \$110,679.50.



10. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in regular session on February 4, 2008.
11. Abandonment of a 170 square foot easement which is shown on Exhibit A as "Area 2", and to approve attached Deed of Easement Form for signature by Mayor.

**End of Consent Agenda****REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items, and asked to revise the agenda order and to hold closed session for the first item to receive legal advice from Town Attorney regarding Charleston Village Real Estate after Public Forum, and add a New Business item #01 to allow for public discussion after closed session and for a resolution regarding this matter. **Action:** Council Member Jones made the motion to revise the order of the agenda, and include a new business item regarding this matter. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 4 and 0 as Council Gossage had not arrived.

Attorney Fordham asked to add the following: an additional item to Closed Session regarding condemnation matter; and for New Business item #3 to consider a proposed agreement regarding road between the Pantry and Arby's, NC55.

**Action:** Council Member Schulze made the motion to modify the agenda as requested. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 4 and 0 as Council Member Gossage had not arrived. The meeting agenda was set as amended.

**PUBLIC HEARINGS**

**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 01 – Annexation Petition # 426**

Public hearing and possible motion regarding Annexation Petition #426, Plan Development, LLC., owners/petitioners, petitioning to annex 51.08 acres into the Town's corporate limits, located on Laura Duncan Road.

Khin oriented to the site known as Laurel Park II, needing water and sewer, and must be annexed before construction plans are signed and is included in the sewer allocation. Council Member Jensen would like to investigate possibility of taking sewer from this development to the Cary project at Ramblewood being it's on the boarder, and long term may need sewer; he has a problem approving housing developments as Apex is out of sewer; doesn't know whether he would vote for this one or not. He thinks to rezone first places the cart before the horse and now to annex or not, have allowed developer to go through a lot of effort and makes it more difficult to say no.

**Council Member Gossage arrived at 7:10 p.m.**

Mayor Weatherly opened the public hearing at 7:10 p.m. and with no one addressing this annexation petition, closed the public hearing. Council Member Jensen added there was nothing he could do tonight, but would talk with staff later and asked to consider this in all areas where this could be done at minimal expense. Council Member Jones added there may be possible times where they would want to contract with others to provide services that we otherwise provide in certain unique circumstances. As to the point of order in which things happen, have had other situations where it was done the other way, annex then rezone, then subdivision review, and it can be awkward either direction. Council Member Sutton asked if Council Member Jensen was trying to free up capacity in Kelly Road pump station. Council Member Jensen responded yes, there is potential opportunity to pick up office/business and should focus on this to allow people to work here and not drive to RTP. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to approve annexation petition # 426 adopting an ordinance to extend the corporate limits. Council Member Schulze made the second to the motion. Vote on the motion was 4 in favor and 1 opposed with Council Member Jensen voting no. Motion carried.

**End of Public Hearing # 01**

**Public hearings continued****Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 02 – Annexation Petition # 427**

Public hearing and possible motion regarding Annexation Petition # 427, KC2 Enterprises, LLC, owners/petitioners, petitioning to annex 2.81 acres into the Town's corporate limits, located on US64.

Khin oriented to the site, known as existing Bradley Carpet, US64 and surrounded by Villages of Apex project; have made a deal to tie into sewer with Villages of Apex and in order to get water and sewer, must be annexed. Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one addressing this annexation petition, closed the public hearing. Council Member Gossage made the motion to approve annexation petition # 427 adopting an Ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 02****Presenter: Brendie Vega Mkhwanazi, Principal Planner**  
**Public Hearing # 03 – Amendments Unified Development Ordinance**

**Planning Board met February 11, 2008 and unanimously recommended approval with conditions (staff will report on conditions); staff recommends approval of the UDO amendments.**

Public hearing and possible motion regarding amendment to various sections of the Unified Development Ordinance: Article 6.1 and Article 12 related to the requirements for the Town of Apex to comply with NPDES Phase II permit conditions for stormwater controls; and Section 8.7.1.A.8 to permit gas canopy stripe; use of LCD/LED lights for gas pricing; and Section 8.7.1.A.10 to change standards for directional ground for hospitals and ambulatory healthcare facilities.

Mkhwanazi noted proposed amendments to Article 6.1 and Article 12 related to requirements for Town to comply with NPDES Phase II permit conditions for stormwater controls; Section 8.7.1.A.8 to permit gas canopy stripe; use of LCD/LED lights for gas pricing; Section 8.7.1.A.10 to change standards for directional ground for hospitals and ambulatory healthcare facilities. Planning Board met February 11, 2008 and unanimously recommended approval of UDO amendments with conditions: 1) recommend investigating the use of the term "built upon area" instead of "disturbs" in Section 6.1.3(A) – staff contacted DWQ to verify: it is disturbed area. 2) Remove duplicate word "limited" in Section 8.7.1(A)(8)(e) – this has been corrected. Staff recommends approval. Mayor Weatherly opened the public hearing at 7:15 p.m. and with no one addressing the proposed amendments, closed the public hearing, calling for a motion.

**Action:** Council Member Gossage made the motion to approve the UDO amendments as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Public Hearings****OLD BUSINESS****Presenter: Town Manager Bruce Radford**  
**Old Business # 01 – Beaver Creek Commons Drive**

Manager Radford led the discussion of Beaver Creek Commons Drive ending behind Circuit City and noted conditions placed on approval of the project did not allow them to develop on the north side of US64 until the bridge connection was made, and had received a request from DDR that they be enabled to build all the road except the bridge in order to get approval to proceed with construction on the north side of US64.

Chris Erb, DDR, presented their case proposing to build out Beaver Creek Commons Drive except for the bridge; bridge is included in the Turnpike Authorities bid and now down to three contractors putting prices together to bid the project. He thinks it safe to say funding is there as soon as General Assembly approves gap funding for I-540; pending approval of gap funding in the summertime, with a delivery date of 2011. Noted Western Wake portion of I-540 is broken into sections A, B, C; Apex section US64 north to existing section is known as Section C and is the only section of the three that has its permitting and ready to go and will be one of the first phases of I-540 project to be built, so when they say 2011 will be the overall completion of I-540, they are talking about the entire Western Wake Freeway and thinks they will see the Apex portion one of the first complete including the bridge associated with the project. He stated in the event the bridge is not in place at the same time or before the north phase of Beaver Creek is complete, they have looked at a likely schedule if Council approved this, almost starting from scratch, would go through a full leasing and marketing effort, likely there will be plan changes that staff will have to review.



## Old Business # 01 –

## Beaver Creek Commons Drive continued

He continued assuming gap funding is approved this summer and being optimistic the bill passes, bond financing and proceeds from the bonds to be available will probably be early fall, making this their starting point, and with construction and plan revisions they will not be able to open the shopping center until late 2010 with their goal to open for Christmas season 2010. Taking all this into account and the information received from the Turnpike Authority, he thinks there will be a small window, if any window at all, where the bridge may not be completed and Beaver Creek Crossings north could be complete. In the unlikely scenario and the schedules don't align, thinks the misalignment would be very small. He addressed concern that if this doesn't happen what happens to the intersections: their traffic engineer looked at the intersections now, and traffic counts and numbers based on original study, and not uncommon, had over estimated the traffic generation, had assumed the south phase was completely full and now it isn't; traffic count showed projection of Green Level Church Road, US64, and Creekside Landing Drive operates well, overall shopping center generation of 433 trips, 17% less difference in overall traffic generations, which helps them. If there is a misalignment with the bridge and opening of the north phase, none of those intersections would fail, all would operate at level service E and will operate and function adequately, not ideal, but work adequately.

He proposes once DDR completes the approaches that are in the current plan that is agreed to with the Turnpike Authority, would build the ramps from either side starting at Kelly Road and behind Circuit City up to a certain point, and stop. The Turnpike Authority would then when they have funding put the bridge in place between the two approaches they have built; once they have completed construction of the approaches and once the gap funding has been approved by the General Assembly, they would ask the Town Council to lift the condition on releasing CO's on the north, so at that point could go out and start marketing the site. Council Member Gossage asked what their schedule looks like, with Erb clarifying if this were not approved and they were to basically wait. Erb responded the economy isn't great, noting a good deal of retailer interest in Apex and Beaver Creek and in the project, and couldn't say in six or twelve months it would still be here. He continued approving this was affording them opportunity to capitalize on interest there today; approval creates more jobs (north side has office, retail, and residential components under way). Apex and triangle area has performed well where the rest of the country has not done so well in terms of job creation and jobs. Approving this plan is another way to insulate Apex and the triangle in general from the slow down of the economy that all are experiencing now. Thinks we are not in a good environment right now, best for the site and Apex and for developer is to get tenants on board and generate more lease space. Council Member Schulze was concerned with timing, and if restriction was lifted and allowed them to start building and for some reason I-540 were delayed, or gap funding delayed, seems short but who knows, construction could be delayed, and could be years before its finished, then what do they do; also requested a copy of the traffic study. Erb stated their proposal states the condition is not lifted until gap funding is approved; once gap funding is approved, its not a matter of if, but when; as far as timing he couldn't guarantee I-540 would be complete on time ahead of schedule or even late, but pointed to past history and the last section of I-540 had opened on northwest side of Raleigh and was completed ahead of schedule. Based on what they are seeing from the Turnpike Authority, they are way ahead of the curve, and in his opinion are doing better job than DOT with this road; he thinks they will be surprised with the timing of the project.

Mayor Weatherly gave his opinion, there were obviously a lot of variables on this, going to the bond market, having the cash, and being able to proceed; these are uncharted waters in North Carolina as he well knows, and there are some variables. All of them had been briefed prior to this proposal and has thought about it a lot and thinks it comes down to him as to whether they want to honor this as it was a reasonable condition placed on the developer that they couldn't proceed with most of the development on the north side until the road was completed; the variable the folks can't control obviously is construction of the road and to hold them hostage for an undetermined length of time, this seems to be a reasonable compromise that they not put them in a position of having a significant financial investment that they can't utilize through no fault of their own; if there had been something they could control, then he thinks this Council is pretty much on record as not having much sympathy for management decisions, but this is not something of some management decision of DDR, and would hope they could work something out and seems to be the most reasonable proposal, but there may be others.



## Old Business # 01 –

## Beaver Creek Commons Drive continued

Council Member Jones agrees gap funding should be in place, the question being when, and would be more comfortable if there were a published schedule and no guarantee of course, and maybe even bid awards for contracts; and based on contract awards you know the timing factor. Erb added the bids are narrowed down to three teams and due in June, and there is nothing to stop the Turnpike Authority from awarding those bid contracts by August which is their current schedule. The only thing that is stopping the work from starting is obviously is the funding, bond issuance, and gap funding approval. Council Member Jones added this could happen as early as May or July. Mayor Weatherly thought that may be in the latter stages of the short session rather than the earlier stages. Council Member Jones would feel much better about this if there were a published schedule and maybe even if the contracts were awarded before they turn him loose, so to speak.

Council Member Schulze asked what if the Town agreed they would not issue a CO until opening of that I-540. Erb responded they would be back where they originally started; issue now is they can't market the site to tenants because they don't know when they can get a building; all tenants are public companies, they way they are and they have to program their stores and store growth and forecasts that to Wall Street, just like they have to forecast when they open shopping centers to Wall Street; if the condition is slightly modified and to say will lift the CO based on Turnpike Authority, saying a percentage complete on the I-540 project, will not get them where they need to be in order to go to tenants and generate interest needed to get the project going again.

Council Member Jensen sees the office section farther along than the retail would be, asking can it be broken into two phases, and did it need an anchor store to develop the office/restaurant whatever was going in there section? He was concerned with funding and schedule in place, assuring they could do a bit more of it not all of it because of the gap funding and schedule. He noted when they had put this together, during rezone phase, it was an open public hearing and Walden Creek gave input and would like input from those folks, maybe 100% might accept to get this thing put together even without the bridge on the other side, personally he could see they might well accept additional traffic to get ride of the vacant lot; he would do whatever to help without hindering folks in that area, and if they could do it in two phases and almost guarantee one phase without other, without the bridge.

Council Member Sutton stated he felt they had put the stipulation on the developer to assure the road was built; they would build the road, they would know there was gap funding, there were contracts let to the Turnpike Authority and there was going to be a schedule when that was done, and when those conditions were met, and that's what they were willing to do, sees no harm in them approving; seems like it's a win-win deal; we get the road, he gets the development. Mayor Weatherly added, right, soon as there's approval of gap funding, it all falls into place, and they are motivated to move as quickly as possible with the connection, and he doesn't think there will be any delays on their part pending bond market is cooperating, assuming they will. Council Member Jensen added he could see moving ahead to allow a phase ahead of that situation with office might need an anchor store, with Erb responding they need an anchor store; in order to sell that office need to show a mass on that north side. Mayor Weatherly added when the timing comes together, for him to get out, market it, folks committed, the time lag will come together about the same, with Erb thinking it would, and based on his conversation with Shannon would not be surprised to see the bridge built and finished prior to them being finished; they are moving quickly, more than he's seen in his four years here in Apex to put this in place and Shannon had personally told him he sees an incredible amount of momentum to get the gap funding done this summer.

Attorney Fordham advised as a matter of procedure as he understands the proposal would amend a prior condition on a conditional use approval and would have to go through the normal process as a zoning matter and would need to go before the Planning Board and a public hearing. It's perfectly proper for Council to discuss it, and have direction, but in terms of it being formally approved needs to go through the normal zoning process. Council Member Sutton asked if this restriction that they had to build this road was on there when it went through the process; he thought it was strictly a zoning matter when it went through the Planning Board. Khin responded it came back as an amendment through the site plan; it went through the Planning Board.

**Old Business # 01 –****Beaver Creek Commons Drive continued**

Mayor Weatherly stated there could be action to remand this back to the process to modify condition and advertise, and going back through Planning Board and take about a month, and calling for a motion.

**Action:** Council Member Sutton made the motion to remand this request back to the Planning Board and put on their March meeting agenda. Council Member Jensen made the second to the motion. Council Member Schulze would like to show the traffic study as a part of the whole process. Council Member Jensen noted all of this is north and the bridge is south, with Erb noting according to the Turnpike Authority, this is all of Portion C, the bridge with Council Member Jensen encouraging them to do all they can do to speed this process. Motion carried unanimously

**End of Old Business # 01**

**Presenter: Town Attorney Hank Fordham**

**Old Business # 02 – Forest Grove Drive**

Town Attorney Hank Fordham presented for adoption, a Resolution of Intent to consider closing a portion of Forest Grove Drive that runs through the development called "The Groves II", SR1010. Development plan reconfigures the road, and the closing of the designated portion of Forest Grove Drive would facilitate implementing the approved development plan. Area potential to be closed is shown on the survey attached as the shaded area designated for street closing. Public hearing is set for March 18, 2008. Closing is consistent with the approved site plan. Mayor Weatherly called for a motion.

**Action:** Council Member Gossage made the motion to adopt the Resolution of Intent for closing a portion of Forest Grove Drive. Council Member Jones made the second to the motion. 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.  
***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Herman Jaffee expressed disappointment in water management, calling attention to the extreme drought, asking Town to purchase low flow washers to be inserted in customer utility bills, saving water from 4 to 2.5 gallons per minutes and could be purchased at Ace Hardware 10,000 for \$1500, and saving money long term.

Steve Mulheim, Charleston Village, commented on Chris Erb presentation, and seems in N.C. property is developed without thinking about roads and infrastructure, also schools; California no development without roads, then residential areas around that with schools afforded to those in that area. There's no planning ahead here, more for what developers want to do, than what people that live here want. For Erb to use words like assume, and count on taxpayers money, and Turnpike thinks a total waste of time, to decide what to do going forward is ridiculous.

Attorney Tom Worth Jr., Raleigh, asked by Attorney for HOA to be present in his absence, comments he doesn't know much about this. Aware of: 1) 1996 recorded map designates an area immediately north of Castleburg Drive as open space; and fronts along Castleburg an area 89.9 feet.; this tract was conveyed with others to Town of Apex in 1996. 2) 1998 a portion of that tract the one immediately north of Castleburg Drive was subsumed into some adjacent platted lots and became parts of those lots. As far as he knows, there has never been a deed to legitimize those conveyances. At that same time, using similar open space languages the remainder of the 89.9 foot width – throat of the property was again denominated as public open space. Developer conveyed by that same map to his client, Charleston Village HOA. In sum, the situation here was that the entire area was designated as open space, and unfortunately some nervous title lawyers and title insurance companies are out there because, sadly and badly, it appears a portion of this area still owned by the Town was conveyed to these homeowners. His clients have no problem at all in rectifying this egregious problem for members of their own CVHOA; these folks are part of this HOA.



## Public Forum continued

They do want to have the integrity and the accessibility and the utility of the balance of that what was 89.9 width to be available to their CVHOA, otherwise, they have the prospect of having two tracts immediately north of this area that they have title to being land locked. There is a problem here, a big one for these folks and his clients, the HOA, and the members of the Board of the HOA, and some of the citizen members are here, but they really want to be a part of the solution to this problem but do want to protect their ingress/egress opportunity while not standing in the way of their neighbors being made whole. He was available for questions, wanted to be a part of the solution as long as they were fairly treated. Mayor Weatherly stated after their Attorney's briefing in closed session would have opportunity for a dialogue.

Matt Burke, resident of Charleston Village Templeton Gap would like area to remain natural as was promised to them; residents along Templeton have been hit with lower property values, and would hit them in wallet again. Residents of the area were present, others agree with their position, or do not want their dues to go towards legal costs for a resolution for the property; path graded with mixed reviews; homeowner had allowed access to property; requested town redraw property lines to effected homeowners and have the town retain ownership of the remaining area giving them an untouched natural area they were promised and currently enjoy, secondly would agree for town to maintain ownership as they continually have in the past and hope would use best judgment as they know they will and resolve this fairly. Did not expect to have to come to Council with this, but forced to do it.

Michele Medlin, one of the authors of the flyer, and secretary of the HOA, submitted the flyer to the community because some do not know they own 3.76 acres landlocked and can't use. This came about as they had a partial of land that needed to be maintained by a landscape company, homeowners had been permitting the landscape company to come through their yard to do that, and wanted to put up a fence, and left them with no access to the common area that needed to be maintained. In searching for a solution, discovered this piece of property believed to be owned by the Town; someone from Town came out and was a utility easement and needed to speak with John Brown and has spoke with him. She went door to door explaining what they were doing; that's when people started contacting the town. She believes this to be a community issue not a Town issue and wouldn't have been a town issue until the second deed was discovered. She feels the homeowners should be able to use that access to the 3.76 acres they own, and obviously people who boarder that property don't want that to happen. Both sides of the story will be shared, and council will have to decide who gain to benefit, 329 homes, pond to fish, walking areas, and simple foot path to access that.

David Randall, 2010 Ironside Lane, adjoining the property within 142 feet, largest line in common with this property, and on the Board of Directors for Charleston Village Homeowners; he would like to keep the property a natural area and reason for buying it and enjoyed for 12 years, understands concerns for landlocked property above this area and all private except for the piece owned by Apex; understands wanting to have access to that; have not had a unanimous vote of the community since it has started and has caused a lot of rip; he doesn't know the Attorney, first learning his name from the Board meeting, and was to pay \$500 for work he was doing; information is not free flowing, and have not explored all options of having access to this property, and ability to exchange common grounds with homeowners if they choose to and to gain access to this property; grounds committee started discussing this last week. He would like as a Board member and property owner to straighten the deed issues for homeowners on Templeton Gap, settle deed issue for the rest of the property and usage of that property; whose allowed to walk on it, how is it to be used, any insight is helpful; have dealt with this since last September, and to minimize the cost to HOA; there has been discussion about purchasing property, possible litigation, and none of the homeowners are interested in using the entire budget for this kind of thing. He trusts any decision made.

Tray O'Quinn, resident and holds office on Board of Directors for CVHOA, and does want and everyone will agree, they want Templeton Gap homeowners taken care of, that those lots lines be made whole; assure every resident on the street whose lot lines vary from the 96 to 98 deed, want to make sure the lots are what they paid for when the bought their house. He thinks usage issue is premature and good possibility if HOA does retain any ownership of this land, nothing will happen and in hands of grounds committee; ownership has not been in grounds committee and always in the board of directors level; grounds committee will determine what will happen on that land, he promises that; its an open involvement as many as want can join grounds committee; decided to make chair Medlin and someone from Templeton Gap – offer made, awaiting decision, to have leadership on that committee has both points of view.



## Public Forum continued

If concern is with people in my backyard, or keeping it natural they are working on this; if concern is there is bias are working on that; making sure grounds committee is more involved, because when this legal issue is done, he doesn't want to hear about path, or pond until they come to him with a motion; he doesn't want to hear about it. He appreciates council's indulgence, realizing it has driven them crazy as they are volunteers just like he is.

Jim Stella, Charleston Village resident, and no other capacity, giving history of buying house in 96/97, first family to close on a lot there. The model home had renderings of the subdivision, there were plans for easements to these ponds, and another series of pond back of the development that showed walkways around them and access for all residents to those ponds. The way it was sold to folks moving into the subdivision having warped into something else because of disputes over property lines. The original intent and way it was sold to original owners that moved in there, some type of arrangement should be made for continued access; continued access through someone else's lot – one gentlemen was letting a landscape company come through there, they put up a fence and cut it off, now someone else on one of the other cul-de-sacs is letting people go through there. What happens if that property changes hands, and the next person puts up a fence and closes it off, why should the rest of the residents be punished.

Tom Hall 2101 Templeton Gap, resident not a member of the board of the HOA nor does his property join disputed, but in proximity to the property the HOA currently owns; his home was built in 2001 and all along thought from day one the HOA owned that strip and came up and connected with the two to three acres where the existing pond is and the issue of improvements, amenities, walkways and pathways and greenways are a priority of this town, and certainly Charleston Village would want to be a part of that also. He would think beyond correcting the problem for the adjoining homeowners, it seems to be a fair decision that the remaining strip become property of the HOA, and let them battle it out within the HOA; those who bought with the assumption of this space, nothing was behind him when he built his house, he heard hundreds of times who owns it and until it's nailed down to how it's zoned, it can all change. He feels it a reasonable compromise to take care of the effected homeowners, but benefit all property owners who have joint ownership of the common land.

William \_\_\_\_\_, 2002 Ironsides Lane, and borders common area in dispute; seems to be a difference in when you were sold you land as to the different amenities; ownership of land is where they are here to have council help; in Charleston Village 11 years, issue of access to pond was never a problem until now; closed in 1997 and understand of the deed was Town owned land and walking across this piece of land to access Charleston Village owned land was not a crime; available to every resident of Charleston Village since they moved in; there has never been a landlocked situation; if you wanted to access this piece of land, were welcomed to walk across the town owned 4.9 acres to access that; he knows of very few that use that amenity currently noting using of the paved walking trail in the community now; access to this pond has not been denied to any resident of Charleston Village to this date; many people are making this sound as if they are landlocked and not the case; walking across a piece of property that is between Templeton Gap and Ironside Lane now is not an issue or a problem for any of the homeowners that border this piece of property; understands its public property owned by Town of Apex.

Tim Hanley, 1912 Castleburg, is volunteer on the grounds committee over last 4-5 years; issue has divided neighbors, legal issue for Town and how to proceed for town; recommends Charleston Village move forward or not move forward whatever plan is best for the neighbors; he recommends for the town as homeowner and citizen of the town, is the town move forward and designate the land in question presumably parts of folks back yards and make sure it gets legally to those homeowners as outlined needs to take priority in the process; the space that joins the creek either with the Town or HOA move forward as open space various recollections, since 97 designated open space, request the space around the creek not in the homeowners backyards not be conveyed any other way than to stay open space with the town owning it or the HOA.

Herman Jaffee, past homeowner, noted this the head waters of Beaver Creek, and are dealing with state waters; there are six foot culverts buried in the ground over, and flows into the big pond there and be sure where you are going.



## Public Forum continued

Mayor Weatherly closed public forum and called for a motion to go into closed session at 8:15 p.m. for the previously stated reason. **Action:** Council Member Schulze made the motion, and Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of closed session are recorded separately. **Action:** Council Member Jensen made the motion to move back into regular session at 8:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

**NEW BUSINESS****Modified New Business # 01 – Charleston Village Subdivision**

Mayor Weatherly turned to Attorney Fordham, as to how to proceed after having received legal advice on this issue. Attorney Fordham stated they have numerous options in respect to the property the Town has deed to from 1996. The Town does have authority to sell property if surplus and a procedure for this. Anytime the Town enters into an agreement to sell property it is subject to upset bid process. At least three parties have expressed interest in this property, first being Templeton Gap homeowners have expressed interest for property adjoining their lots subject to claim of a 1996 deed; Home Owners Association has expressed interest for the property to the other side of that, and the homeowners of Ironside Lane has expressed interest in how the property is handled. In terms of the council's legal authority, have the option to authorize of any portion or all of it to parties they choose subject to upset bid.

Mayor Weatherly asked if anyone wanted to weigh in on this discussion:

Council Member Schulze wanted to be clear on what he was about to say, as it was very confusing to talk about. He thinks all agree on Templeton Gap wanting to set the record straight, and no dispute that they want to fix the record so it shows the original purchase, essentially moving the property lines back to the creek with exception of 2007 and 2005 Templeton Gap, with Mayor Weatherly adding whatever the subdivision plot showed, with Manager Radford adding which is beyond the creek; this is Piece 1 he proposed.

Piece 2: carve out a 20' swath on the right side borders the folks on the new side of Templeton Gap that will provide access to the land up top, proposing they give that correcting give to sell to the HOA for nominal fee.

Piece 3: Sell Ironside Lane the delta between where their existing property line is now and the new property line bordering up against that 20' swath, and that way the Town of Apex is totally out of property owning business in this area.

Council Member Schulze continued folks in Ironside Lane get the opportunity to purchase addition property that will allow them some buffer between any potential path that may access the property up top, and they set the record straight for the folks on Templeton Gap. To him, pretty much, everyone should be happy with this solution.

Mayor Weatherly agrees should resolve the issue with Templeton Gap as to what the platted lots show, and beyond that he is not certain they need to have a dog in the fight.

Council Member Jensen agrees they should take care of the Templeton Gap folks back to the original plot line and resolve that by selling that property for some nominal fee; and remainder hold onto it and make decision later date as to how to convey it, this will bring us back to what was originally there and will correct the larger part of the problem; the other part seems to be up in the air with the HOA and with the other folks and thinks they can resolve this at a later date; this would allow more time for discussion because town does not have a dog in that fight.

Council Member Jones tended to agree; the sense of urgency for the Ironside Lane side of the creek doesn't seem to be as urgent as the Templeton Gap side of the creek, because of the issue with the discrepancies or in-discrepancies of ownership and does think they have time to work out, or for the HOA to work along with us as to what happens with that; otherwise he's in agreement. Manager Radford asked the Mayor if he were willing to accept a nominal fee of \$50 per lot for the Templeton Gap lots. Mayor Weatherly stated it reasonable to him if this is the direction Council wants to go and talking about the Templeton Gap lots only; and the other issues would remain unresolved by this proposal.

Council Member Schulze stated if he didn't want to weigh in on the other issues, it was fine, but didn't understand what the big deal is in resolving it right now; who would be opposed to that plan. Council Member Jensen was not opposed to resolving it, but thinks the homeowners and property owners should resolve; we can resolve the Templeton Gap side because we are involved there, and the other side, if we so decide to sell it at a later date to the homeowners who are living there or to the HOA, he thinks they need to work that out themselves, it's not our problem right now; he doesn't want to impose a solution on people they should work out themselves, and if we have to in the future do it then; he agrees Templeton Gap.

**Modified New Business #01 continued**

Mayor Weatherly added a solution may be a tendered offer from the homeowners association for an easement through there; for an easement to their property that no one disputes the HOA owns, and would entertain that we be willing for the swath through there that the town owns. Council Member Jensen added, we could actually sell it with a conservation easement, and a few deed restrictions that would protect the property owners and would be done with it. Mayor Weatherly continued he was more comfortable to resolve the issue on Templeton Gap, clearly wanting to resolve this in the homeowners favor, and beyond that, offered they wait for HOA resolution they propose to the town for the rest of the other issues there may be; there may be more issues than what's been identified and doesn't know there are.

Council Member Sutton likes Council Member Schulze's concept; for \$50 resolve the Templeton Gap homeowners moving them towards the creek and over creek in two cases where their lots were as they thought they were on their original deeds; strip in the middle stays basically along the creek for public use; also make the folks on Ironside Lane, bringing them to the strip reserved, letting them pay \$50.00, move their property line, then sell the strip to HOA for a nominal fee and get out of it; this is what he understood Council Member Jones to say something like this. Council Member Jones responded one of his concerns was that the lot lines for the Templeton Gap lots don't consistently go to the creek, so laying out a 20' easement, path or greenway, whatever you want to call it, is going to require in making those lot lines consistent is going to require a lot of survey expense and other things that are not accounting for tonight; recall there was some space between those Templeton Gap lots and the creek that was sort of in limbo as they were looking at subdivision plans and pictures, and are going to end up with slivers of land they are not accounting for and someone is going to have to go in and survey for and spend money on that we will not get refunded on and be unaccounted for; he agrees he wants to deal with it and be done but is not ready to do it convey, and thinks they would lose money in that deal. Council Member Sutton asked couldn't they go with \$50.00 to the creek. Manager Radford told him he had misunderstood what they were talking about, \$50.00 was for the conveyance on Templeton Gap, and suggestion earlier was for the area that would be sold was \$3 or \$4 per square foot for both areas of the land they own remaining after that; both \$3 or \$4 per square foot to the HOA and or to the effected neighbors on Ironside Lane. Council Member Sutton stated we have no use for the land out there; we have it, but no use for it, the Town. Mayor Weatherly stated no one disagrees with him there. Council Member Jones added the method of disposal is what he's not in a hurry for.

Mayor Weatherly stated there may be a different proposal more suitable for people than this one, if we allow them to work it out; thought this consistent with what they have done, we don't interject ourselves in what is a rightful and private agreement, we let them come to us with a resolution – no body is going to expect them to be unanimity probably and what is fair and reasonably accepted by the folks that is going to be impacted by this; why mandate our agreement on them rather than the other way around; entertain agreement from them when the right plan is apparent to the majority of this Council, then can do that; resolve the one issue they all believe is the fairness in equity that they can resolve tonight and wait for the effected folks to suggest what is fair.

Council Member Jones asked if a motion were in order. Mayor Weatherly responded yes.

**Action:** Council Member Jones made the motion to authorize the Manager and/or Town Attorney to enter into an agreements with the affected property owners on Templeton Gap to convey to them in accordance with the 1998 platted lots of the approved subdivision plan for a sum of \$50.00 each. Council Member Gossage made the second to the motion. Mayor Weatherly asked for discussion. Manager Radford stated in keeping up with the Attorney's opinion about the upset bid process, beginning with the \$50.00; he doesn't anticipate anyone coming to buy someone else's backyard. Mayor Weatherly added this to be a given, with Attorney Fordham advising they have to comply with the upset bid procedure by the General Statute; he advised there was no other legal issue. Council Member Jones added subject to the upset bid procedure; part of this is communicating to the effected property owners the details of that process. Motion carried unanimously.

**End of Modified New Business # 01**

**Presenter: Dianne Khin, Director of Planning**

**Formerly New Business # 01 - Minimum Lot Size Various Districts**

Khin led discussion and asked for direction to staff in that if there is an extended discussion regarding minimum lot sizes in the Low Density Residential District (LD), the Rural Residential District (RR) and the Residential Agricultural District (RA) that this be referred to the Planning Committee; facts regarding potential issues regarding a 1/3 acre minimum lot size for the Low Density Residential District are outlined on cover sheet for this agenda item facts 1-5.

**Action:** Council Member Sutton had brought this up wanting to enlarge lot sizes being bigger in lower density, and average covers this, and put in the form of a motion to refer this line of thinking to the Planning Board, being a UDO amendment.



## Formerly New Business # 01 continued

Khin stated you would not get to three units per acre density with average because of infrastructure and stream buffer requirements, but would allow a range of lots, asking if three units per acre were low density or would they rather have two units per acre maximum; with average lots size would not get up to three units per acre; two units per acre is more as to what is happening now under developments being built under low density designation. Allows more flexibility that every lot would not be the same, but be a range, but average would be 1/3; density would be the same, but not meet that density, and depends on individual projects; can't say for certain two or one and one-half would be enough.

Mayor Weatherly asked if changed, how would effect the Land Use Plan, with low and medium density out there, if changing the definition of density what's appropriate for a land use that may change. Khin stated it wouldn't change because low density on the 2025 Land Use Plan says you can rezone to LD, RR, or RA, and would depend on the zoning; and if they wanted to do more density, would ask for it. Mayor Weatherly thinks our ordinances in this respect should be market driven, an owner who buys property and knows what he needs to get from it, attractively done and is what the market wants and as long as the land use is properly considered by this board, he doesn't want to tell him what cookie-cutter lots he has to do, that government tells a business man we want 1/3 or 1/4 acre lots, he thinks the business person should provide flexibility, where it has a stream for thoroughfare, would have to have a special buffer, as long as we have oversight over the land use and the zoning, this is micro-managing from a central government perspective is contrary to what he sees to the way we ought to react to our business community.

Council Member Schulze to a point agrees, but asks where we draw the line; why not zone everything high density and then if they want low density, we let them, but don't want to say everything high density.

Council Member Jones asked within these densities of RR, or RA do you go with; some plans that have come before us might average two to three lots per acre, some .2 and might be very small, but thinks flexibility is important; one hammer says you can't do mass grading you got to preserve trees, RCA, and other stuff, and there may be a piece of land on one side that's ok to have lots that are 5,000 square feet: 5 to 7 and then another piece that are three acres on that same 100 or 200 acre tract of land; thinks the more flexibility you give, the better the product will be with input of staff and the rest of the UDO in place. Putting a limit on it that it has to be 5,000 or 3,000 is going to be market driven; they are not going to put a little mobile home lot here and bigger on three acres next door. Council Member Sutton added average does give more flexibility. Khin responded it does. Mayor Weatherly asked if either option would affect Villages of Apex or Trackside; Khin responded they are already approved and grandfathered and zoned Planned Unit Development, staff is talking about the specific districts. Examples she had given was newer low densities.

Mayor Weatherly stated this is what Planning Committee is for, to work these issues out. Council Member Sutton stated he had made the motion to go to the Planning Board. Council Member Schulze wanted the Planning Committee to review this as well. Council Member Schulze made the second to Council Member Sutton's motion.

Mayor Weatherly restated the motion to refer this to the Planning Board, the average lot size. Mayor Weatherly called for discussion. Council Member Gossage asked if the Planning Committee wanted to discuss this as well. Council Member Schulze wanted the Planning Committee to review this as well. Council Member Sutton had tried to get this on the agenda since December, and felt this would delay getting this done; its not a drastic change, with Council Member Jensen agreeing, they would see more of these high density quote low density things come through. Council Member Schulze stated the more input the better. Mayor Weatherly stated there was discussion on the motion, but reasonable amendment would be if there is some reason to vent this more before going to the Planning Board, then would come back to Council with a recommendation, then maybe give it to the Planning Committee with a specified 30 day time limit or finite time to come back to Council; could accept that and move with it or then refer to Planning Board, and if not would take it out of Committee, referred to this board no later than 30 days, and takes jurisdiction away from the committee if the committee has brought them a recommendation. Council Member Schulze indicated two weeks would be enough time.

**Action:** Council Member Sutton withdrew his motion. Mayor Weatherly stated it easier to amend the motion. Council Member Schulze wanted to amend the motion to refer to Planning Committee, with Council Member Jensen adding for up to two weeks and if not out of there by then, goes automatically to the Planning Board, offering this as a second to the motion. There was no discussion on the amendment. Vote on the amendment carried unanimously. Mayor Weatherly called for a vote on the amended motion. Vote on the amended motion carried unanimously. Mayor Weatherly sated Council Member Schulze, Chairman of the Planning Committee will schedule the Planning Committee meeting and if he doesn't bring back to Council in two weeks automatically goes to Planning Board.

End of Former New Business #01



New Business continued

**Add-on New Business # 3 – Road Agreement**

Attorney Fordham stated 11/20/07 Town entered into an easement agreement with Solid State Apex US1, to access property off NC55; road between Pantry and Arby's. Road Repair, Improvement and Dedication Agreement was to work with all interested parties that owned property adjacent to this particular road or had rights to travel that road to find way for private parties to pay for that road upgrade, and then the town would accept dedication. Agreement is before them with three of the parties agreeing to do this Prime Realty, Inc, Pantry, Raleigh Focus VII, Acquiline Apex Owner LLC, and Carolina Power and Light Company and Town of Apex. The Pantry, Raleigh Folks, and Acquiline will bring the road up to town specifications and meet all applicable standards and in doing so, each of the parties will offer for dedication to the Town, their interest in the road, and town within 60 days would accept the dedication. Town is not liable to pay for work and doesn't have to accept dedication until meets Town approval. He asked for authorization for the Town Manager and himself to make minor changes to meet the specifications, not affecting the substance. All parties need to review changes he has made.

Mayor Weatherly called for a motion: **Action:** Council Member Schulze made the motion to approve the Road agreement as presented, and authorizing the Manager and Attorney to make changes as necessitates. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business

**WORKSESSION**

There were no Worksession items.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss the following:

- 1. to receive legal advice from the Town Attorney regarding Charleston Village Real Estate (held prior to public forum)
- 1) to receive information from the Town Attorney regarding condemnation of utility easements in the Central Business District.
- 3) add-on: condemnation.

**Action:** Council Member Jensen made a motion to move into closed session at 9:30 p.m.. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed session were recorded separately.

**Action:** Council Member Gossage made the motion to move out of Closed Session into Regular Session at 9:45 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 9:45 p.m. Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the February 19, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their March 4, 2008 meeting.

*Georgia A Evangelist*  
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Georgia A Evangelist, MMC  
Town Clerk

*Keith H Weatherly*  
\_\_\_\_\_  
Keith H. Weatherly  
Mayor

## TOWN OF APEX, NORTH CAROLINA

### Minutes and General Account of the Town Council's 2008 Annual Retreat

The Town Council of Apex, North Carolina held its annual retreat as follows:

Date: Thursday, February 28, 2008

Time: 6:00 p.m. to 9:00 p.m.

Location: Peak City Grill, Apex, North Carolina

Date: Friday, February 29, 2008

Time: 8:00 a.m. to 2:30 p.m.

Location: Apex Town Hall and Town Campus, Training Center 3A, 73 Hunter Street.

Manager Radford and Mayor Weatherly extended a welcome to Council and staff attending the Thursday evening meeting held at Peak City Grill. All Council Members and staff were present. Mayor Weatherly presided over the meeting following dinner. Mayor Weatherly called on Manager Radford who presented the 2008 Annual Retreat Agenda and noted the opportunity for long range planning.

Dianne Khin, Director of Planning, Kent Jackson, Director of Construction Management, and Lee Smiley, Director of Finance presented population and growth forecasts, building and construction forecasts, and the financial review. Staff answered questions regarding future planning and development and financing (pages 4 – 17). A slowdown in construction was noted and due because of the need for wastewater (Director of Public Works Donnelly commented on the need of the regional wastewater plant over two years ago, led a brief discussion concerning available sewer); residential vs. non-residential development and growth were discussed and where the Town wants it to occur and what Town wants to see; tax base percentages were shared as well as projected fund balances and reserve funds; outstanding indebtedness; and financing options for future CIP projects. The meeting was recessed to Friday morning at the Town Hall to begin at 8:00 a.m.

The morning session was held in the Town Hall Training Room 3A with a recap of Thursday evening and review of the 2008 Retreat Agenda by Town Manager Radford; discussion accompanied each presentation (see attached agenda and reports); questions and concerns were addressed throughout the presentations.

Key highlights follow:

Director of Planning Dianne Khin gave an update on the Western Area Plan to adequately plan for future growth driven by the Regional Water Reclamation Facility and the Triangle Expressway I-540 planned for completion around 2013, with the area encompassing 22,170 acres, 3049 dwelling units and 8323 residents (update pages 19 – 21). Public workshops were held with Land Design Consultants and a 15 member group of design professionals and citizens who live in the study area; purpose to consider new ideas for the western area; Western Area Plan Map is attached; Public hearing is scheduled for May or June 2008. Discussion: land near I-540 and possible industrial park; there is no anticipation for business due to the problematic access to the area.

Police Chief Jack Lewis gave a Police Department review: mission, values, organization and current staffing levels, call statistics, campaigns, criminal investigations, special operations unit, community outreach efforts and goals for long range planning. As Town continues to grow comes challenges and opportunities, with more demand for police response (pages 23 – 31).

Fire Chief Mark Haraway gave an overview of the Fire Services provided from Station 1- 210 N. Salem Street, Station 2 - New Hill Holleman Road, and Station 3 - 736 Hunter Street (map identifying locations showing existing and projected station locations attached); noted current staffing levels including volunteers and need for additional personnel, presented operational guidelines for efficient and effective fire protection services (increase in calls, response time, 1.5 mile service area, equipment and training, where fire services needs to be (page 33 and attached presentations).

Noted the following:

- requirement by County for personnel service levels and fire ratings
- lack of adequate response to portions of the Apex fire district
- distance to areas covered by Station 3 vs Station 5
- service level goals are not being met nor vehicle accident and structure fires
- justified need and benefits for keeping Fire Station # 1 (downtown business area)
- necessity of Fire Station # 2 for the rural area and not fire hydrated
- justified need for Public Safety Station # 4 south of Town based on extended response times and built upon properties outside of the 1.5 mile service area
- need for fire services in western section of town previously identified as early as 1984
- proposed site for Public Safety Station #5, site breakdown for 2.5 acres on Apex Barbecue Road, and justification for its need due to continued growth in the western part of town
- additional considerations for Public Safety Station # 6 due to projected growth and planning north and west of US64
- Fire and Rescue services and potential consolidation options with Apex EMS (why merge, what we gain, information about the accredited AEMS); joint venture in Public Safety Station # 4; merger would be much like the fire merger. April Hobney was present from Apex EMS. Council was not aware of any negatives in consolidation.

Director of Public Works Tim Donnelly gave an update of Public Works Priorities (pages 35 – 41) beginning with Regional Water Reclamation Facility, with US Army Corps of Engineers continuing to work on the Environmental Impact Statement. Four alternative sites (discussed criteria in looking at viable sites) will be compared to the alternative site, and noting remaining EIS issues to be resolved, with the major one being Harris Lake and its discharge point as Division of Water Quality has traditionally opposed lake discharge due to fear of eutrophication and would cause potential for additional delay (answered questions regarding water quality and State standards); also gave a review of project schedules with a delayed operational date for the operational facility 2013, which is two years behind schedule. Impacts of the delay: Town will not comply with Inter-basin Transfer Certificates 2011; construction costs continue to rise with an estimated share for Apex entire project currently \$75 million; Town has approximately 300,000 gallons per day of uncommitted sewer capacity (continued pumping to Raleigh will be required through 2010).

Manager Radford sought direction from Council regarding reserve of sewer capacity for non-residential growth along with current 75,000 gpd in contingency sewer capacity. After discussion and seeing support for additional reserve of sewer capacity, Staff will present a recommendation at an upcoming Council meeting.

Director of Public Works Tim Donnelly gave an update of the plans for a 3rd. Point of Delivery for the Town electric system needed before 2009, offering preferred Site A and alternate Site B (proposed maps attached). Total price of substation including land, construction, equipment and new feeders is expected to be \$6,500,000; timely construction is required because peak load has grown by 33% in the past four years. At current growth rates, safe loading on our existing facilities will be exceeded in 2010. Questions were answered regarding current substations and redundancy level.

Director of Public Works Tim Donnelly gave an update of the plans for Public Works and Utilities Center Expansion and identified as critical space for to meet long term goals. Staff seeks authority to bid the project in 2009; Finance Director is working on a financing plan for the projected cost of \$4.4 million expansion project. Questions evolved around expansion onto the Butler property and potentially the 0.7 acre Chamber Building site that is isolated and surrounded by the Public Works Facility and makes for a long-term site arrangement plan. Staff seeks direction.

Director of Parks, Recreation and Cultural Resources gave a review of Parks Projects (pages 43 – 52) beginning with 2008 significant projects, 2004 Bond Referendum projects, 2004 Bond related Capital Improvements Plan for parks and recreation services, and issues for 2008 and beyond while noting impacts as follows: year-round schools on programming and facilities, staffing, operation and programming of the Halle Cultural Arts Center, additional programming and staffing; and due to ETJ expansion with population projection 1850, comes projected park sites.

Director of Construction Management Kent Jackson presented a review of Transportation Projects (pages 53 – 57) giving the status of significant projects: intersections, signalization, and safety improvements, Peakway construction, sidewalk construction, street and utility construction, update of transportation bond projects with bond funds needed totaling \$2,854,534; transportation projects not funded in the 2004 bond schedule total \$1,835,000 and with two of those projects being the Peakway to complete the loop: i.e. NC55 to Schieffelin Road and Tingen Road to Bradley Terrace. Discussion: sidewalks on Lake Pine to the community park having been discussed several years ago, with John Brown, Director of Parks and Recreation stating decision was to wait for NCDOT to make road improvements and install sidewalks at that time. Staff seeks direction for funding the Peakway Phase 3 for Trakside and Lufkin Road.

Staff Members Russell Dalton and Jean Weatherman made the following presentations:

Weatherman: Electronic TRC Plan Review Program, having been well received; answered questions regarding paying fees online and registering into the system to see plans.

Dalton: Trans Link 32, an NCDOT observation software for traffic signal involvement if it were to be brought in house (operation and maintenance). Discussion: NCDOT reimbursements, personnel, the need for traffic signal involvement due to necessity, as Town continues to grow; seeks direction.

Noted: Construction Management Newsletter "Connections" on the town's website: monitors traffic, transportation projects, meetings and studies.

Director of Human Resources Eleanor Green shared Issues and Trends in Human Resources giving an employment update (organizational charts attached) noting turnover rate of 3.4%; unanticipated labor shortfall predicted for 2013; retirement of baby boomers who occupy key management and professional positions and shortages of experienced, talented individuals interested in government careers as replacements; need for strong pay and benefits; opportunities for professional growth and promotion while maintaining a good employer reputation; completion of workforce analysis to formalize town's succession planning efforts. An Employee Satisfaction and Commitment Survey conducted indicated employees are satisfied with their jobs and with Town as an employer; lowest score area related to management and resources (adequate staff and equipment to do the job). Recognition Committee has been organized to develop recommendations for management that relate to improve communication, work processes, inter-departmental relationships, with one recommendation for more supervisory training and fits into HR development plan. Insurance Costs: potential for 21% increase (Blue Cross Blue Shield look to bid plan, look at plan design, consider self-funded insurance plan); related increases to worker's compensation and property and liability coverage (NC League of Municipalities) (pages 59-75). Question: would it help to have employee physicals: not allowed.

Town Manager Radford opened discussion regarding topics proposed by Council Members: Green Energy Programs (attachment) Mayor Weatherly noted the purpose of the program being considered was to develop green energy sources within our Town, and potential to partner with Home Builders Association in relation to energy savings apparatus and devices, and recognizing homes deemed energy efficient, noted guidelines and standards, a voluntary program, and would encourage builders to be involved in green energy programs, i.e. "Green Medallion Home"

Council Member Jensen expanded on the solar energy program, noted green initiatives and opportunity for Apex to be involved in a solar energy program and also opportunity for involvement by the local schools; would be a volunteer program and would put Apex ahead as a leader in an environmental responsible energy program; noted a percentage of his neighborhood had signed up, and offered that an awareness program includes sending information in utility bills; noted could consider a points system, could train employees in this area, for Town would be more economical and worthwhile.

Mayor Weatherly asked if there were interest of the Council to see where the HBA was going with this type program; sited experience in Germany that was "not cast in a favorable light", and personally would like to see more detail and additional literature regarding this program. Council Member Jensen noted at this time the program was not cost effective, and with a volunteer program hopes to receive monthly revenue in the amount of \$3000 to \$4000, and already has people donating to this program, and hopes there's opportunity for grants, and sees a break-even situation in about eight to eleven years; would be using volunteer money to promote the new energy source. Mayor Weatherly weighed in on the flag of caution, as the Town would be noted for encouraging citizens to voluntarily contribute money for an efficient source of energy, not knowing enough now, thinks this deserves more study, and folks trust that the Town wouldn't ask for money if this was not a winner, if it were a private business would be great, however, he wanted more information and felt it reasonable to air on the side for caution. Council Member Jensen responded on the success of this program in California and Oregon, noting the Asheboro Plant becoming a leader and would be a guide best for people in the long run; disclosure noted it not cost effective, but so be it. Mayor Weatherly wanted more time to analyze the current state of solar energy.

Manager Radford stated there was a scheduled mailer to be included in upcoming electric bills; asking if Council wanted a short delay to see additional information that's out there, moving slower with caution. Council Member Sutton suggested someone from NC State come to speak to Council regarding this. Mayor Weatherly's response noted it where we are, an unproven science or not. Council Member Jensen didn't approve of the wait mentality, had done homework, and a thorough research; felt Apex needed to be a leader in green energy program, and had discussed first plans to locate collectors on Town's public works building, noting state government backs this type technology as well as the federal government and need to be involved in solar energy as technology is highly refined and reliable. Mayor Weatherly added that if it were a good program now, it would be good in three to four months from now, and if it's a sound science and technology, it will fly, and could take a look at it. Council Member Schulze noted this was a new territory for Apex and didn't want to be pressured. Mayor Weatherly suggested this be considered in a couple of months as an agenda item, with Council Member Jensen asking consideration within one month. Manager Radford will hold the mailer for one month and bring in a noted expert for a presentation to Council.

Council Member Sutton commented on the Town setting example for fuel consciousness, asking for reduction in vehicles sizes. Director of Fleet Facilities and Services advised the vehicles were by description for the position and over time would change; employees are asking for smaller vehicles and there are plans to include Hybrid vehicles in future budgeting plans.

Certified Industrial Sites: Council Member Schulze asked this discussion be included.

Jim Stella, Economic Development Director for the Chamber gave a presentation regarding certified sites (attached), noting shortage of certified industrial sites suitable for large-scale economic development and had caused the County to create a Certified Industrial Site Policy; if certified sites are not available there is risk of losing large economic development projects to neighboring counties or states. A certified site checklist was discussed, with Policy having been developed by WC Economic Development and having worked with County and municipal governments; various components were discussed; noted engineer does research, tests, etc. Noted: nine potential sites have been recommended by local municipalities and private property owners and County is prepared to certify these sites; noted with I-540 and with approval of the funding, provides a unique opportunity in that corridor to certify and reserve land for an industrial park. Several communities have agreed in principal to the funding up to one-half of the certification costs (outline for funding and sample costs for certified sites attached; does not take into account the cost of extending infrastructure to the site, or associated survey costs); land agreements were discussed, along with funding and discussion regarding sale of property and owner paying up front costs. Continued the supplier of wastewater treatment and water supply must certify the proposed site is within 500 feet of existing wastewater lines and that connection to these lines is technically and economically feasible (may be waived if complete). Certification schedule is attached. As municipality and county have to initiate certification process, Stella seeks direction to move forward with site certification process.

Concern was expressed by Director of Public Works Donnelly that to certify a site, sewer must be available, and Town could not certify there's sewer when there's not; however once the sewer treatment facility is done, then Town could certify. Stella noted a five year agreement to hold the land; and had been charged to look ahead and thinks Apex needs to plan ahead; noted 5 years would put Town in the 2013 range, knowing Town could not do this now. Donnelly noted completion of the facility would open up 5 mgd, however can't tell them until they are known certainties. Manager Radford began a discussion regarding the Trinity sewer, reservation of 75,000 gpd and leaving 225,000 gpd, and could consider that area which takes away from Kelly Road and noted need to stay outside the Kelly Road pumping station, and noted west of Town, north of USI was not sewer able; Donnelly noted he had not looked at anything for Trinity. Stella noted Town could opportunity for Town to apply for federal funding; letters of intent could be written at no cost and could move slowly, and was a long term project over four or five years; noted if the site is not sewered it would limit the kind of business you could get; didn't think they could certify a site until Town can provide services and maybe should concentrate on office vs. industrial. Council Member Jensen felt it an attribute to have certified industrial sites, and did note limited wastewater capacity.

Council Member Jensen expressed they had brought Jim into this to bring in business and now there's no sewer, and certification of sites was critical to his job; asked they let him do as much as possible and expressed he was embarrassed they were now stuck with this situation. Manager Radford responded he too was embarrassed three years ago over the split decision regarding the waster facility site. Stella knew this to be a long process however something he thought could be done successfully.

Mayor Weatherly noted the level of confidence in the survey completion and asked if Council wanted to consider reservation of a finite amount of sewer capacity, to be site specific. Attorney Fordham advised there may be need to investigate, and advised there should be consistency with the current ordinance, and if payment is not made for reserved capacity, might be great enough public interest to review this.

Mayor Weatherly heard support for reservation of sewer capacity and may be need to be site specific, and not for all nine sites; merger of sites was discussed and was noted the commitment would be to serve the whole certified site with services; asked if it could be a finite capacity commitment to the site; felt full support for certified sites.

Discussion continued regarding infrastructure, connection to be built by owner, federal grants and noted neighbors to the south have received whole hearted support, with Council Member Jensen feeling Town should apply every time they get a chance. Stella was willing to do all the paper work and explore every effort possible, to do this right, and proceed slowly. Manager Radford noted discussion would continue at the Economic Development Committee meeting.

Manager Radford called attention to the Long Range Capital Improvement Plan (CIP) (page 78 – 83) for: Facilities, Parks Projects, Transportation Projects, Water Projects, Sewer Projects, and Electric Projects. Directors from each department noted key projects. Noted: Peakway projects; required signal at Peakway and Bryan Drive are town streets; third point of delivery; public works facility (options to pay are uncertain).

Chief Haraway commented on the fire services having outgrown infrastructure, expressing # 5 should happen soon and would be same footprint as #4, question was how to pay for them – equipment is in place for # 4 and #5 and with ISO rate requirement – does not have efficient staffing – thinks the plan as is a good year to plan for # 5 and will bid # 4 this year. Council Member Sutton felt to build would add to personnel costs and felt the western area should build out then build a station, noting the few fire calls. Council Member Schulze felt the Town couldn't be too careful in the protection of its citizens. Discussion continued regarding Station # 1 and use of its personnel noting the current contract agreement remains in effect for ten years.

Manager Radford summarized an estimated \$200 million was needed over the next ten years for completion of the long range projects, and if they are not given resources to complete them could forget them. Council Member Sutton added without a financial plan or tax increase. Council Member Schulze commented they would have to have the plan to get there with Manager Radford stating they would hold on for the tax increase. Assistant Manager Mike Wilson noted the last tax increase was in 1985 – 1 cent that remained revenue neutral.

Manager Radford summarize he had heard Council's direction and would be presenting a draft budget in the next 60 to 90 days; noted long range funds are necessary and now had to decide how to raise the funds, either cut or fund it all would need a list to prioritize if need be.

Mayor Weatherly expressed appreciation to staff for all their input and ended the retreat at 2:45 p.m.

The Minutes and General Account of the Town Council Retreat for 2008 was submitted by the Town Clerk at their March 18, 2008 meeting for approval.

  
Town Clerk

  
Mayor

## TOWN OF APEX, NORTH CAROLINA

### MINUTES OF THE MARCH 4, 2008 MEETING

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 4, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jones, Jensen, Schulze, Sutton, and Gossage were present.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

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.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve. There were no amendments to the consent agenda and was set as presented with Mayor Weatherly calling for a motion.

**Action:** Council Member Gossage made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of February 19, 2008 Council meeting.
2. Minutes of February 19, 2008 Council Closed Session (two sets recorded separately).
3. Annexation Petition # 429, County of Wake, owners/petitioners, petitioning to annex 7.85 acres into the Town's corporate limits; property location Old Smithfield Road (SR 1172); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by clerk; and 3) Resolution to set Public Hearing for March 18, 2008.
4. Annexation # 430: Resolution Declaring Apex Town Council's Intent to Annex Town-Owned property into the Town's corporate limits: 4.143 acres (Apex Peakway Right of Way) located west off North Salem Street and setting Public Hearing for March 18, 2008.
5. Award of Contract for construction of Harwood Street / Second Street drainage improvements to recommended lowest bidder: Holmes Contracting, Inc. \$95,100.00 / construction contingency: \$15,000.00: with a total construction cost of \$110,100.00.

End of Consent Agenda



## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items, asking if there were amendments to the meeting agenda. Council Member Sutton asked to include a Closed Session item to discuss purchase of property. Council Member Jensen asked to include an Old Business item to discuss solar energy program, and asked for Council's approval to move forward or the latest in two weeks. Mayor Weatherly had understood and thought agreed to 30 days and to be placed on the March 18, 2008 agenda. Council Member Jensen debated the 30 days was not voted on and previously voted to move forward with this project; he brings more information to the table. Mayor Weatherly asked if there were a motion to include this item for consideration.

**Action:** Council Member Jones made the motion to amend the agenda to include both requests. Council Member Jensen made the second to the motion. Motion carried unanimously to amend the agenda as requested. The Agenda was set as amended.

## PUBLIC HEARINGS

**Presenter:** Dianne Khin, Director of Planning

**Public Hearing # 01 – Annexation Petition # 428**

Public hearing regarding Annexation Petition # 428, Miguel Guerra and Dawnna L. Hogan, owners/petitioners, petitioning to annex 4.05 acres into the Town's corporate limits; property located at 1012 Holt Road; possible motion to adopt an Ordinance to extend the corporate limits.

Dianne Khin, Director of Planning oriented to the site adjacent to the Salem Elementary School, and noted this a satellite annexation. The house is not occupied; owners have drilled numerous wells and request annexation to allow them to have water. Sewer availability was questioned, with Director of Public Works Donnelly responding there is no gravity sewer, noting a pump station owned by the County for the school site and a pump station located at the church across the street; would be quite a while before this lot would get sewer; town provides electricity to the area.

Mayor Weatherly opened the public hearing at 7:05 p.m. and with no one addressing this annexation petition, closed the public hearing and referred the matter to the Council.

**Action:** Council Member Gossage made the motion to approve annexation petition # 428, and adopt the ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously

**End of Public Hearings**

## OLD BUSINESS

**Presenter:** Director of Planning Dianne Khin

**Old Business # 01 – Minimum Lot Sizes**

Recommendation from Planning Committee regarding minimum lot sizes in the Low Density Residential District (LD), the Rural Residential District (RR) and the Residential Agricultural District (RA); possible motion to start the UDO amendment process through the Planning Board.

Dianne Khin, Director of Planning stated the Planning Committee had considered minimum lot sizes at the February 27, 2008 meeting and recommended to move forward with the staff proposed UDO amendments to the Planning Board for consideration at the March 10, 2008 meeting, with same scheduled to be heard by the Town Council at the March 18, 2008 meeting. Attorney Fordham advised no formal motion was necessary by Council, as the change in minimum lot size would require an ordinance amendment and would go through the regular public hearing process, requiring advertisement and public hearing before taking formal action.

**End of Old Business # 01**

**Add-On Old Business # 02 – Solar Energy**

Council Member Jensen presented information regarding Solar Electric System: energy converted from the sun into electricity. Option system spread sheets were provided as he noted the theory of solar energy was waive of the future and had been on the market for years, however still an expensive idea, but costs were coming down. Best and worst case scenarios were provided regarding pay-back of the totally voluntary program, inclusive of grants (pricing does not take into account an increase of electricity or inflation which would make pay back less) a money maker for the Town, as he foresees electricity increasing over the next ten years and almost double within 20 years. He sees this as an opportunity for Apex to move ahead in reducing carbon dioxide in the atmosphere and could be ahead to join with other municipalities for larger systems. He noted previous action taken by Council to move ahead, and stated he had received donations from his neighborhood having shown interest in this project; he asked for reaffirmation on Council's previous vote to move ahead, and wanted information to go out in utility bills, as he had already done a lot of work on this project.

Mayor Weatherly thought it was agreed to, to have a reasonable discussion and majority agrees, that with the initial consideration, it was with the text of the flyer and not the substance of the project and its validity, and when the Town encourages people to donate money, should stand behind it as a creditable project. Has no doubt the information was factual, but thinks there is another side; some literature, he's seen, says will never make money, and to make money for the town based on current technology is not true and wants a thorough discussion; he wants to come up with someone to present the literature and not wanting to rush, but to wait two weeks; he was not ready to vote now, wanting to see whether Council wanted to put the Town behind this and encourage citizens to give their money for it. He commented on things in the media about energy conservation, some are good and some are shames and doesn't think the Town should be perpetuating some things going on.

Council Member Jensen commented on success of this on a commercial scale, noting Asheboro 100 KW system in place. Council Member Schulze wanted to do his own research and added if this was such a good deal, why aren't all the major corporations putting solar panels on their roofs. Council Member Jensen commented on others moving in this direction with 9 KW, 20 KW and 30 KW systems being placed on roof tops; noted others who have been successful with this program: Wal-mart in California, however not doing it here, and some RTP buildings that are moving forward with solar projects, stated North Carolina is behind other states in solar energy, and some countries are subsidized by the government, with Europe moving ahead of others.

Manager Radford noted with the initial vote staff had moved forward with printing 14,000 flyers and are waiting to be inserted in the next upcoming utility bills, seeking direction to move forward or hold off. Council Member Sutton questioned the cost to Town, it being in the printing, knowing Council did work on the wording of the flyers. Manager Radford noted the thoughts were the cost for the flyers would come from the first month's donations to the project.

Mayor Weatherly stated they hadn't studied any substance it self, but wanted to encourage people to contribute, if the Town backs it credibility, and he's not that comfortable, after some of the things he had found, commenting they were looking at what was in front of them and not the underlying, and thinks they need two weeks, and have a thorough discussion and Council Member Jensen could bring the same data, if good now would be good then; thought Council had said 30 days, with intention on one of the next two meetings for sure.

Council Member Jensen responded that Council didn't vote on it; with two weeks fine, but were taking back their vote from a month ago and fine too. He asked Mayor Weatherly where he had gotten the information regarding Germany as he had not found anything on this. Mayor Weatherly indicated he had spoken to a fellow from Germany that stated the information to him, and he may be at a future meeting; Germany not only subsidizes but mandates, and whether it was good for the Town or not, to say it puts electricity back into the grid and at what cost, does not doubt it will generate electricity – that's a proven fact, but whether it's done efficiently is another thing; will discuss this two weeks from now. Council Member Jensen wanted a vote by Council so he would know where they were headed.

**Action:** Council Member Jones made the motion to put this item on the March 18, 2008 Council agenda, and would allow time to consider and absorb the information presented and allow for more research. Council Member Schulze agreed making the second to the motion. Motion carried unanimously.

**End of Old Business Item # 02**



**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. **Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Katy Ward is an Apex High School student, along with other students, was in attendance and working on a school project; she commented on the school system instigated freshman projects asking if Council was involved in that. Mayor Weatherly responded no that was school system initiated and adopted by the Wake County Board of Education and Council had nothing to do with that.

End of Public Forum

**NEW BUSINESS**

There were no New Business items for discussion.

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

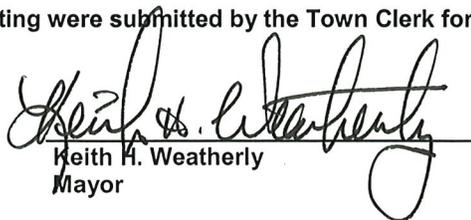
The Closed Session item for discussion was in regard to purchase of property. Mayor Weatherly called for a motion to move into Closed Session. **Action:** Council Member Gossage made the motion with Council Member Jones making the second. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Schulze made the motion to move back into Regular Session. Council Member Jones made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn at 9:45 p.m. Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 4, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their March 18, 2008 meeting.

  
Georgia A. Evangelist, MME  
Town Clerk

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, March 18, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jones, Jensen, Schulze, Sutton, and Gossage were present.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

Mayor Weatherly called the meeting to order and gave the Invocation. Scouts from Troop # 310 and # 344 led the Pledge of Allegiance. Mayor Weatherly extended a welcome to those in attendance.

### RECOGNITIONS

Council Member Mike Jones presented Parks, Recreation and Cultural Resources 2007 Volunteers of the Year Awards: Athletic Program: Donnie Olive; Non-Athletic Programs: Elaine Reeves and Scott Lassiter.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve. Attorney Fordham asked to modify language of the Peachtree Landing Encroachment Agreement, Consent 5, Page 3, deleting ...for good cause... No more amendments were made to the consent agenda and it was set as modified. Mayor Weatherly called for a motion to approve the consent agenda as modified. **Action:** Council Member Jensen made the motion to approve the consent agenda as modified. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of March 4, 2008 Council meeting.
2. Minutes and General Account of March 4, 2008 Council Closed Session.
3. Minutes and General Account of the Council's February 28 and 29, 2008 Annual Retreat.
4. Minutes and General Account of the February 27, 2008 Planning Committee meeting.
5. Budget Amendment No. 11 and Capital Projects Ordinance Amendment for acquisition of sewer easement and improvements at water treatment plant.
6. Contract approval with Joyce and Company to perform audit for fiscal year ending June 30, 2008.
7. Revert unpaid lot(s) and plot(s) on reserve in Apex Town Cemetery back to Town for resale pursuant to Section 6-63 of the Code of Ordinances.
8. **Resolution No. 08-0318-06** and Supplemental Agreement with NCDOT related to East Thompson Street authorizing installation of crossing improvements and pedestrian protective devices CSX railroad-highway grade crossing # 630-691Y; estimated Town's cost share \$22,500.



Consent Agenda continued

9. Authorize Town Manager and Town Attorney to complete negotiations for extension of November 28, 2001 Intermunicipal Agreement between Town of Apex and City of Raleigh for treatment of wastewater.
10. Peachtree Landing/the Orchards Encroachment Agreement with Apex OV, LLC for guardhouse and alternative pavement treatments in public street right-of-way and for the same to be signed by the Town Manager and recorded (modified language, recommended by Town Attorney).
11. Wake County Tax Report approved by the Board of Commissioners on March 10, 2008 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 on the following items, and with no amendments the Regular Meeting Agenda was set.

## PUBLIC HEARINGS

**Presenter: Attorney Hank Fordham**

**Public Hearing # 01 – Order for Closing a Portion of Forest Grove Drive**

**Review:** Closing implements the approved development plan; previous action by Council closed portions of Forest Grove Drive to the west of the portion under consideration.

Public hearing on and possible motion to approve an Order Closing a Portion of Forest Grove Drive.

Attorney Hank Fordham presented an Order Closing a Portion of Forest Grove Drive with certified survey of the area proposed to be closed and runs through the development called "the Groves II", located on SR1010; closing is requested due to reconfiguration of the roads, and would facilitate implementing the approved development plan. Council previously closed portions of Forest Grove Drive to the west.

Mayor Weatherly opened the public hearing at 7:10 p.m., and with no one addressing the proposed closing, closed the public hearing. Mayor Weatherly called for a motion to adopt the Order Closing a Portion of Forest Grove Drive.

**Action:** Council Member Gossage made the motion to approve the Order as presented. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

**Presenter: June Cowles, Senior Planner (Dianne Khin, Director of Planning)**

**Public Hearing # 02 – Rezone Case # 08CZ01 (Groves II PUD Amendment)**

**Review:** Planning Board met March 10, 2008 and continued this hearing to the April 14, 2008 Planning Board meeting; Applicant requested continuation to April 15, 2008 Town Council meeting.

Public hearing and possible motion regarding rezone and site plan of 0.16 acre from Residential Agricultural to Planned Unit Development Conditional Zoning (PUD-CZ) Rezone Case #08CZ01; site location north of Center Street and south of Surrey Meadows Subdivision.

Khin presented the Applicant's request to continue this hearing to April 15, 2008 meeting. Planning Board continued this hearing to their April 14, 2008 meeting. Mayor Weatherly called for a motion to continue this hearing to the April 15, 2008 meeting.

**Action:** Council Member Jones made the motion to continue this hearing to April 15, 2008 meeting. Council Member Gossage made the second to the motion. Motion carried unanimously.

Public Hearing # 02 continued to April 15, 2008 Council meeting



## Public hearings continued

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 03 – Rezone Case # 08CZ02 (Beaver Creek Crossings)**

Review: Planning Board met March 10, 2008 and unanimously recommends approval of the changes to the zoning conditions to allow CO's provided two conditions are met; staff recommends approval of the changes to the zoning conditions provided two conditions are met; staff will report.

Public hearing and possible motion regarding Conditional Zoning Case # 08CZ02, DDR/1<sup>st</sup> Carolina Crossings North, LLC, petitioner, seeking to rezone from PUD-CU to PUD-CZ (to change conditions) located north of US64 between Green Level Church Road and future I-540, containing 40.42 acres.

Khin presented the staff report which is attached and incorporated as a part of the minutes. Request was to allow Certificates of Occupancy for Phase 4 of Beaver Creek Crossings to be released once ( i ) DDR has completed construction of the approaches on Beaver Creek Commons Drive that are required by the NC Turnpike Authority for the bridge that the NCTA will build as part of the I-540 project and ( ii ) the gap funding for the Western Wake Freeway project has been approved. Beaver Creek Commons Drive ends at Circuit City and under construction to extend to Kelly Road; request is for DDR to build pieces up to the bridge and NCTA will build the bridge as part of the I-540 project.

Khin reported five new site conditions since the last rezone was approved July 10, 2006:

- 1) NC Turnpike Authority has said they have no problem with keeping the traffic signal for US64 at Green Level Church operational until the Kelly Road square loops are open (2006 was supposed to be taken away when the 540 was let an NCDOT condition);
- 2) NCTA preferred to build the Beaver Creek Commons Drive bridge over their I-540 facility as opposed to DDR building it due to the design-build process and aesthetic considerations;
- 3) Zeno Road has been paved;
- 4) A permanent traffic signal has been installed for Green Level Church Road at Creekside Landing Drive;
- 5) A temporary traffic signal has been installed at the intersection of US64 and Kelly Road.

Based on five new site conditions Staff recommends approval provided two conditions would be agreed to by developer:

- 1) Certificates of Occupancy will be released only when the Western Wake Freeway project has been let (not when gap funding is approved as was requested by the applicant).
- 2) On the US64 east approach to Green Level Church Road, the left turn lane shall be extended by the developer to 500 feet with a 200 foot deceleration lane. Planning Board met March 10, 2008 and unanimously recommends approval of the changes provided the same two conditions were met.

Russ Dalton Town Traffic Engineer answered questions regarding:

- o Lane extension which lengthens the existing turn lane in the median and what staff recommends and sees no problem from NCDOT.
- o Beaver Creek Commons Drive connection to Kelly: currently traffic from the south on Kelly Road would be able to turn onto Beaver Creek Commons Drive; without the connection would continue on Kelly to US64 making a right turn and then a left turn.

Mayor Weatherly opened the public hearing at 7:16 p.m.

Chris Erb, DDR, stated DDR was fine with pushing the date they would get their CO's contingent on the funding being approved for the contract for Western Wake Expressway project being let; thinking a three month difference when they get funding for the project and when they let the project. Asked consideration by Council pertaining to the 2<sup>nd</sup> condition, that it be only a condition if they need their CO's prior to NCTA finishing the bridge; they don't want a condition being placed on them, the bridge being finished and even though the connection to Kelly Road is complete, would still have to lengthen the turn lane on US64; understands the concern with stacking and added traffic to this intersection and safety; don't want to waste money when doesn't need to be spent.



Public hearing # 03 continued

Russell Dalton, Transportation Engineer answered questions:

- o If Kelly Road were connected by the bridge would there be a need to lengthen the left turn lane: no there would not be and was fine with that being a condition of the CO and had no issues with this. He continued when the I-540 project is complete the Green Level Church Road intersection will become a right-in and right-out and the left turn be completely removed.

With no one else addressing this request, Mayor Weatherly closed the public hearing at 7:17 p.m. and referred the matter to the Council.

**Action:** Council Member Sutton made a motion for approval with Condition # 01 as stated by staff, and with Condition # 02 as modified by DDR. Council Member Jensen made the second to the motion. With no further discussion, the motion carried unanimously.

End of Public Hearing # 03

Presenter: Brendie Vega Mkhwanazi

**Public Hearing # 04 – Unified Development Ordinance Amendments**

Review: Planning Board met March 10, 2008 and unanimously recommended denial of the proposed amendment; Applicant has asked for a continuance to the May 6, 2008 Town Council meeting.

Public hearing and possible motion regarding possible amendment to the Unified Development Ordinance: Section 7.5.4.B.4 as requested by Michael Stewart of Stewart-Proctor, PLLC to reduce the minimum lot size from one acre to 20,000 square feet to those subdivisions not requiring curbs and gutters.

Mkhwanazi stated applicant had asked for continuance to May 6, 2008 meeting: letter attached. Planning Board met March 10, 2008 and unanimously recommended denial of proposed amendment. Mayor Weatherly called for a motion to continue this hearing to May 6, 2008 Council meeting.

**Action:** Council Member Gossage made the motion to continue this hearing to May 6, 2008 meeting. Council Member Jones made the second. Motion carried unanimously.

Public Hearing # 04 continued to May 6, 2008 Council meeting

Presenter: Brendie Vega Mkhwanazi

**Public Hearing # 05 – Unified Development Ordinance Amendments**

Review: Planning Board met March 10, 2008 and unanimously recommended approval of the UDO amendments; Staff recommends approval.

Public hearing and possible motion regarding possible amendments to various sections of the Unified Development Ordinance: Mkhwanazi presented the staff report which is attached and incorporated as a part of the minutes, noting the proposed amendments and are recommended by staff for approval. Planning Board met March 10, 2008 and unanimously recommended approval of the UDO amendments. Proposed amendments are as follows:

Section 2.3.4.L: remove language for extension of PD Plans

Section 2.3.6.J.1: include Minor Site Plans in the expiration dates of Site Plans

Section 8.3.6.C: standardize private parking striping (Bojangles used yellow; white be standard color 4" wide)

Section 7.5.4.B.4: remove an incorrect reference in Standard Specifications and Standard Details.

Mayor Weatherly opened the public hearing at 7:22 p.m. and with no one addressing the proposed amendments, closed the public hearing and referred the matter to the Council.

**Action:** Council Member Gossage made the motion to approve the UDO amendments. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 05

**Public Hearings continued****Presenter: Brendie Vega Mkhwanazi****Public Hearing # 06 – Unified Development Ordinance Amendments****Review: Planning Board met March 10, 2008 and recommended approval of the UDO amendments;****Staff recommends approval.**

Public hearing and possible motion regarding possible amendments to various sections of the Unified Development Ordinance: Mkhwanazi presented the staff report which is attached and incorporated as a part of the minutes.

1. Section 3.3.1 : District Purposes, Residential Districts, to state new average lot size requirement
2. Chart 5.1.1 : insert column for average lot sizes to include average lot sizes for LD, RR, and RA Districts
3. Section 5.2.3 : include a new section explaining the calculation of Average Lot Size
4. Section 5.1.1 : Residential Districts to increase front yard setbacks for single-family homes in Low and Medium Density Districts
5. Section 7.5.5 : require a landscaped median at the main entrance of a LD or MD subdivision
6. Section 7.5.6(A): require one deciduous tree in the front yard of each residential lot, set back 5 feet from property line
7. Section 8.2.4.A.2 : reference required street yard tree section

Reported items 1, 2, and 3 are being proposed relative to average lot sizes, and recommended by the Planning Committee. Items 4, 5, 6, and 7 are being proposed relative to street trees, and recommended by the Planning Committee. Planning Board met March 10, 2008 and divided the two issues with two different votes; Average lot sizes: approval 5-2 vote (2 vote - felt developer would find a way to get around this and not worth putting in the ordinance as they could rezone to Medium Density or PUD; Council Member Sutton added if approve) and Street trees: approval 6-1 vote (1 vote - felt it was over regulating).

Mayor Weatherly stated the amendments had been considered in previous meetings, and opened the public hearing at 7:25 p.m. and with no one addressing the proposed amendments, closed the public hearing and referred the matter to the Council for formal ratification.

**Action:** Council Member Schulze made the motion to approve the proposed amendments. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 06****Presenter: Dianne Khin, Director of Planning****Public Hearing # 07 – Annexation Petition # 429**

Public hearing and possible motion regarding Annexation Petition # 429, County of Wake, owners/petitioners, petitioning to annex 7.85 acres into the Town's corporate limits; property location Old Smithfield Road (S.R. 1172).

Khin presented the petition from Wake County to come into compliance with a 1990 Annexation Agreement; There is town water at the gate house and petition is to annex the area; noted the new drive extension.

Mayor Weatherly opened the public hearing at 7:30 p.m. and with no one addressing the proposed annexation, closed the public hearing and referred the matter to the Council.

**Action:** Council Member Jones made the motion to approve Annexation Petition # 429. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 07**



**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 08 – Annexation# 430**

Public hearing and possible motion regarding Annexation # 430, Town of Apex, owners/petitioners, petitioning to annex 4.143 acres, (Apex Peakway Right of Way) into the Town's Corporate limits; property location west off North Salem Street.

Khin oriented to the Apex Peakway, recently opened from North Salem Street and crossing NC55 and over to Olive Chapel Road; section is currently in the ETJ and annexation would bring it into the corporate limits; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:30 p.m. and with no one addressing the proposed annexation, closed the public hearing and referred the matter to the Council.

**Action:** Council Member Schulze made the motion to approve the annexation. Council Member Gossage made the second. Motion s carried unanimously.

End of Public Hearing # 08

## OLD BUSINESS

**Presenter: John Brown, Director of Parks, Recreation and Cultural Resources**  
**Old Business # 01 – Recreation Fee in Lieu Study**

Brown presented highlights of the Recreation Fee in Lieu Study (presentation and Study attached).

- 1) The Town has a current service level of 1/30 acre per unit as opposed to 1/35 of an acre per unit.
- 2) Based on the two most recent attempts to purchase park land, the value of an acre is \$88,000 as opposed to the \$32, 767 per acre we currently generate from our highest per unit fee.
- 3) Consideration should be given to pro-rating land requirements across 3 housing types (Single Family Detached, Single Family Attached, and Multi-Family)
- 4) Consideration should be given to a mechanism that would allow for an adjusted fee in lieu when the fair market value of the developed land has a lower cost per acre than the proposed fee schedule.

The Parks, Recreation, and Cultural Resources Advisory Commission reviewed and discussed the final report February 27<sup>th</sup>. No formal recommendation was made due to the complexity of the issue but there was unanimous sentiment that whatever changes are adopted should: a ) be fair, and b) assure Town can purchase an amount of land comparable to what the developer would be required to donate whenever a fee in lieu is accepted rather than land dedication. (Ex: 5 acres of land is required = fee in lieu comparable to cost of 5 acres). Questions were answered and discussion followed regarding data used for the study, accepted standards, uses of fee-in-lieu money for acquisition of land, or improving land or land purchases, and possibly for use to pay bond indebtedness with Attorney Fordham advising if the bonds were being used to maintain the same level of service, probably so, and would want to research this, if used to improve the level of service, maybe not.

Mayor Weatherly thinks it is the right time to move forward and dedication requirement is based on sound principal, and level of dedication should be commensurate, cash or land, the sacrifice for the community should be equal and is not under the current ordinance and noted Council struggles as well, sometimes want to get the land real dollar value, but don't need land in a particular area, but does need park land and get less when we do the fee-in-lieu and the recommendation sounded reasonable to him.



Council Member Jones agrees from an equity standpoint and might encourage developers to find land the Town would want and may cost them less than fee-in-lieu, and may co-ordinate with other developers to put acreage together (ordinance allows) rather than paying a fee-in-lieu ( ex. Kelly Road Park). Council Member Jones noted increase would be passed through to those buying the house adding to the price; would like to see how the total fees per unit compares with other municipalities; fully supports this, but would like to see total fee structure comparisons.

Mayor Weatherly agrees and had talked about making growth pay for itself, not 100% but should be some contribution to growth, new people moving in, buying homes and moving up in the market, and incur added cost of impact fees that's being talked about; demographics of Apex clearly are young families with children who use the wide range of our parks and recreation department; he was not saying not look at the impacts, as we should know what we are doing, unintended consequences could obviously be there. Council Member Jones asked staff bring back fee structure comparisons of other towns, and saw no need for this to go to committee. It was consensus of Council to move the recommendation through the regular process for approval.

#### End of Old Business # 01

**Presenter: Council Member Jensen and Mayor Weatherly**

#### **Old Business # 02 – Solar Energy Program**

**Review: Continued from the March 4, 2008 Council meeting**

Council Member Jensen led continued discussion on a Solar Energy Program presenting information from the March 4, 2008 meeting that included payback estimates from use of various systems; noted trend in costs of standard solar panels, gave examples of other places using a solar system, noted solar is working, and noted expected high increases in electricity (presentation attached). A number of solar programs already exist in North Carolina, and with costs going down, gives opportunity for Town to be on the solar utility side and no cost to the Town, with donations through utility billing would generate some revenues to apply towards a 10 KW system; recommending Town move forward with the program.

Mayor Weatherly expressed he now knows more about this than when first discussed and if the town were going to promote the system and back the program must be honest about it and felt it premature and experimental to support the program unless there is a significant break through in technology and will be glad to revisit this in the future. He commented on the content of the brochure and further he does not agree with a mandated government program (ex. Germany) and further does not agree to encourage voluntary contributions to fund the program, but could be in the future. He presented a report from the John Locke Foundation in response to the proposed Apex Green Energy Initiative Program flyer and commented on his findings regarding this topic and expressed his feelings towards global warming theory.

Council Member Schulze from a cost standpoint was not justified and not convinced it's so good for the environment nor the way to go, and commented on his feelings on global warming. Council Member Jones shared comments and reactions to the flyer and did not want to mislead the citizens. Discussion continued on the flyer content and how green power works. Council Member Sutton felt his would be a pilot environmental program, and makes a statement and if citizens wanted to volunteer money, could do it; made comments on power from solar and windmill energy.

Mayor Weatherly responded folks could voluntarily place solar panels on their homes, with Council Member Sutton wanting to leave the decision to the folks if they wanted to participate in the program or not, Council Member Jensen was not saying mandate the program, but promote it totally voluntary. Council Member Gossage shared folks could make private investments on solar panels and participate in existing state programs in regards to green power; uncertain whether they should duplicate options; valid point that people are not necessarily motivated about cost business analysis; if Town should move forward with this program should significantly reword the flyer.

**Old Business # 02 continued**

Council Member Jensen shared his response to the John Locke report and finalized the Town should give folks opportunity to join in and with Apex being on the forefront with this program. Mayor Weatherly opened the floor for a motion if Council so chose to do so, however did not think it was the time to encourage citizens to participate in a program he didn't think the Town could vouch was creditable.

**Action:** Council Member Jensen made the motion to follow what was done six weeks ago, approve the program subject to necessary changes in the flyer to eliminate wording that seems to go against the grain. Mayor Weatherly asked if there were a second to the motion. Council Member Sutton made the second to the motion. Vote on the motion was 3 against and 2 in favor with Council Member Jensen and Sutton voting in favor. Motion failed.

**End of Old Business # 02**

**Presenter: Council Member Jensen**

**Old Business # 03 – Proposed Unified Development Ordinance Amendment**

Council Member Jensen proposed Unified Development Ordinance amendment to regulate 25-year stormwater run-off, noting forward looking developers had voluntarily done so, commenting on issues from related stormwater run-off. Mayor Weatherly noted previous discussions where staff had informed them there were no other municipalities enforcing this, perhaps one, and if voluntary wanted to do so, was fine, but concluded our current ordinance is sufficient. Council Member Jones noted Council had made changes to current specifications and standards recommended by Soil and Erosion Division that requires 25-year storm for temporary sedimentation ponds during construction when most of the problems occur not during completion of the development. Mayor Weatherly asked if there were a motion.

**Action:** Council Member Jensen made the motion to approve proposed as stated; there was no second to the motion. Motion failed due to lack of a second.

**End of Old Business # 03**

**Presenter: Attorney Hank Fordham**

**Old Business # 04 – Accepting Offer of Dedication of Public Rights-of-Way for Apex Peakway**

Attorney Fordham presented **Resolution No. 08-0318-07** Accepting Offer of Dedication of Public Rights-of-way for the Apex Peakway and other streets in and around Peakway Village. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to accept the offer of dedication. Council Member Gossage made the second. Motion carried unanimously.

**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. *Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Deborah Lanuti expressed it was a great idea to research solar energy, and displeased with the action of Council during the presentation.

Liberty Tax Preparer Waldorf, asked Council consider forgiveness and relieve them from previous assessment of fines by Town's Zoning Enforcement Officer for Liberty's violations of the Unified Development Ordinance, and pledged to continue to follow the Town's UDO permitting requirements.

Jim Oxford addressed redundancy in solar system plans, commended the reserve of sewer capacity for non-residential and asked if Town could negotiate with City of Raleigh water for sewer.

Herman Jaffee addressed conservation of electricity, reduction of coal plants by use of windmill power, keeping costs low and state utilities commission reaction, and the proposed reactors for the Harris Plant; asked Council to take action with this serious situation.

End of Public Forum

**NEW BUSINESS**

**Presenter: Tim Donnelly, Director of Public Works**

**New Business # 01 – Reserve of Sewer Capacity Non-Residential**

Donnelly presented a proposed amendment to the Town's Ordinance No. 2007-0821-11 by reserving 50,000 gallons per day in sewer capacity for non-residential growth along with the current 75,000 gallons per day in contingency sewer capacity; would be held in reserve until the Town's unreserved sewer capacity is exhausted. Town could not certify sites without water and sewer commitment; Town is running out of sewer capacity, could reserve the site with this 50,000 gallons; problem is finding a 50 acre site that has access to downgraded pump station is almost impossible and tends to develop quickly; noted Kelly Road limitations, and Trinity site building bigger pump stations, and Middle Creek no pump station support. Mayor Weatherly called for a motion on the proposed amendment.

**Action:** Council Member Sutton made the motion to amend the ordinance. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 01

**Presenter: Tim Donnelly, Director of Public Works**

**New Business # 02 – Water Contract with City of Raleigh**

Donnelly recommended Council authorize the Town Manager and Town Attorney to negotiate and execute an Agreement between Apex, Cary, and Raleigh for the purchase of water during emergency conditions. Letter received by Town Manager of Cary as they have a physical connection to Raleigh; Cary could not sell to Raleigh without Apex consent, staff agrees Apex should help Raleigh, informing Jordan Lake is at full capacity and eventually all would be back to normal from drought conditions, and has the capacity to do so. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to do so. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02



**Presenter: Tim Donnelly, Director of Public Works**  
**Current Water Restrictions**

Director of Public Works Donnelly stated currently irrigation is not allowed under the current water restrictions, and thinks at the end of the month, should consider lifting the ban on mandated water restrictions and recommends going back to the voluntary odd/even watering system, anticipating Cary doing the same and recommending effective date for change, April 1, 2008. Discussion followed regarding the current watering system in step with what the state wants, and similar restrictions with Cary as it does encourage conservation and lowers peaks and demands; Town voluntarily complied with Governor's request for conservation, and with folks continuously following what Cary and Apex does. Mayor Weatherly called for a motion regarding the recommendation.

**Action:** Council Member Sutton made the motion to repeal the ordinance that prohibits irrigations and filling of outdoor fountains and returning to the odd and even watering schedule. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

**Presenter: Mayor Weatherly**  
**New Business # 03 – Legislative Agenda**

Mayor Weatherly led discussion regarding a proposed Legislative Agenda asking reaffirmation of the following to be considered by the Wake County delegation:

- 1) Change manner in which the Wake County Board of Education is elected to provide at-large representation.
- 2) Eliminate the statewide cap on charter schools.
- 3) Legislation to require the NC Department of Transportation to investigate alternative sources of revenue to fund the I-540 Western Wake Expressway to eliminate the possibility of tolling. This review shall specifically include using funds currently designated for the Triangle light rail project.

Each item was discussed with the following amendments:

No. 1) provide at least a majority of members elected at-large. Council Member Gossage asked to add elections for school board elections to be moved from October – Odd years to November – even years. (would coincide with general elections and for higher turn-out and voter participation)

No. 2) Eliminate or increase

Council Member Sutton discussed authority to levy a transportation impact fee for county roads being turned over to the towns for maintenance, not wanting an unfunded mandate. Mayor Weatherly commented on the Metropolitan Coalition decision to turn this down as it would become our obligation with granted authority; thankfully do not have to maintain NCDOT roads; item was not added. Mayor Weatherly called for a motion.

**Action:** Council Member Gossage made the motion to adopt the proposed legislative agenda as modified. Council Member Schulze made the second to the motion. Motion carried unanimously.

**End of New Business # 03**

**End of New Business**



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

The Closed Session items for discussion were presented by Mayor Weatherly as follows, and calling for a motion to move into Closed Session at 9:40 p.m.

- 1) Receive legal advice from Town Attorney regarding condemnations
- 2) Update purchase/lease real estate
- 3) Consider condemnation for Apex sewer line, specifically over Womble and Mann properties.
- 4) Receive legal advice from the Town Attorney regarding legal matters.

**Action:** Council Member Gossage made the motion to move into closed session authorized under the General Statute. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. Mayor Weatherly called for a motion to move back into Regular Session at 10:36 p.m. **Action:** Council Member Gossage made the motion to move back into Regular Session. Council Member Schulze made the second to the motion. Motion carried unanimously.

With Council having returned to Regular Session, the following action was taken:

**Action:** Council Member Gossage made the motion to adopt Resolutions as follows. Council Member Schulze made the second to the motion. Motion carried unanimously.

- o **Resolution No. 08-0318-08** Authorizing Eminent Domain Proceedings Related to the Improvement of the Apex Sewer System.
- o **Resolution No. 08-0318-09** Authorizing Eminent Domain Proceedings Related to the Roberts Road project for Easements to Improvement of the Apex Electric System.
- o **Resolution No. 08-0318-10** Authorizing Eminent Domain Proceedings Related to the Harwood Street Project for Street Rights-of-Way, Drainage and Electric Easements to improvement of the Apex Street, Drainage and Electric Systems.
- o **Resolution No. 08-0318-11** Authorizing Eminent domain Proceedings Related to Electric Easement for the improvement of the Electric Systems. Council Member Schulze made the second to the motion. Motion carried unanimously.

**Action:** Council Member Gossage made the motion to not waive Conflict of Interest with the Law firm of Cranfill, Sumner, and Hartzog. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Regular Session

**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn the meeting of the Council at 10:40 p.m.

**Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the March 18, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their April 1, 2008 meeting.

Georgia A. Evangelist, MMC  
Town Clerk

Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 1, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

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

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

Mayor Weatherly called the meeting to order and led the Invocation.  
Presentation of Colors and Pledge of Allegiance was led by Cub Scout Pack 230  
Mayor Weatherly extended a welcome to those in attendance.

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the Council 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 to approve.

**Action:** Council Member Gossage made the motion to approve the consent agenda.  
Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of March 18, 2008 Council meeting.
2. Minutes and General Account of March 18, 2008 Council Closed Session (separate cover).
3. Ordinance Rezone # 05RZ22, Toll Brothers, Inc. petitioner, located off Roberts Road.
4. Ordinance Rezone #07RZ23, Town of Apex, petitioner, located at 205 Saunders Street.
5. Findings of Fact and Conclusions of Law and Ordinance Rezone #06CU04, Steven Kubera, petitioner, 1619 Salem Church Road.
6. Ordinance No. 08-0401-05 to repeal Ordinance No. 07-1016-13 relating to the Town's Water Conservation Ordinance.
7. Amendment No. 3 to the Water Intake Service Agreement between the Town of Cary, Town of Apex and Chatham County.
8. Amendment No. 1 to the 2006 Interlocal Agreement for the Interlocal Solid Waste Management System.
9. Authorize Mayor to execute a Certificate of Project Completion and a Grant Closeout Agreement for 2005 for EDI-Special Project Grant No. B-05-SP-NC-0861 from HUD provided for completion of the Halle Cultural Arts Center of Apex.

End of Consent Agenda



## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items with a request by Attorney Fordham to include the three additional items to the agenda, and with a request by Assistant Manager Wilson to give an update regarding CSX rail repair.

- 1) Utility Preliminary Engineering Agreement with the North Carolina Turnpike Authority Project: Western Wake Parkway ( I- 540 ). Consideration: New Business Item # 02.
- 2) Conflict of Interest: Closed Session Item # 01.
- 3) Water Sales Contract with the City of Raleigh.
- 4) Assistant Manager to report on CSX railroad crossing repair schedule requiring closing of numerous at-grade crossings through-out town.

**Action:** Council Member Gossage made the motion to add the requested items to the agenda.

Council Member Sutton made the second to the motion. Motion carried unanimously.

The agenda was set as amended.

### **Add-on No. 4 – Report on CSX repair**

Mayor Weatherly called on Assistant Manager Mike Wilson for a report on the CSX rail repairs. Wilson reported all rail at-grade crossings throughout Town, except Hunter Street crossing, would be blocked for local traffic for making necessary repairs to the rail lines, beginning Wednesday April 2 and with a schedule for completion on Thursday, April 3.

End of Report

## 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.

***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Mary Lou Jackson, White Hall Manor, shared concern with the NC55 and Salem Street Signal: timing, traffic back-up, and need for a designated left turn lane and left turn signal onto NC55. Response: Design was by NCDOT specifications, signal would be modified; Staff Engineer will contact her with accurate and full details of the project and its completion date.

End of Public Forum

**NEW BUSINESS**

Presenter: Council Member Jones

**New Business # 01 – Parks and Recreation Commission**

Council Member Mike Jones offered the following recommendation for appointments to the Parks, Recreation and Cultural Resources Advisory Commission effective with the June 25<sup>th</sup> 2008 meeting.

Appoint Elaine Reeves as Senior Citizen Representative for 3 year term to end May 2011

Reappoint Mr. Dave Duncan for 3 year term to end May 2011

Reappoint Mr. Greg Coley for 3 year term to end May 2011

Reappoint Angela Reincke as Chairperson for 1 year term to end May 2009

Reappoint Greg Coley to serve as Vice-Chairperson for 1 year term to end May 2009

**Action:** Council Member Jones made the motion to approve the appointments as recommended. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Attorney Fordham

**Add-on: New Business # 02 – Engineering Agreement with NC Turnpike Authority**

Attorney Fordham presented a Utility Preliminary Engineering Agreement, by and between the North Carolina Turnpike Authority, and the Department of Transportation, Agencies of the State of North Carolina, whereby have agreed to reimburse the Town of Apex for preliminary engineering services associated with the Western Wake Parkway (I-540) Transportation Improvement Program No. R-2635. Mike Couch Electrical Superintendant answered questions regarding the services by the department and recommended approval. Mayor Weatherly called for a motion to approve the Agreement as presented.

**Action:** Council Member Sutton made the motion to approve the Agreement. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly introduced the Closed Session items to be considered:

1) Conflict of Interest, and 2) Water Sales Contract with the City of Raleigh, and called for a motion to move into Closed Session at 7:15 p.m.

**Action:** Council Member Gossage made the motion to move into closed session for the reasons stated. Council Member Jones made the second to the motion. Motion carried unanimously. Closed session minutes are recorded separately. Mayor Weatherly called for a motion to move back into Regular Session. **Action:** Council Member Gossage made the motion to move back into Regular Session at 7:42 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session, the following action was taken:

**Action:** Council Member Jones made the motion to approve the contract between Raleigh and Cary, per the final details, with Town of Apex giving approval for Town of Cary to sell water to Raleigh. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Regular Session

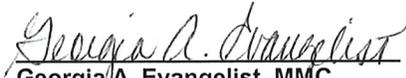


**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn the meeting of the Council at 7:43 p.m.

**Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the April 1, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their April 15, 2008 meeting.

  
Georgia A. Evangelist, MMC  
Town Clerk

  
Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 15, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.  
Council Members Jensen, Gossage, Jones, Schulze and Sutton were present.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

## COMMENCEMENT

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

## PRESENTATIONS

Mayor Weatherly presented a Proclamation: Recognition of Youth Gang Awareness and Prevention Month

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

1. Minutes of April 1, 2008 Council meeting.
2. Minutes and General Account of April 1, 2008 Council Closed Session (recorded separately).
3. Findings of Fact and Conclusions of Law and Ordinance for Rezone #08CZ02, DDR/1<sup>st</sup> Carolina Apex LLC, petitioners, for the property located at the northwest quadrant of the intersection between US64 and Green Level Church Road; approved by Council March 18, 2008.
4. Budget Ordinance Amendment and Capital Projects Ordinance Amendments: Shop with a Cop contributions; Fire Department Grant; payment of transportation development fee credit; and performing arts center renovation costs.
5. Transfer and issuance of deeds in Apex Town Cemetery pursuant to Sec. 6-12 of Apex Code of Ordinances.
6. Revert unpaid lot(s) and plot(s) on reserve in Apex Town Cemetery back to Town for resale pursuant to Sec. 6-63 of Apex Code of Ordinances.
7. Easement Deed between Salem Street promenade, LLC, Helm Builders, LLC, DTA II, LLC and Town of Apex with authority to Town Manager and Town Attorney to adjust language so long as easement is not substantially changed.
8. Declare surplus certain Town owned property located in Charleston Village known as portion of lots 324 - **Resolution No. 08-0415-12**, 326 - **Resolution No. 08-0415-13**, and 329 - **Resolution No. 08-0415-14**; Council approved plan to sell at their February 19, 2008 meeting.
9. Resolution Authorizing Sale of certain properties located in Charleston Village: portion of Lots 324 - **Resolution No. 08-0415-15**, 326 - **Resolution No. 08-0415-16** and 329 - **Resolution No. 08-0415-17**, subject to Upset Bid Procedure.



Consent Agenda continued

- 10. Amend Apex Code of Ordinances relating to Stop and Yield Intersections: Sec. 20-60.1 Traffic Schedules, Sec. 20-68(b) Stop Intersections and Sec. 20-70. Yield Intersections.
- 11. Street closing for portion of Perry Road for upcoming Apex Autozone 2<sup>nd</sup> Annual Car / Truck Show April 24, 2008.
- 12. 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 on the following items with a request by Attorney Fordham to include the two additional items to the agenda, and with a request by Mayor Weatherly to add one additional item and consideration of the following:

- NB # 03: Resolution Supporting Funding of the Construction of the Marco Street Connection From Highway 55 to Schieffelin Road.
- NB # 04: Public Sewer Easement: DDR/1ST Carolina Crossings North LLC and Town of Apex
- NB # 05: Appointments to the Wake County Growth Management Task Force

**Action:** Council Member Jones made the motion to add the requested items to the agenda. Council Member Gossage made the second to the motion. Motion carried unanimously. The agenda was set as amended.

**PUBLIC HEARINGS**

Presenter: June Cowles, Senior Planner

**Public Hearing # 01 - # 08CZ01 Groves II Land Use Amendment, PUD Rezone and Site Plan**

**Review: Planning Board meets April 14, 2008; Staff will present their recommendation at the Council Meeting; Staff recommends approval of the Land Use Amendment, Rezone and Site Plan.**

Public Hearing and possible motion regarding Groves II Land Use Amendment, Rezone and Site Plan of 0.16 acre from Medium Density Residential classification and Residential Agricultural Zoning district to High Density Residential classification and Planned Unit Development Conditional Zoning (PUD-CZ) # 08CZ01; site located north of Center Street and south of Surrey Meadows Subdivision.

Staff report was presented and incorporated as a part of the minutes and reflects an existing older home was demolished on site; site is proposed to be incorporated into Groves II PUD Plan. Applicant requests land use amendment: existing Groves II is HD Residential land use and PUD Plan has condition the density would not be more than seven units per acre. The additional 0.16 acre lot and one townhome are consistent with Groves II PUD Plan and is maximum overall gross density of 6.8 units per acre (76 townhomes on 11.18 acres). RCA is consistent with Groves II PUD Plan. Neighborhood meeting was held. Lot incorporation is consistent with Town thoroughfare plan and complies with UDO standards. Staff recommends approval of Groves II land use amendment, rezone and site plan. Planning Board met April 14, 2008 and recommends approval.

Mayor Weatherly opened the public hearing at 7:12 p.m.

Pete Clossen, Jones and Clossen Engineers, gave his support for the request. With no one else speaking, Mayor Weatherly closed the public hearing and referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the Groves II land use amendment, rezone and site plan for # 08CZ01. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01



## Public hearings continued

Presenter: Candace Davis, Transportation Planner

**Public Hearing # 02 – Bicycle, Pedestrian and Equestrian Plan Map**

Review: Planning Board meets April 14, 2008; Staff will present their recommendation at the Council Meeting;  
Staff recommends approval of the proposed.

Public Hearing and possible motion regarding proposed changes to the Bicycle, Pedestrian, and Equestrian Plan Map.

Staff presented the staff report for the proposed map amendments which is incorporated as a part of the minutes. Proposed amendments are based on modifications to the construction plan elements of the Western Wake Freeway (I-540), pedestrian signal installations, and future bicycle and pedestrian improvements funded by a Safe Routes to School Demonstration Grant. Color maps are attached. Planning Board met April 14, 2008 and voted unanimously to approve the proposed changes. Staff recommends approval. Discussion followed regarding Laura Duncan Road and US64 pedestrian underpass symbols and costs for construction of same, and the US64 Study provisions, as square loops are proposed and would provide sidewalks across US64 with push button access; discussion continued regarding Lake Pine intersection. Council Member Schulze was concerned with children crossing the intersection cutting off access to the Community Park; also concern for limited pedestrian access across US1.

Mayor Weatherly opened the public hearing at 7:20 p.m.

Tom McKay asked clarification at Apex BBQ Crossing (there will be a vehicular bridge with sidewalks; sidewalks will be placed on Apex Barbecue Road).

With no one else addressing the proposed changes, Mayor Weatherly closed the public hearing and referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the proposed changes to the Plan and map. Council Member Sutton made the second to the motion. Motion carried unanimously.

**End of Public Hearing # 02**

Presenter: Brendie VegaMkhwanazi, Principal Planner, and John Brown Director of Parks, Recreation and Cultural Resources

**Public Hearing # 03 – Unified Development Ordinance Amendment: Park/Land Dedication and Fee in Lieu**

Review: Planning Board meets April 14, 2008; Staff will present their recommendation at the Council Meeting;  
Staff recommends approval of the proposed UDO amendments.

Public hearing and possible motion regarding amendments to the Unified Development Ordinance regarding Park/Land Dedication Ordinance and fee-in-lieu computations.

Staff presented the proposed amendments with staff reports from Planning Department and Recreation Department incorporated as a part of the minutes. Comparative charts and the fee-in-lieu study are attached. Planning Board agrees fee structure should be adjusted and had initially made a motion to deny the amendments. Manager Radford and Director of Parks and Recreation Brown asked Planning Board rather than to deny, allow this item to come back to Planning Board for further consideration, as there were unanswered questions as to whether 1/30 should be across the board, or maybe not; were not convinced the three types of residences are needed; and how redevelopment is calculated. Planning Board agreed to ask Council to remand this back for further consideration. Council Member Jensen expressed concern over losing money if the amendments were not made.

Mayor Weatherly called on Lance Olive, Planning Board, for comments; stated Board was in favor of a more equitable fee-in-lieu, having expressed concern with three dwelling types and whether multi-family generates traffic that puts higher demand on parks. Attorney Fordham advised it appropriate for Council to continue the hearing to a date and time certain. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to postpone action on the proposed amendments, by remanding this matter back to Planning Board for consideration at their May 12, 2008 meeting and coming back to Council for consideration on May 20, 2008. Council Member Jones made the second to the motion. Motion carried unanimously.

Public hearing continued to May 20, 2008



Public hearings continued

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 04 – Unified Development Ordinance Amendments**

Review: Planning Board meets April 14, 2008; Staff will present their recommendation at the Council Meeting; Staff recommends approval of the proposed UDO amendments.

Public hearing and possible motion regarding amendments to the Unified Development Ordinance regarding: correction to a reference currently showing an incorrect section number in the Camouflage Stealth Tower Section; a change to the language for setback measurements to take into account property lines that extend to the center line; and a change to all references to the Town of Apex Standard Specifications and Standard Details to reflect the Spec Book's name change.

Staff report was presented for proposed amendments to the UDO and are incorporated as part of the minutes. Planning Board met April 14, 2008 and unanimously recommended approval; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:35 p.m. and with no one addressing the amendments, closed the public hearing, referring the matter to Council.

**Action:** Council Member Jones made the motion to approve the proposed amendments. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearings

**OLD BUSINESS**

There are 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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Herman Jaffee addressed a proposed plan for electric and water needs that would eliminate coal, steam and nuclear plants (attached).

Tom Colhoun, Planning Board, addressed subdivision plan submittals that follows the UDO as written at the time of submittal, and noted when UDO changes are made in the middle of the submittal process, the submittal then would have to follow new UDO rules, and he did not agree with this, and felt once a submittal is entered in by certain UDO rules, the rules should not change in mid-stream for approval of the plan.

Jim Oxford, US64 Highway, expressed the town does excellent work on big box projects, but not so good for small business, asking to work on proposed plans for small businesses, as the burden of the UDO may not be met immediately, and would afford better opportunity to small business; he supports the concept of a UDO. Council Member Sutton added a small tire business had been discouraged by upfront costs and felt small business faces too much upfront costs.

Mike Smith, E. Chatham Street presented a petition to build a skate park in town, listing reasons for the request. Jim Stella, Economic Development Director, Apex Chamber gave his support for a skate park. Mayor Weatherly response the town continues to consider a skate park and was a legitimate recreational need and a good idea.

Heather O'Sullivan-Caney, 311 Olive Street, supports a skate park in town as well. She further agrees with the comments for the submittal of plans and UDO changes not apply in mid stream. She commented on calculations for fee-in-lieu and should be supported by an appraiser, referring to school land values and worth.

End of Public Forum 7:40 p.m.

**NEW BUSINESS**

Presenter: Brendie VegaMkhwanazi, Principal Planner

**New Business # 01 – Apex Barbecue Road Property Major Subdivision**

**Review:** Planning Board meets April 14, 2008; Staff will present their recommendation at the Council Meeting; Staff recommends approval of the proposed subdivision.

Possible motion regarding Subdivision Plan approval for Apex Barbecue Road property, Jones and Cnossen, petitioner; plan includes 43 single family lots and located on Apex Barbecue Road adjacent to St. Mary Magdalene and the Green at Scott's Mill Subdivision.

Staff reported applicant requests for a variance from new UDO setback requirements in Medium Density Residential classification passed March 18, 2008 after applicant was nearly through the subdivision review process. Planning Board met April 14, 2008 and recommends approval with the UDO provision as submitted. Staff advised the plan as submitted does not currently meet the UDO requirements for 25 feet, as applied is 15 feet. Attorney Fordham advised approval of the plan should be judged on current UDO requirements at time of approval, however, Council could amend setback requirements in the UDO and would be applicable to pending applications; however should judge this request for approval based on UDO rules that are currently in place. Staff stated this had come from Planning Committee and developer was advised after Planning Board action. Council Member Sutton expressed Town should allow for contemplated UDO changes, with Council Member Jensen agreeing UDO changes should not impact pending applications. Mayor Weatherly understood consensus among Council to consider UDO amendments to protect the application in process. Attorney Fordham advised, should the plan not meet UDO requirements, it should not be approved; could ask Applicant his preference to wait on a UDO amendment. Staff added applicant could choose to change setbacks to 25 feet, however understood due to investments and layout did not choose to do so.

Pete Cnossen, Jones and Cnossen Engineers, addressed the extension of Churchwood Drive in the Green and noted advisement of the UDO changes in second TRC, and wanted to keep uniformity in the streetscape; agrees to 25 feet setback to begin work, and also to move forward with UDO amendment from 25 feet to 15 feet. Tom McKay felt it best to postpone rather than deny, and willing to accept 25 feet for approval, and would bring a request for reduction to 15 feet, as setbacks would impact lots; would be an additional 30 day delay and desires to move forward quickly; noted 15 feet consistent with build-out of Scotts Mill; noted setbacks would impact some lots; noted other compromises made in road redesign, traffic calming, RCA, buffers, promoting trees/streetscape, with money and marketing investments. Heather O'Sullivan-Caney weighed in agreeing for approval with the 25 feet setback requirement and would bring back amendments to the plan to allow for 15 feet.

Attorney Fordham advised on UDO amendment procedures; approval of 25 feet would then allow for modification to 15 feet within 30 days, and could be considered May 20, 2008; advised a mechanism is not in place to reconsider prior to approval at the next regular meeting; advised modifications to the plan would not need to go back through TRC. McKay restated his agreement for approval of 25 feet setback requirement and would return within the month for modification to 15 feet. Attorney Fordham advised a change in UDO setback for 25 feet where applicable does not violate the UDO and is acceptable; if plan meets the UDO it's not unlawful to approve it. Staff advised if applicant loses lots, its no problem. Attorney Fordham advised there is no regulatory approval for re-combination of lots.

Council Member Schulze was in favor of the amendment; Council Member Sutton felt applicant should wait and bring his request back in 30 days with the UDO change and doesn't think they should modify this verbally; Council Member Jensen approved of the 25 feet setback provision so they could proceed and then come back with the request for 15 feet. Council Member Jensen commented the fee-in-lieu should be amended so the town would not lose more money. Mayor Weatherly called for a motion.

**Action:** Council Member Jensen made the motion to approve the subdivision plan with the setback requirement for 25 feet for each lot. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 02

**New Business continued**

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources

**New Business # 02 – Parks, Recreation, Greenways and Open Space Master Plan**

**Review:** Parks and Recreation Advisory Commission met March 26, 2008 and unanimously recommends changes consistent with those proposed for the Bicycle, Pedestrian, and Equestrian Plan.

Possible motion to amend existing Parks, Recreation, Greenways and Open Space Master Plan consistent with the changes to the Bicycle, Pedestrian, and Equestrian Plan.

Brown first commented on the request for a skate park, agreeing with need and noted a large complex would be needed with most of the space for parking; has information on Cary park and will continue to look at it.

Brown noted Parks and Recreation Commission were unanimous for changes to Parks, Recreation, Greenways and Open Space Master Plan for consistency with those proposed for Bicycle, Pedestrian, and Equestrian Plan. Changes involve deletion of some crossings associated with future construction of I-540 and realignment / deletion / addition of some greenway trails in western Apex. Data supplied did not include Raleigh or Cary; will supply more data; commented on a previous study by Duncan Associates with Attorney Fordham advising data had been based on 2000 Census. Discussion continued regarding Planning Board concerns; noted pedestrian crossings under I-540 connecting to Beaver Creek Greenway; Evans Road realignment with greenway as part of the multi-use path connecting to the park; I-540 Middle Creek connection to Holly Springs Greenway; shared concern with US64 becoming a freeway and for a pedestrian crossing, and agreeing with concerns at Laura Duncan Road. Mayor Weatherly referred the matter to the Council.

**Action:** Motion by Council Member Jones and second by Council Member Gossage to amend the existing plan as shown.

**End of New Business # 02**

Presenter: Attorney Fordham

**New Business # 03 – Marco Street Connection ( Add-on )**

Attorney Fordham presented a **Resolution No. 08-0415-18** Supporting Funding for construction of Marco Street Connection from Highway 55 to Schieffelin Road (map attached). Completion would connect an important section of Apex Peakway and would relieve traffic pressure on Highway 55 and other streets (shown on the Thoroughfare and Collector Street Plan). Resolution will be sent to NC General Assembly in hopes of securing participation of NCDOT funds (\$250,000) for the project. Letter of support is attached from Representative Paul Stam to the Speaker of the House, along with a summary construction cost estimate prepared for White Oak Development and have plans for a hotel and convention center. Town will contribute \$75,000 in transportation fees collected from Holiday Inn Express for its intended purpose. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to adopt the Resolution of support. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of New Business # 03**

Presenter: Attorney Fordham

**New Business # 04 – Public Sewer Easement ( Add-on )**

Attorney Fordham presented a Public Sewer Easement between DDR/1st Carolina Crossings North, LLC and Town of Apex for White Oak Force Main project (Beckwith Farms) and given to Town without charge; public sewer easement addendum is attached as Exhibit C and noted minor differences in items 1 and 3. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to adopt the Resolution of support. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of New Business # 04**



New Business continued

Presenter: Mayor Weatherly

**New Business # 05 – WC Growth Management Task Force ( Add-on )**

Mayor Weatherly recommended participation in Wake County Growth Management Task Force and noted common objectives for development of a growth management strategy with continued shared challenges (see attached correspondence). Mayor Weatherly recommended he and Council Member Jones be appointed the two regular members to the task force and Council Member Schulze be appointed an alternate member, and referred the matter to Council.

**Action:** Council Member Jones made the motion to approve the appointments as recommended. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 05

End of New Business

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

There were no Closed Session items to be considered.

**ADJOURNMENT**

With no further business to come before Council, Mayor Weatherly called for a motion to adjourn the meeting of the Council at 8:45 p.m.

**Action:** Council Member Sutton made the motion to adjourn. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the April 15, 2008 Council meeting were submitted by the Town Clerk for approval by the Town Council at their May 6, 2008 meeting.

Georgia A. Evangelist, MMC  
Town Clerk

Keith H. Weatherly  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 6, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

### COMMENCEMENT

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

### PRESENTATIONS

Presentation by Leza Mundt, the North Carolina Safe Routes to School Coordinator: \$250,000 Safe Routes to School Demonstration Grant award check was given to Town of Apex and Olive Chapel Elementary School.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve. Council Member Sutton asked items # 5 and # 9 be considered separately (New Business); and Closed Session additional item regarding property acquisition. **Action:** Council Member Sutton made the motion to modify the agenda as requested. Council Member Jones made the second to the motion. Motion carried unanimously. **Action:** Council Member Gossage made the motion to approve the consent agenda as modified. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes of April 15, 2008 Council meeting.
2. Findings of Fact and Conclusions of Law and Ordinance for Rezone #08CZ01, JVI Construction II, petitioners, for property located at 1308 Forest Grove Road; approved by Council April 15, 2008.
3. Annexation petition #431 Salem Baptist Church, Apex NC, and located on 1200 Salem Church Road, containing 22.834 acres including right of way; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for May 20, 2008.
4. Annexation petition #432 White Oak Foundation, Inc. and site location, US Highway # 1 and Schieffelin Road, containing 11.096 acres; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for May 20, 2008.
5. Budget Ordinance Amendment and Capital Projects Ordinance Amendments: Seagroves Farm Park, Nature Park, Apex Peakway, and Lufkin Road (**New Business # 2**).
6. Declare Surplus Town owned property located in Charleston Village known as a portion of Lot 325.

RESOLUTION NO. 08-0506-19



7. Resolution authorizing sale of certain property located in Charleston village, known as a portion of Lot 325, subject to the Upset Bid Procedure. *RESOLUTION No. 08-0506-20.*
8. Right of Way Encroachment Agreement Shea Homes, LLC. Creekside Landing Drive.
9. Proposed reimbursement Agreement with Apex First Development LLC, for design/construction of Ambergate Station Roadway (**New Business # 3**).
10. Yard Waste Service Agreement Renewal Griffin Brothers.
11. Street Closures for Monarchs in Motion 5K Walk/Run sponsored by St. Mary Magdalene Church and coordinated through Apex Police Department for Saturday May 17, 2008 beginning at 8:00 a.m.

End of Consent Agenda

## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. The agenda was set as amended with additional Closed Session item: Property acquisition.

## PUBLIC HEARINGS

Presenter: Brendie Vega Mkhwanazi

### **Public Hearing # 01 – Unified Development Ordinance Amendment**

*(APPLICANT REQUESTS CONTINUANCE TO JUNE 3, 2008)*

Review: Planning Board met March 10, 2008 and unanimously recommended denial of the proposed amendment; Council honored Applicant's request for continuance to the May 6, 2008 Town Council meeting.

Public hearing and possible motion regarding possible amendment to the Unified Development Ordinance: Section 7.5.4.B.4 as requested by Michael Stewart of Stewart-Proctor, PLLC to reduce the minimum lot size from one acre to 20,000 square feet to those subdivisions not requiring curbs and gutters. Staff stated the applicant had requested continuance of this hearing to June 3, 2008.

**Action:** Council Member Schulze made the motion to continue this hearing to June 3, 2008. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearings

## OLD BUSINESS

Presenter: Russell Dalton, Transportation Engineer, Construction Management

### **Old Business # 01 – US64 Phase 2A Corridor Study**

Staff gave a slide presentation regarding the US 64 Phase 2A Corridor Study; a 19-mile section of US64 between US1/US64 interchange in Cary to US64/US64 Business split on the east side of Pittsboro (Exit 385). Purpose of study: to develop a design and operations plan that identifies a series of long and short term transportation and land development strategies to transition this section of US64 from its current condition to a freeway and expressway (identified in the newsletter) and to be implemented over an extended period of time and to be developed with public input, continuous consultation of the Corridor Development Team. Key points: NCDOT is not allowing anymore at-grade access points along this corridor; notice has been given by NCDOT for upcoming Public Workshop to be held May 19 at 5:00 p.m. at Apex High School; Public Officials Workshop is scheduled for 3:00 p.m. May 19 with public notice posted by the Town Clerk (Study and copies of the newsletter are attached). Study should be completed April 2009. Existing corridor and preliminary alternatives and estimates are outlined in the study which led to discussion regarding better alternatives that were closer to Council's desire for expressway to begin west of I-540. Problematic Alternatives were noted as they relate to Town's Land Use Plan in the NC751 and New Hill Road areas. 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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Herman Jaffee presented alternative methods for production of affordable electricity through wind farms that could be built on the NC coasts; asked Council to contact our State Representatives, Utilities Commission, and to review costs factors as they are passed to the ratepayers.

End of Public Forum

## NEW BUSINESS

Presenter: Lee Smiley, Director of Finance

### **New Business # 01 – Financial Summary**

Staff reviewed the 3<sup>rd</sup> quarter FY07-08 Financial Summary. Benchmark for 3<sup>rd</sup> Quarter performance is 75% for revenues and expenditures; significant variances were noted. Financial forecast is good. Report was well received by Council.

End of New Business # 01

### **New Business # 02 formerly Consent Agenda #05**

Budget Ordinance Amendment and Capital Projects Ordinance Amendments: Seagroves Farm Park, Nature Park, Apex Peakway, and Lufkin Road.

Council Member Sutton asked for discussion regarding this item. Kent Jackson Director of Construction Management gave an update regarding street projects, noting the two recent completed sections of the Peakway had experienced significant cost overruns – the south section required more soil removal than expected and the north section had greater than estimated costs for easement acquisition. Staff is close to bidding out the work for improvements to Lufkin Road. All street projects are being financed through the bonds expected to be sold next year. Attorney Fordham advised that he anticipates substantial settlements for easement acquisition regarding Lufkin Road improvements. Note: contractor is insured and could file claim regarding the cost overages. Council was in agreement to file claim against the contractor's insurance company to recoup some of the soil removal costs.

**Action:** Council Member Sutton made the motion to approve the Budget Ordinance Amendments and Capital Projects Ordinance Amendments for Seagroves Farm Park, Nature Park, Apex Peakway and Lufkin Road. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02 formerly Consent Agenda # 05

**New Business # 03 (formerly Consent Agenda # 9)**

Proposed Reimbursement Agreement with Apex First Development LLC, for design/construction of Ambergate Station Roadway.

Council Member Sutton asked for discussion regarding this item as he didn't recall it being part of the funding. Kent Jackson Director of Construction Management gave an explanation of the project costs as shown in the exhibit and the history of the roadway construction as it relates to the design, engineering, and construction of the roadway that would provide access to Thales Academy and as shown in the Thales Academy construction plans and described within the agreement.

The roadway would also provide access to the parcel for a public park to be known as Hunter Street Park, and also would provide secondary access to the Villages of Apex development. Apex First Development will act as contracting party with roadway costs being paid for by Thales Academy, Town of Apex and Apex First Development. Estimated costs shown in Exhibit A: \$1,111,540. Public funding for this project includes transportation development fee credits and water and sewer acreage fee credits (water and sewer construction only). Notes: Agreement to build the road was agreed to on staff level, and as shown on the Thales Academy construction plans, and with access designed as right-in and right-out.

Further concern and discussion evolved around the utilization of parkland for the road and its impacts on the park. Director John Brown gave the history of the approved park design by the Parks and Recreation Advisory Commission, and noted land acquisition for the park satisfies the recreation fees (fee-in lieu to build park up to \$400,000, and to be bid), and further the roadway was needed due to the timing of the bridge and Parkway construction.

Discussion continued as the roadway construction related to: potentially use of parking at Town Hall on weekends for park traffic, proportionate road costs and the supporting school portion, as well as the payment percentages by the three parties; extension of water/sewer to the Academy. School exemptions: Attorney Fordham advised there was a local bill that outlined qualifying criteria whereby schools do not have to pay fees. Questions related to the public use of funds further led Attorney Fordham to advise Apex First Development had managed the design from the beginning and the proposed agreement was a natural extension of this, and lawful to have such an agreement with contracting parties, and with the questions and concerns related to the fees/credits, felt it may be appropriate to make revisions within the agreement, and suggested it be pulled from the agenda to further re-examine costs, fees due, and decision regarding the bidding. Council further asked staff be prepared to discuss the access points of the roadway, and wanted to also see the design of the park (original and present). This item will return to Council for further discussion.

**End of New Business**

**WORKSESSION**

**There were no Worksession items for discussion.**



**CLOSED SESSION**

Mayor Weatherly presented the Closed Session items for consideration by Council, with **Attorney Fordham** asking to add litigation to the Closed Session:

- o Land acquisition electric substation site
- o property acquisition
- o litigation

**Action:** Council Member Schulze made a motion to move into Closed Session at 8:30 p.m. for the stated items including litigation. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Sutton made the motion to move back into Regular Session at 9:10 p.m. Motion carried unanimously. With Council having moved back in Regular Session the following action was taken:

**Action:** Council Member Schulze made the motion to negotiate the purchase of the Richardson property for Point of Distribution # 3. Council Member Jones made the second to the motion. Motion carried unanimously.

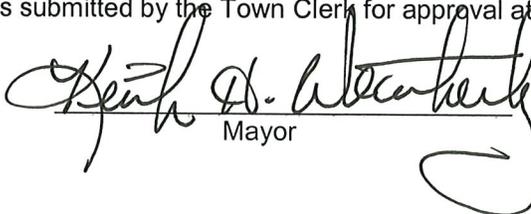
End of Regular Session

**ADJOURNMENT**

With no further business to come before the Council, there was a motion by Council Member Gossage to adjourn at 9:11 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the May 6, 2008 meeting was submitted by the Town Clerk for approval at their May 20, 2008 meeting.

  
Town Clerk

  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, May 20, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

**Council:**  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

## COMMENCEMENT

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

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Jones made the motion to approve the consent agenda.

Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of the May 6, 2008 Council meeting.
2. Minutes and General Account of the May 6, 2008 Council Closed Session (minutes under separate cover).
3. Minutes and General Account of the April 24, 2008 Personnel Committee meeting.
4. Annexation Petition # 433, Matthew C. and Jennifer P. Cook, owners/petitioners petitioning to annex 1.904 acres into the Town's corporate limits; property location 2128 Kelly Road; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for June 3, 2008.
5. Findings of Fact and Conclusions of Law and Ordinance for Rezone #07CZ08, Clark Land Company, petitioner, for property located at E. Williams Street and Bobbitt Road; approved by Council May 1, 2008.
6. Changes to existing operating guidelines, rules, and regulations for Halle Cultural Arts Center of Apex.
7. Personnel Committee recommendation for adoption of Position Classification Plan for FY08-09.
8. Declare Surplus Town owned property located in Charleston Village known as a portion of Lot 328.
9. Resolution authorizing sale of certain property located in Charleston Village, known as a portion of Lot 328, subject to the Upset Bid Procedure.
10. Wake County Board of Commissioners approved and accepted 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 on the following items. Attorney Fordham asked to add a closed session to receive legal advice regarding an easement agreement.

**Action:** Council Member Gossage made the motion to add closed session. Council Member Jensen made the second to the motion. Motion carried unanimously. The meeting agenda was set as amended with a Closed Session.

## PUBLIC HEARINGS

**Presenter:** Brendie Vega Mkhwanazi

### **Public Hearing # 01 – Unified Development Ordinance Amendment**

**Review:** Planning Board met May 12, 2008 and unanimously recommended approval; staff recommends approval. Public hearing and possible motion regarding possible amendments to the Unified Development Ordinance: Section 13.15(b)(2) Transportation Development Fees updated from a 32' street to a 35' street to be in compliance with the Spec Book and an amendment to Section 5.1.1 Residential Districts to make front-yard setbacks amended on March 18, 2008 applicable to projects submitted after April 1, 2008.

Staff presented the amendments; attached staff report incorporated as a part of the minutes. Mayor Weatherly opened the public hearing at 7:02 p.m. and with no one speaking, closed the public hearing. Attorney Fordham in response to concern for setting precedent in the future in regards to front-yard setbacks, advised he did not think Council was setting a legal precedent; his understanding of the general issue is that pending applications should be subject to changes of the UDO before Council; this being a question of general concern, were not acting for the benefit of any one party, simply applying good public policy principals to this situation and doesn't cause legal concern; every time a UDO amendment is made, the decision has to be made whether it ought to apply or not apply to pending applications. Mayor Weatherly called for a motion.

**Action:** Council Member Sutton made the motion to approve the UDO amendments by adopting the Ordinance. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

**Presenter:** Brendie Vega Mkhwanazi, Principal Planner

### **Public Hearing # 02 – Unified Development Ordinance Amendment: Park Dedication and Fee-in-Lieu**

**Review:** Planning Board met April 14, 2008 and requested Council remand item to them for further consideration, and Planning Board on May 12, 2008 unanimously recommended approval; staff recommends approval. Public hearing and possible motion regarding amendments to the Unified Development Ordinance regarding Park Dedication and fee-in-lieu computations.

Staff presented the amendments; attached staff report is incorporated as a part of the minutes. Mayor Weatherly opened the public hearing at 7:05 p.m. and with no one speaking, closed the public hearing. Mayor Weatherly called for a motion.

**Action:** Council Member Schulze made the motion to approve the UDO amendments by adopting the Ordinance. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02



Public hearings continued

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 03 – Annexation Petition # 431**

Public hearing and possible motion regarding Annexation Petition #431 Salem Baptist Church, Apex NC, owner/petitioner, petitioning to annex 22.834 acres including right of way into the Town's corporate limits, and located on 1200 Salem Church Road.

Staff presented the annexation petition, orienting to the site; Church has property proposed for development and in need of water and sewer. Mayor Weatherly opened the public hearing at 7:10 p.m. Tom Colhoun spoke in favor of the annexation and noted proposed plans for a multi-purpose facility and in need of water and sewer. (Note: a minor site plan does not come before Council). Mayor Weatherly closed the public hearing and called for a motion.

**Action:** Council Member Gossage made the motion to approve the annexation petition by adopting the Ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 04 – Annexation Petition # 432**

Public hearing and possible motion regarding Annexation Petition #432 White Oak Foundation, Inc., owners/petitioners, petitioning to annex 11.096 acres into the Town's corporate limits, and located on US Highway # 1 and Schieffelin Road.

Staff presented the annexation petition, orienting to the site (proposed Fairfield Inn and Suites) and in need of water and sewer. Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one speaking to the petition, closed the public hearing and called for a motion.

**Action:** Council Member Jensen made the motion to approve the annexation petition by adopting the Ordinance to extend the corporate limits. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

End of Public Hearings

**OLD BUSINESS**

Presenter: Kent Jackson, Director Construction Management

**Old Business # 01 – Road Construction Agreement**

Staff presented the following: 1) revised Road Construction Reimbursement Agreement with Apex First Development and a follow up of May 6 Council meeting; 2) consideration whether or not to add Ambergate Station Road to Town's Capital Improvement Plan; 3) Ordinance to implement the local act General Assembly act for Town to enter into developer reimbursement agreements with private parties.

Note: Adoption of the Ordinance is required before exercising the authority in the local act. Ambergate Station Road, as a requirement for entering into a reimbursement agreement for an item of infrastructure, must be included in the Town's Capital Improvement Plan (CIP) per the local act.

Council discussed: Access to town's park site and roadway construction, cost share associated with different sections are attached: Town, Apex First Development and Thales Academy and based on work done on each property; costs for park section would be more heavy duty (design, construction, and erosion control); project costs attached; construction would work under one contract all at one time.

**Continued Old Business # 01**

Attorney Fordham presented the Ordinance to implement enabling authority provided by the local act codified in NCGS 160A-499 by specifically authorizing developer reimbursement agreements; Ordinance was noted as broad by Council Member Sutton, with Attorney advising it was in the public's best interest to be able to enter into developer agreements, and noted shall not be valid until considered and approved by Council.

**Action:** Council Member Jones made the motion to adopt the Ordinance as described by the Town Attorney. Council Member Schulze made the second to the motion. Motion carried unanimously.

Attorney Fordham advised to give authority for the developer agreement, the road infrastructure has to be on Town's CIP. Jackson stated all subdivision streets are not necessarily on the CIP and if not on an original plan, developer would be responsible for those improvements, however due to park site access this road must be on Town's CIP (Ambergate Station Road). Attorney Fordham advised there is nothing to prevent any road in Apex from being placed on the CIP, if Council chose to do so.

Russell Dalton, Town Transportation Engineer, stated staff opinion is the road would give traffic relief to other north/south corridors, and was of value to the overall corridor plan with extension from Hunter Street to US64 north; recommends right-in and right-out access for this road, noting other roads within the village, and giving consideration to all land uses that could draw additional traffic onto this road; he saw no significant impact on Hunter Street and Salem Street as there would be no conflicting left turn movements. Discussion evolved around maximum cul-de-sac length (500'), the estimated cul-de-sac length into the park site 900 to 1800 feet; Council Member Jones had participated in an emergency train derailment drill that focused on this location and expressed in regard to the distance to the park site, didn't want to see a park and school between two railroad tracks with only one way in or out.

**Action:** Council Member Schulze made the motion to add Ambergate Station Road to the Town's CIP. Council Member Jones made the second to the motion. Motion carried unanimously.

Attorney Fordham noted a public bid provision in the Road Construction Agreement for the project to be publicly bid; 30 days was decided upon with applicant agreeing; it was noted an extension could be granted if need be; specifics about drawings and additional language will be finalized by Town Attorney Fordham and Director of Construction Management Jackson.

**Action:** Council Member Jones made the motion to approve the Road Construction Reimbursement Agreement and to add the 30 day time period for public bid. Council Member Gossage made the second to the motion. Motion carried unanimously. *10/21/08 minutes files*

Jackson in response to comments on accuracy of cost share, and construction of 12" waterline from Hunter Street north through Villages of Apex, explained 12" line was consistent with town's water system and referred to as feeder mains, and establishes grid for the water system and discussed associated costs for line construction; 8" line would impact water pressure and water quality. Council Member Jensen thought this to be oversizing of lines and a rush for the school, however approves the school and agreement to get things done and get money back thinking this was an incentive package to keep in mind when certifying sites; agreed with staff recommendation for a 12" line and according to staff was not an optimal choice, and did not want to micro-manage staff decision. Council Member Sutton stated it appeared to be a rush deal; encouraged staff to take time when reviewing agreements; commended staff for reducing the associated \$1.1 million cost from the last proposed agreement and saving Town \$315. Council Member Gossage thought division of cost share was wise, and did not want to micro-manage staff decision. Council Member Jones thought an 8" line would be satisfactory for park and school alone; staff confirmed it would be sufficient, however 12" line will serve the Villages of Apex, park site and school site, and basically needed for points north.

**End of Old Business # 01**



**Old Business continued**

**Presenter:** Bruce Radford, Town Manager

**Old Business # 02 – Contract: ModSpace**

Possible motion to approve contract with ModSpace for installation of modular office units with standby power for Telecommunications group at police station.

Marty Mitchell Director of Facility and Fleet Services recommended approval of a contract with ModSpace for modular office units, and approval for standby power generator Agreement with Gregory Poole; 15 month contracts will be in place for telecommunications as construction/renovation of Police Station will begin and did not want any delay that would impact critical telecommunications schedules; estimated costs \$1280 monthly for modular units and \$1416 monthly for generator backup. Discussion: project schedule, massive move of the department, and total project cost; bid opening scheduled for July 16, 2008 and subject to final approval and award.

**Action:** Council Member Schulze made the motion to approve both contract with ModSpace and Agreement with Gregory Poole. 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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Herman Jaffee recommended town look into possibility of solar hot water units that would hold down electric demand and costs during peak periods.

Tom Colhoun, Planning Board ETJ member, expressed concern by west corridor folks that NCDOT was not listening to their concerns related to access they will no longer have with the proposed changes to the US64 Corridor and the impact this will have on Apex and areas important to the Town; asked Council to address this matter in more detail.

Response: NCDOT public workshops were held; Western Area Plan Study will address concerns and study results of would make a statement to NCDOT (presentation: Planning Board June 9 and Council June 17). TCC is currently addressing this and felt it appropriate to take a position at this time; Director of Planning suggested CAMPO may want to issue a statement and thinking it best to act at TAC level; noted Mr. Ed Johnson was not in favor of NCDOT plans, however more in favor of town plans. Manager Radford suggested a resolution be prepared as an official statement to NCDOT for consideration at the June 3 Council meeting, that would assure proposed is not in conflict with Town's Transportation Plan; noted the west corridor folks are not pleased with the existing plan as it does not show at-grade access, and a foregone conclusion these folks want easy access. Staff will contact Chatham County in regard to their position (freeway plans west of I-540 with Apex position no freeway east of I-540).

**End of Public Forum**

**NEW BUSINESS**

Presenter: Brendie VegaMkhwanazi, Principal Planner

**New Business # 01 – Subdivision Plan Amendment Apex Barbecue Road**

**Review:** Applicant requests this amendment from the approved April 15, 2008 decision by Council for 25'; Planning Board met May 12, 2008 and unanimously recommended approval; staff recommends approval.

Possible motion regarding Subdivision Plan Amendment for Apex Barbecue Road property adjacent to St. Mary Magdalene and the Green at Scott's Mill Subdivision; Jones and Crossen, petitioners, seeking amendment to the subdivision plan that would allow applicant to amend their front yard setback to 15' instead of currently approved 25'. Staff presented the amendment, and attached report incorporated as a part of the minutes. With no discussion, Mayor Weatherly called for a motion.

**Action:** Council Member Jensen made the motion to approve the amendment. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of New Business # 01**

Presenter: Lee Smiley, Director of Finance

**New Business # 02 – General Obligation Parks and Recreational Facilities Bonds**

Mayor Weatherly presented a Resolution providing for issuance of \$2,500,000 of general obligation parks and recreational facilities bonds. Director of Finance recommended adoption of the Resolution for related bond sale set for June 3, 2008 (\$2 million for the Nature Park, and \$500,000 for the Greenway for Beckett Crossing to Beaver Creek Commons). A future bond presentation was discussed. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to adopt the Resolution. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

Presenter: John Brown Director of Parks, Recreation and Cultural Resources and Peter LaPiana, Director of Information Services

**New Business # 03 – Agreement: Bronto, Inc. and PR&CR**

Possible motion to ratify and approve agreement(s) with Bronto Inc. to handle mass e-mail communication and distribution for programs and activities associated with Apex PR&CR, Halle Cultural Arts Center, and other events as deemed appropriate by the Town. Agreements contain indemnity clauses in terms and conditions Bronto will not consent to delete.

Staff presented an Agreement that would assist the Town from running the risk of having town bulk e-mailed tagged as spam, and being black-listed as it would cause significant disruption of e-mail service. This service would save Apex mail server from increased workload and keep optimized mail flow, keep lists clean and ensure delivery and remove addresses no longer valid. Agreement contains an indemnity clause in terms and conditions and Bronto will not consent to delete. Attorney Fordham noted it policy to bring indemnities before Council for approval.

**Action:** Council Member Sutton made the motion to approve the Agreement with the indemnity clause. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of New Business # 03**

**End of New Business**



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly called for a Closed Session to receive legal advice from Town Attorney regarding easement issues.

**Action:** Council Member Gossage made the motion to move into closed session at 8:22 p.m. for the purpose stated. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. Council Member Jensen made the motion to move into Regular Session at 8:34 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

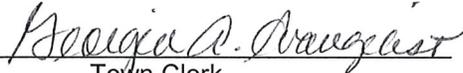
With Council having moved back into Regular Session, the following action was taken:

**Action:** Council Member Schulze made the motion to approve a public sewer easement agreement with DDR / 1<sup>st</sup> Carolina Crossings North LLC. Council Member Sutton made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before Council, there was a motion by Council Member Gossage to adjourn at 8:35 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

The minutes of May 20, 2008 meeting was submitted by the Town Clerk for approval at the June 3, 2008 meeting.

  
Town Clerk

  
Mayor

# TOWN OF APEX, NORTH CAROLINA

## Minutes and General Account

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 3, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

### COMMENCEMENT

Mayor Weatherly called the meeting to order, led the Pledge of Allegiance, and extended a welcome to those in attendance. Prayer was led by Council Member Jones.

### PRESENTATION

Presentation and recognition of the Halle Cultural Arts Center of Apex for outstanding design: "Merit Award" from the Local Chapter of the American Institute of Architects presented by Project Manager Fred Belledin on behalf of Clearscapes, Inc.

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Jensen made the motion to pull item no. 9 for separate consideration.

Attorney Fordham advised discussion should occur in Closed Session. Council Member Gossage made the second to the motion for this item to be discussed in Closed Session. Motion carried unanimously.

**Action:** Council Member Schulze made the motion to approve the consent agenda items 1-8 as modified. Council Member Sutton made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of May 20, 2008 Council meeting.
2. Minutes and General Account of May 20, 2008 Council Closed Session (minutes: separate cover).
3. Budget Ordinance Amendment and Capital Projects Ordinance Amendments for recreation bond projects, transportation fee credit, reimbursement for road widening, and acquisition of sewer easement.
4. Annexation Petition # 434, Jennie S. Brown Revocable Trust, owners/petitioners petitioning to annex 1.025 acres into the Town's corporate limits; property location 2709 Evans Road;  
1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and  
3) Resolution setting date of public hearing for June 17, 2008.

**Consent Agenda continued**

5. Annexation Petition # 435, Apex Investors, LLC, owners/petitioners petitioning to annex 3.98 acres into the Town's corporate limits; property location 1538 E. Williams Street; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for June 17, 2008.
6. Annexation Petition # 436, Robert V. and Linda W. Annunziata, owners/petitioners petitioning to annex 1.611 acres into the Town's corporate limits; property location 7124 Apex Barbecue Road; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for June 17, 2008.
7. Contract renewal to cover basic historic preservation and Small Town Character Overlay District consultation services: Capital Area Preservation, Inc. \$16,500 FY2008-2009 Budget.
8. Authorize participation in Low Flood Study of Cape Fear River downstream of the B. Everett Jordan Dam; Apex estimated share of the study \$5,000 with billing to occur through Cary/Apex Water plant operational agreement.
9. **Resolution No. 08-0603-23** authorizing condemnations related to the Old US1-New Hill Holleman Road water line and electric line extension project (discussed in Closed Session).

End of Consent Agenda

**REGULAR MEETING AGENDA**

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action on the following items. Manager Radford stated Old Business Item No. 2 will be continued to the June 17, 2008 Council meeting. Manager Radford requested addition of item to consider cancellation of Council's first meeting in July, 2008. **Action:** Council Member Jones made the motion to amend the agenda. Council Member Gossage made the second to the motion. Motion carried unanimously. The Regular Meeting agenda was set with the amendments.

**PUBLIC HEARINGS****Public Hearing # 01 – FY 2008-09 Annual Budget Hearing**

Public hearing regarding the FY2008-09 Annual Budget was opened by Mayor Weatherly at 7:05 p.m. Requesting funding: Lynn Pierce, Civic Education Kids Voting: \$1,700, and Brenda Steen, President, Apex Chamber of Commerce: Economic Development \$83,200 Mayor Weatherly closed the public hearing, and noted the Manger is presenting a balanced budget; both requests have been included.  
End of Public Hearing

Presenter: Dianne Khin, Director of Planning

**(APPLICANT HAS REQUESTED APPLICATION BE WITHDRAWN – NO ACTION REQUIRED)**

**Public Hearing # 02 – Unified Development Ordinance Amendment**

Review: Planning Board met March 10, 2008 and unanimously recommended denial of proposed amendment; March 18, 2008 Council honored Applicant's request for continuance to May 6, 2008 Council meeting; May 6, 2008 Council honored Applicant's request for continuance to June 3, 2008 Council meeting.  
Public hearing and possible motion regarding possible amendment to the Unified Development Ordinance: Section 7.5.4.B.4 as requested by Michael Stewart of Stewart-Proctor, PLLC to reduce the minimum lot size from one acre to 20,000 square feet to those subdivisions not requiring curbs and gutters.



Public hearings continued

**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 03 – Annexation Petition # 433**

Public hearing and possible motion regarding Annexation Petition # 433 Matthew C. and Jennifer P. Cooke, owner/petitioner, petitioning to annex 1.904 acres into the Town's corporate limits, and located on 2128 Kelly Road.

Director of Planning presented this annexation petition and oriented to the site and located in the Apex ETJ and zoned Rural Residential; applicant is building a home and wants to connect to town water. Mayor Weatherly opened the public hearing at 7:13 p.m. and with no one addressing this annexation petition, closed the public hearing.

**Action:** Council Member Gossage made the motion to approve Annexation Petition # 433 by adopting an Ordinance to extend the corporate limits. Council member Jensen made the second to the motion. Motion carried unanimously.  
**End of Public Hearing # 03**

End of Public Hearings

**OLD BUSINESS**

**Presenter: Dianne Khin, Director of Planning**  
**Old Business # 1 – Resolution to Support Adopted Apex Transportation Plan**

Director of Planning presented for adoption, **Resolution No. 08-0603-24** to Support Adopted Apex Transportation Plan in NCDOT Transportation's US64 Phase 2A Study that will be sent to NCDOT; study was presented to Council May 6, 2008.

**Action:** Council Member Sutton made the motion to adopt the Resolution. Council Member Schulze made the second to the motion. Motion carried unanimously.  
**End of Old Business # 01**

**Presenter: Bruce Radford, Town Manager will introduce this item**  
**(THIS ITEM WILL BE CONTINUED TO JUNE 17, 2008 COUNCIL MEETING)**

**Old Business # 02 – Drainage Issue**

Chris and Barbara Williams will address a drainage issue at 714 Cash Street

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.  
***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Dan Brubaker, Old US1 New Hill, asked Council to consider re-location of proposed utility lines (water and electric) that will serve fire Station and sewer plant; rather than condemn, asked to look at re-alignment to save trees on site; has not received clear answers on the proposed alignment.

John Moore, New Hill, asked delay in condemnation to minimize damage and associated personal costs with the project; asked town consider paying damages inflicted upon the Brubaker property.

End of Public Forum

**NEW BUSINESS**

**Presenter:** Director of Public Works Tim Donnelly

**New Business # 01 – Amend Water Purchase Agreement**

Director of Public Works offered an Interlocal Water Purchase Agreement Amendment between Town of Cary and City of Durham; extension of present contract through December; Cary has right to sale from their allocation. Attorney Fordham offered a revised amendment that includes the language that was included in an agreement between Cary and Raleigh.

**Action:** Council Member Jones recommended approval of the Agreement as amended by the Town Attorney. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business #01

**Presenter:** Manager Bruce Radford

**New Business # 02 – Add-on Cancellation of Council Meeting**

Manager Radford noted it traditional to cancel the Council's first meeting in July once the budget is approved, and allows for vacations, and at this point there are no items for the July 1 meeting.

**Action:** Council Member Sutton made the motion to cancel the July 1, 2008 Council meeting. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 02

End of New Business

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss Consent Agenda # 9: legal advice regarding **Resolution No. 08-0603-23** authorizing condemnations related to the Old US1-New Hill Holleman Road water line and electric line extension project. **Action:** Council Member Schulze made the motion to move into Closed Session for the purpose stated at 7:30 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes are recorded separately. **Action:** Council Member Sutton made the motion to move into Regular Session at 7:55 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

With Council having moved back into Regular Session, the following action was taken:

**Action:** Council Member Jones made the motion to adopt a Resolution authorizing condemnations related to the New Hill waterline and electric line extension project. Council Member Gossage made the second to the motion. Council Member Jones recognized staff had researched all options and alternatives, with some options best for some and not best for others, but the best put before them. Council Member Jensen did not have a full understanding of the projects, and preferred to hold off for two weeks or a month, look at the maps and get a better feel for costs and future development plans. Mayor Weatherly commented on the history of the project, expressing reluctance to use the power of condemnation, and only when necessary for conclusion of public projects for public good. Vote on the motion was 4 in favor and 1 opposed (Council Member Jensen casting the opposing vote). Motion carried.

End of Regular Session

**WORKSESSION**

Presenter: Ed Burchins, Springsted Inc.

**Worksession # 01 - Apex Benchmarking Study**

Ed Burchins, Vice President, Client Representative introduced the Apex Benchmarking Study prepared by Springsted Inc., Chesapeake, Va. and under contract with North Carolina League of Municipalities and identified areas where Town is most efficient and effective and opportunities for improvement regarding expenditures and staffing levels compared to area towns; presented study methodology, demographic comparisons, findings and recommendations. Stronger points: Police and Fire were shown as less than average in personnel and response time (fire station # 4 will bring average up and help with response time). No data was available for Planning and Zoning and Code Enforcement (staff should keep internal data). Study reflects where Apex is in time and recommends utilizing benchmark measures, maintaining data and update annually (study is attached).

End of Worksession #01

Presenter: Bruce Radford, Town Manager

**Worksession # 02 - FY 2008- 2009 Annual Budget**

Manager Radford presented FY2008-2009 Annual Budget and delivered the Budget Message. Highlights: recommended tax rate \$0.34 per \$100 value - will provide minimal requirements for current operations and suggested consideration for an additional \$0.02 to the tax rate that would generate an additional \$800,000 future capital reserve funds dedicated to property acquisition, road improvements, fire stations, and other projects that had been discussed for which there is no present financing plan (Manager stated he did not see support for an additional \$0.02 tax increase); 21 personnel positions are recommended (necessity for one additional code enforcement position will be determined in ninety days); proposed 3% cost of living and merit program for eligible employees; 3.9% increase in health insurance costs (co-pays and deductibles will not change); rate adjustments for the following services are summarized in the budget message: yard waste, solid waste and recycling, water/sewer, and electric.

Discussion: proposed electric rate adjustment -all base charges are proposed to increase by \$1.00 and all retail rates proposed to increase by 6% in anticipation of a 9% wholesale rate increase from NCEMPA in October. Assistant Manager reported on anticipated rate increase and reason to adjust the rates July 1, 2008 with council concern preferring to not increase electric rates July 1, 2008, and making adjustment with notification of an approved increase (decision: no adjustment will be made until notification of the rate increase and will return to Council prior to adjustment).

Finance Director presented and answered questions regarding projected revenues; noted current bond rating; noted parks and recreation bonds sold with 3.93% interest rate. Manager Radford presented and answered questions regarding projected expenditures; discussion: debt service requirement and financial planning for police and fire services (benchmark study clearly defined less than average in these areas when compared to other municipalities in personnel and response time); debt service for recreation; note: general fund increase is largely due to amount of debt service for stated departments; note: Council had approved all proposed expansion projects; noted: special appropriations.

Construction Management Director presented and answered questions regarding proposed development fee adjustments; scenarios showed total project costs with current fee schedule and proposed fee adjustments – fees almost doubled; showed comparisons to other towns (note: proposed fees are not included in proposed budget).

Manager Radford will respond to unanswered questions prior to June 17, 2008 when the Budget Ordinance will be presented for adoption.

End of Worksession



**ADJOURNMENT**

With no further business to come before the Council, the meeting stood adjourned at 10:05 p.m.

The minutes of June 3, 2008 meeting were submitted by the Town Clerk for approval at the June 17, 2008 meeting.

*Georgia A. Branglist*  
Town Clerk

*Keith A. Brantley*  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**Minutes and General Account**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, June 17, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Present: Council Member Jones, Schulze, and Sutton

Absent: Council Member Jensen and Gossage

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

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

**PRESENTATION**

Mary Silliman, Robo Cats, Apex Middle School: Tree Planting Program. It was recommend by Town Manger group should team with other programs of the same nature for this purpose.

Mr. Jim Stella, Economic Development Director, Apex Chamber of Commerce: Economic Development Report (attached)

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Jones made the motion to approve the consent agenda. Council Member Schulze made the second to the motion. Motion carried unanimously to approve the items on the Consent Agenda with a vote of 3 - 0.

**Note:** This was an introduction and first reading of Ordinances included in the consent agenda.

**Note:** Consent Agenda Item No. 3 will be presented for second reading and ratification at a Special Meeting June 18, 2008.

**Note:** Consent Agenda Items No. 10 and 11 will be presented for second reading and ratification at the July 15, 2008 regular meeting.



## Consent Agenda continued

1. Minutes and General Account of June 3, 2008 Council meeting.
2. Minutes and General Account of June 3, 2008 Council Closed Session (minutes: separate cover).
3. Budget Ordinance Amendment and Capital Projects Ordinance Amendments for electric power purchases, Regional WWTP, recreation bond issuance costs, and Ambergate Station Road.
4. Ordinance rezone #07RZ23, Town of Apex, petitioner; property at 205 Saunders Street (approved October 2, 2007).
5. Findings of Fact & Conclusions of Law & Special Use Permit #07SUP03, MC Precast, 520 Pristine Water Drive (approved December 18, 2007).
6. Findings of Fact and Conclusions of Law and Ordinance Rezone # 98CU14, Paton/Zucchini, petitioner; property located at Lufkin Road south of US #1 at Ten-Ten Road (approved October 20, 1998).
7. **Resolution No. 08-0617- 25** authorizing Wake County Revenue Director to collect taxes on behalf of Town of Apex.
8. **Resolution No. 08-0617- 26** supporting fire department's application for funding through Staffing for Adequate Fire and Emergency Response Grant (SAFER).
9. Agreement with Etix to handle on-line ticketing of events associated with the Halle Cultural Arts Center and authorization for Town Manager to execute same.
10. Amend Traffic Schedule I and II: **Ordinance No. 08-0617-10** Referenced Sec 20-60.1 Traffic Schedules: Sec 20-68. Subsection (b) Stop Intersections & Sec. 20-70. Yield Intersections; to be kept on file by the Town Clerk.
11. Personnel Committee recommendation to approve Motor Vehicle Operator's License and Insurance Requirements policy, and the **Ordinance No. 08-0617- 11** establishing a division of Auxiliary Police Officers.
12. Wake County Board of Commissioners approved and accepted Tax Report for Town of Apex.

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda will be set prior to taking action on the following items. Attorney Fordham asked to amend the Regular Meeting Agenda by adding two items:

- 1) Resolution Accepting Dedication of Public Right-of-Way for Apex Peakway in or near Whitehall Village (NB # 5)
- 2) Administrative Services Agreement with Blue Cross and Blue Shield (indemnification provision) ( NB # 6)

**Action:** Council Member Sutton made the motion to amend the regular meeting agenda as requested. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 - 0. The Regular Meeting Agenda was set as amended.

**PUBLIC HEARINGS**

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 01 - # 08CZ06**

Review: Planning Board met June 9, 2008 and voted 3-2 to not recommend approval; Staff does not recommend approval.

Public Hearing and possible motion regarding Rezone Case # 08CZ06 Walter and Laura Hollingsworth, owners, seeking to rezone from B1 Neighborhood Business and STC Small Town Character Overlay District to PC-CZ Planned Commercial Conditional Zoning district and removal from STC Small Town Character Overlay District for property located at 400 N. Salem Street containing .66 acres.

Khin oriented to the location of the property; applicant request to rezone as stated and to be removed from STC Overlay District; proposed uses and conditions are stated in the staff report and incorporated as a part of the official minutes; a neighborhood meeting was held, and applicant agreed to additional conditions stated in the report.



Planning Board met June 9, 2008 and with a vote of 3 – 2, to not recommend approval (motion was to approve with conditions, motion failed). Staff does not recommend approval of the conditional zoning and removal of property from STC Overlay District for reasons stated on the report. Exhibit A: Email received regarding this item from neighboring resident.

Mayor Weatherly opened the Public hearing at 7:25 p.m.

Speaking in favor: Walter Hollingsworth, property owner, gave background history of the property and previous uses of the building, same type uses since the purchase; has lost rent and can't rent as is; property would not be vacant if it were not for the Town having changed the zoning to STC Overlay District; noted proximity of a car lot and service station to this property; proposes car sales and will be built to look historic; noted existing property uses in proximity of the lot; has not received complaints regarding proposed use; noted higher traffic volume and noise where detail, auto, tire service and gas station, and saw this as a better use than what's there.

No one spoke in opposition.

Khin noted grandfathering of area car dealership - had been the same use without interruption; in this case the property had been vacant for six months and had never been car sales. STC Overlay Plan was adopted 2006 and does not allow auto uses however, retail sales is allowed. Notices were given to neighboring residents, and neighborhood meeting was held April 28, 2008 with 6 attendees. Applicant agreed to pave sales lot and agreed to the hours noted Monday through Saturday and closed on Sundays. Mr. Pritchard had expressed concern with use as auto dealership, suggesting other uses (restaurant, coffee shop, etc.) and property should remain in the STC Overlay District (Exhibit A).

Council Member Schulze recognizes the building as a service station; STC Overlay District Plan is set for good reason and does not feel there should be an exception; noise was a concern. Council Member Jones sees small towns with car sales lots; property has been a gas station since he was a child; home owners had never complained; car sales lot would be less erroneous than restaurant and service station activities if esthetics could be worked out. Khin noted one of the uses: Automotive service station. Hollingsworth noted there were no plans for a service station if rezoning is approved, neither he nor the neighbors wanted a service station at this location; any auto detailing would be inside. Hollingsworth offered to remove this use from the conditions. Attorney Fordham advised it permissible to take off the condition and if it were added to a written document. Mayor Weatherly commented the ownership could change and the use would be whatever was permissible. Hollingsworth noted he bought the gas station to use in that manner and didn't know about the change to STC Overlay District; the proposed would be nice and would eliminate noise. Council Member Sutton felt the property should remain in the STC Overlay District.

Mayor Weatherly closed the public hearing and called for a motion. Attorney Fordham advised any action taken would not be final until the 2<sup>nd</sup> reading; 1<sup>st</sup> reading requires a 2/3 super majority vote, however could defer and vote with all Council Members present, then the 1<sup>st</sup> read would be the vote of the actual membership.

**Action:** Council Member Schulze made the motion to defer action for a full membership of the Council. Attorney Fordham advised continuation should be to a date certain. Mayor Weatherly on advice from the Town Attorney reopened the public hearing at 7:42 p.m. and discussed with the applicant a reasonable date for continuation, it was agreed upon as August 19<sup>th</sup>, 2008, and was included as a part of the motion. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 - 0 to continue the public hearing to August 19, 2008.

Public Hearing #08CZ06 continued to August 19, 2008



Public hearings continued

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 02- Western Area Plan**

Review: Planning Board met June 9, 2008 and unanimously recommended approval; Staff recommends approval.

Public Hearing and possible motion regarding Western Area Plan prepared by Land Design: encompasses area west of the future I-540, south of Green Level West Road, one (1) mile south along US #1 Highway to the Chatham County Line.

Staff recognized members who had served on the Western Area Plan Advisory Committee and introduced representatives from Land Design for presentation of the Draft Plan and to present recommendations regarding the study. Planning Board unanimously recommended approval of the Western Area Plan at the June 9, 2008 meeting. Staff recommends approval.

Land Design presented the draft plan, reviewed the planning process, noted public meetings and open house was held. Representatives stated the purpose of the plan and expanded on the plan framework elements used to guide the creation evaluation of plan alternatives: land use, economic development, transportation, utilities and public safety, environment, and parks and cultural resources (defined on the draft plan). Reviewed existing conditions and gave plan results: balance of land uses, define where growth should go, and preservation of rural character; presented future land use plan map features defining the 7 study areas and recommendations for each. Proposed amendment includes a notation by Town of Cary regarding development while maintaining rural character of Green Level Church Road and Green Level West Road; proposed text changes in two areas.

Mayor Weatherly opened the public hearing at 8:00 p.m.

Bent Durer, Surveyor Holly Springs, represented Feebe Jenks, property owner Jenks Road and US64; expressed low density residential zonings is not appropriate for this property as there is no water and sewer available and not suitable for septic system; request appropriate zoning to construct mini-storage with application in process; there are no dwellings on the property and not perceivable; noted zoning to the south was O&I and to the north Low Density Residential; convenient store is zoned Commercial and does not see the ten acres out of place if zoned commercial; called attention to the impact on residential development from noise, and did not see this viable as low density residential and suggested light industrial or commercial for the best use.

Gary Atkins, representing Feebe Jenks, property owner Jenks Road and US64, stated a proposal was offered from Progress Energy to park equipment on this land, and with property taxes on the increase needed to be able to accept the proposal and Town says they can't park equipment there. He asked Council to push ahead to allow for this request, honoring a special use permit, as the property was not suitable for anything else since there was no perk site, and with I-540 in progress, not much future for this property, asking concessions be made and do something now to honor this request. Khin noted these folks were advised to comment as this bears on future land use plan amendments in this area. Mayor Weatherly responded Council was bound to follow the lawful process regarding their request.

Jim Goldston, property owner, commended the draft plan and would like to see more retail/commercial.

Doug Jacobs, Fuquay, represented three property owners: commended the plan overall, commenting on Kelly and I-540 area and that mixed use and commercial makes sense for this area, and requested consideration of a mix of O&I and commercial with possibly some residential. He noted some positive study areas over the 2025 LUP (Friendship and New Hill). He agreed it makes sense to have areas north and west of Jenks zoned Commercial or O&I and looking at the NCDOT US64 corridor plans, as Low Density Residential would back to US64 and was not desirable; noted development would increase traffic and would like to see New Hill, Olive Chapel and Holleman Roads four-lane while keeping the beauty of it. Quoted Planning Board Member Calhoun – "Western Area Plan was not etched in stone, it's on paper".

Rick Blevins, US64/Kelly Road, property owner gave support to the Western Area Plan.



Public hearing #02 continued  
Western Area Plan

No one else addressed the plan. Council Member Jones in looking at Jenks/US64 area did not want to see homes backing up to the corridor; for at least a portion would like to see all four quadrants a similar use. Khin reported low density residential was suggested for this area because the land is in a critical watershed and was environmentally sensitive, and didn't want to change the boundary; noted public had been very vocal during the process and had believed from Wake County the area west of Jenks Road would remain low density residential, noting this density also allows for schools. Khin had no problem with it up to Wimberly being O&I. Council Members Jones and Schulze felt it was as high a density as it should go. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion for approval of the Western Area Plan and with the amendment for area north and west of Jenks Road and US64 to Wimberly Road, changed from low density residential to O & I. Council Member Schulze made the second to the motion. Motion carried with a vote of 3 - 0.

End of Public Hearing # 02

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 03– Unified Development Ordinance Amendments**

Review: Planning Board met June 9, 2008 and unanimously recommended approval with changes in text; staff recommends approval as presented. Public hearing and possible motion regarding amendments to the Unified Development Ordinance regarding: Section 7.2.1.L.3 - Traffic calming policy; Section 11.5.3 - Language allowing officials other than Planning Director to issue Notice of Violation and Correction Orders; Section 4.4.5.G.13 - Allow up to 900 square feet for self-service storage bays; Section 5.2.2.B.4.a - Language for garages with alley access which is already part of the text in Figure 5.2.2.B.4.

Staff presented the UDO amendments with staff report attached and incorporated as a part of the official minutes. Planning Board met June 9, 2008 and unanimously recommended approval of the amendments with changes to the text as stated on the cover sheet; changes are reflective in the staff report. Proposed amendments will not impact any of the projects currently in the process of development review. Staff recommends approval of the amendments as presented.

Mayor Weatherly opened the public hearing at 8:25 p.m. and with no one addressing the amendments, closed the hearing and referred the matter to the Council. Attorney Fordham advised on the 2/3 super majority rule for approval and advised Council could delay action until July 15, 2008 meeting. Mayor Weatherly having received advice from the Town Attorney reopened the public hearing at 8:25 p.m. and called for a motion to continue the hearing to a date certain.

**Action:** Council Member Jones made the motion to continue the public hearing to July 15, 2008. Council Member Schulze made the second to the motion. Motion carried 3 - 0.

Public hearing # 03 continued to July 15, 2008.

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 04 -Annexation Petition # 434**

Public hearing and possible motion regarding Annexation Petition # 434, Jennie S. Brown Revocable Trust, owners/petitioners petitioning to annex 1.025 acres into the Town's corporate limits; property location 2709 Evans Road.

Khin presented the request for annexation and oriented to the site, noting surrounding properties of Bella Serra and this property would increase this subdivision, and zoning would be rural residential.

Mayor Weatherly opened the public hearing at 8:26 p.m. and with no one addressing the annexation, closed the public hearing and called for a motion.

**Action:** Council Member Sutton made the motion to adopt the ordinance to approve Annexation Petition # 434. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 3 - 0.

End of Public hearing # 04



**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 05- Annexation Petition # 435**

Public hearing and possible motion regarding Annexation Petition # 435, Apex Investors, LLC, owners/petitioners petitioning to annex 3.98 acres into the Town's corporate limits; property location 1538 E. Williams Street.

Khin presented the request for annexation and oriented to the site, noting the Light Industrial Zoning and proposed Apex Mini Storage, and to receive construction plan approval must be annexed.

Mayor Weatherly opened the public hearing at 8:27 p.m. and with no one addressing the annexation, closed the public hearing and called for a motion.

**Action:** Council Member Jones made the motion to adopt the ordinance to approve Annexation Petition # 435. Council Member Sutton made the second to the motion. Motion carried unanimously with a vote of 3 - 0.

End of Public hearing # 05

**Presenter: Dianne Khin, Director of Planning**  
**Public Hearing # 06- Annexation Petition # 436**

Public hearing and possible motion regarding Annexation Petition # 436, Robert V. and Linda W. Annunziata, owners/petitioners petitioning to annex 1.611 acres into the Town's corporate limits; property location 7124 Apex Barbecue Road; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for June 17, 2008.

Khin presented the request for annexation and oriented to the site, noting well failure and in need of town water and requiring annexation.

Mayor Weatherly opened the public hearing at 8:28 p.m. and with no one addressing the annexation, closed the public hearing and called for a motion.

**Action:** Council Member Schulze made the motion to adopt the ordinance to approve Annexation Petition # 436. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 - 0.

End of Public hearing # 06

End of Public Hearings

**OLD BUSINESS**

**Presenter: Bruce Radford, Town Manager**  
**Old Business # 01 - Drainage Issue**

Chris and Barbara Williams will address a drainage issue at 714 Cash Street: Property owners were not present so this item was pulled from the agenda with no action taken.

End of Old Business # 01



Old Business continued

Presenter: Attorney Hank Fordham

**Old Business # 02 – Amendment to Cary/Durham Water Purchase Agreement**

At its June 3<sup>rd</sup> meeting the Apex Town Council approved an Amendment No. 1 to Agreement between Cary and Durham Establishing Conditions for the Purchase of Water and Amending Former Agreement ("Amendment No. 1"). Town of Cary has made a request that Amendment No. 1 be revised; possible motion to approve a revised Amendment No. 1.

Attorney Fordham presented the revised amendment to the Agreement as stated. Attorney Fordham had asked the indemnity provision be removed, however was not critical as this amendment was for a short term to December 31, 2008; change in request for specific language had been approved. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to approve the revised amendment as presented. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 3 - 0.

End of Old Business # 02

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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Ambassador J. C. Knowles presented Mayor Weatherly with a black top hat – necessary attire for all public appearances.

End of Public Forum 8:32 p.m.

**NEW BUSINESS**

Presenter: Bruce Radford, Town Manager

**New Business # 01 – Parking in Central Business District**

Joe Foresta, property owner, requested to address the Council regarding parking in the Central Business District, i.e. 200 block of North Salem Street; presentation noted accessible parking area, with area in question being offered to town, would call for the demolition of the Wachovia Bank Building and connection of the parking lot to the existing public lot, and proposing need for public parking, present and future, in the N. Salem, Saunders and Templeton Streets areas. Noted millions of dollars spent in the 200 block and continuing to grow, having lost 11 parking spots with restriping and turn lane and had to revert to rear for parking; noted with police expansion the public parking area would be utilized by police and reason for a much needed plan to incorporate short term needs with long term goals for expansion of downtown parking and for potential parks. He asked this or existing plan be considered.

Manager Radford noted scenario's considered and associated costs with each; shared his understanding of an uncomfortable situation, however, options are limited; noted this an excellent plan however an expensive plan, \$1 million plus, and considering the FY 2008-09 budget is asking for a 3 cent tax increase, and with a tight budget could not afford the proposed at this time; consideration will be given to future measures to minimize impact on the downtown parking lot. Mayor Weatherly noted town continues to look at opportunities and appreciates the presentation, however there were conflicting needs, and could only do what is budgeted.



**New Business continued**  
**Parking in Central Business District**

Council Member Sutton stated Town had created the parking problem and bad timing for businesses there, and Town should seek short/long term solution; confirmed there were no plans for the building to be torn down at this time. The timing of the police construction and lease of mobile units were discussed. Council Member Sutton felt consideration should be given to lease the land or consider other option for parking behind the Cultural Arts Center, and should make an investment to do it; can't afford for businesses to go out because of the cut in parking. Mayor Weatherly noted it unfortunate, as a temporary use was not a good option, however was not the end of the discussion, noting tax increase was to afford police and fire protection and needs of the citizens. Foresta stated consideration may want to be given to phasing plan for a portion at the time. Mayor Weatherly stated any options could be discussed and if Town could afford it could do so. Council Member Schulze addressed Seaboard Street parking options, however not viable at this time. Council Member Jones would like to look at solutions and options even if it were on the other side of the street to minimize impacts on customer parking.

**End of New Business # 01**

**Presenter: Tim Donnelly Director of Public Works**

**New Business # 02 – Sewer Easement and Sewer Line Proposed Abandonment**

Stewart Jones of Jones and Crossen proposed abandonment of a sewer easement and sewer line at the proposed Apex Flex Space Site, located at 1019 Investment Blvd. as the Town's line is in conflict with proposed development. Letter of request attached. Most impacted by the line is Calvary Chapel, and believe their property better served by a sewer line that currently ends on their property; understands a future sewer through their property will be required to serve up stream lots. Public Works and Utilities Department has met with the developer and representatives of the Church and they have no objection to proposed abandonment. Mayor Weatherly called for a motion.

**Action:** Council Member Jones made the motion to approve the request for abandonment of the sewer easement and line. Council Member Sutton made the second to the motion. Motion carried unanimously 3 - 0.

**End of New Business # 02**

**Presenter: Michael Deaton, Environmental Services**

**New Business # 03 – Discharge Detection and Elimination Ordinance**

Possible motion to adopt an Illicit Discharge Detection and Elimination **Ordinance # 08-0617-09**.

Presentation of the defined Ordinance was presented by Mike Deaton, Environmental Services, pursuant to Town's NPDES Phase II permit effective July 1, 2005. Town is required to establish an effective discharge program and maintain legal authority to prohibit and enforce upon illicit discharges and connections; failure to comply constitutes violation of the Clean Water Act and is grounds for enforcement action. Town staff recommends adoption of the proposed IDDE Ordinance.

Mayor Weatherly called for a motion.

**Action:** Council Member Sutton made the motion to adopt the Ordinance as presented. Council Member Jones made the second to the motion. Motion carried unanimously 3 - 0. (Ordinance will be presented for second reading July 15, 2008 ( 2/3 super majority ruling for first reading of the ordinance).

**End of New Business # 03**



New Business continued

Presenter: Bruce Radford, Town Manager

**New Business # 04 – FY 2008-09 Annual Budget Ordinance**

Review: June 3, 2008 Budget hearing and presentation of FY2008-09 Annual Budget

Manager Radford presented for approval the FY 2008-09 Annual Budget **Ordinance # 08-0617- 08**. (Ordinance will be presented for second reading June 18, 2008 ( 2/3 super majority ruling for first reading of the ordinance).

Mayor Weatherly commented public safety could not incur without a tax increase, noting Apex in past years having the lowest tax rate in Wake County and with increase in tax rate will still be so and would meet the needs for essential services with Police and Fire. Council Member Jones noted employees do more with less than any municipality and the benchmark study confirmed that, and also provided staff is most effective and efficient when it comes to spending tax payer's money. Council Member Sutton expressed regret citizens will face a tax increase, those with fixed income and continuing to see economic increases, notes the additional 21 people that will be hired this year and with debt service he desires to see projects staggered in the future.

Manager Radford answered questions received from Council regarding TRACS rate, anticipated electric rate increase 12-14% August 1, and increase in construction fees included in fee schedules, however not in revenues; will report back to Council in six months on the fee schedule increases and the impact to the development community. As this is the first reading of the Budget Ordinance and due to the 2/3 super majority vote rule, a Special meeting will be held Wednesday, June 18, 2008 for the second reading of the Budget Ordinance and formal ratification.

Mayor Weatherly noted full Council had given unanimous support for both police and fire projects, and in budget discussions there was no suggestion by any member of Council to cut items. Council Member Jones noted time to catch up and if it were not from the debt service from the two projects would not be doing them; other projects are on going; citizens had asked for and need these services; Council doesn't enjoy or take lightly tax increases and this being his 19<sup>th</sup> Budget since serving on the Council, and last tax increase goes back before his time, and now needed.

End of New Business # 04

**New Business - Add on # 05**

Attorney Fordham asked consideration to adopt a Resolution No. 08-0617-27 Accepting Dedication of Public Right-of-Way for Apex Peakway in or Near Whitehall Village.

**Action:** Council Member Sutton made the motion to adopt the Resolution as presented. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 – 0.

End of New Business # 05

**New Business - Add on # 06**

Attorney Fordham presented a draft Administrative Services Agreement between Town of Apex and Blue Cross and Blue Shield informing Council of the indemnification provision, trying to expand to include negligence, and limiting the indemnification provision. Town will be self-insured and BCBS will be the administrative services for the program. Asked consideration to approve the draft Agreement and will continue negotiations, otherwise the contract would move forward as is.

**Action:** Council Member Jones made the motion to approve the Agreement with the Attorney continuing negotiations. Council Member Sutton made the second to the motion. Motion carried unanimously with a vote of 3 – 0.

End of New Business # 06

End of New Business



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session for the following purposes:

1. Routine personnel matter related to Assistant Town Attorney.
2. To receive legal advice about and discuss potential condemnation litigation.
3. To receive legal advice about and discuss potential litigation.

**Action:** Council Member Jones made the motion to move into Closed Session at 9:30 p.m. for the purposes stated. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 3 – 0. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to go out of Closed Session at 10:21. Council Member Sutton made the second to the motion.

With Council having moved back into Regular Session the following action was taken:

**Action:** Council Member Schulze made the motion to approve a Unilateral Offer and Agreement to Pay Condemnation Expenses and Costs associated with the Mann Property. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 – 0.

**Action:** Council Member Sutton made the motion to approve a 3% Cost of Living Adjustment for the Assistant Town Attorney. Council Member Jones made the second to the motion. Motion carried unanimously with a vote of 3 – 0.

**End of Regular Session**

**ADJOURNMENT**

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

**Action:** Council Member Jones made the motion to adjourn at 10:25 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously with a vote of 3 – 0.

The minutes of June 17, 2008 meeting were submitted by the Town Clerk for approval at the July 15, 2008 Council meeting.

*Georgia A. D'Angelo*  
Town Clerk

*Heidi A. Weatherly*  
Mayor

# APEX TOWN COUNCIL

## SPECIAL MEETING

June 18, 2008

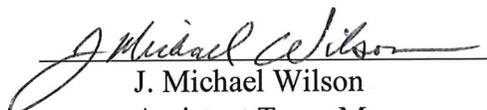
### *MINUTES AND GENERAL ACCOUNT*

Mayor Keith Weatherly called to order a Special Meeting of the Apex Town Council at 6:01 P.M. on Wednesday, June 18, 2008, in the Council Chambers of the Apex Town Hall. The Special Meeting had been called for the purpose of considering the adoption of Budget Ordinance amendments, Capital Projects Ordinance amendments, and the Annual Budget Ordinance. Along with the Mayor, Council Members Jones, Schulze, and Sutton were present. Council Members Jensen and Gossage were not present. Town Manager Bruce Radford and Assistant Town Manager Mike Wilson were in attendance for the Special Meeting.

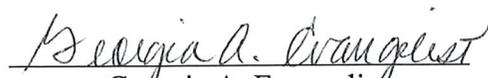
The Mayor began the meeting by directing the Council's attention to the first item on the agenda and asked if there were any motions to be offered. Council Member Jones made a motion, seconded by Council Member Schulze, to approve *Budget Ordinance Amendment No. 15* [Attached], the *Capital Project Ordinance Amendment – Regional WWTP Capital Project Fund* [Attached], the *Capital Project Ordinance Amendment – Recreation Projects Fund* [Attached], and the *Capital Project Ordinance Amendment – Street Improvements Project Fund* [Attached]. The motion passed.

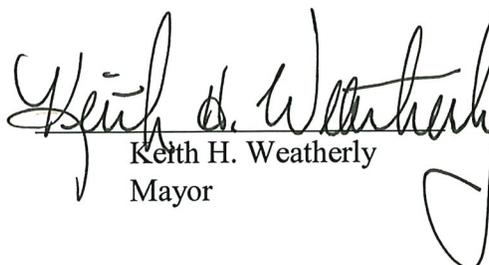
For the second and final agenda item, the Mayor again asked if there were any motions to be offered. Accordingly, Council Member Sutton made a motion, seconded by Council Member Schulze, to approve Ordinance No. 08-0617-08, the *FY2008-09 Annual Budget Ordinance* [Attached]. The motion passed.

With all business complete, a motion was made by Council Member Schulze and seconded by Council Member Jones to adjourn. The motion passed and the Special Meeting was adjourned at 6:04 P.M.

  
J. Michael Wilson  
Assistant Town Manager

The above minutes were approved on the 15<sup>th</sup> day of July, 2008.

  
Georgia A. Evangelist  
Town Clerk

  
Keith H. Weatherly  
Mayor

## TOWN OF APEX, NORTH CAROLINA

July 15, 2008 Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, July 15, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

### COMMENCEMENT

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

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Jones made the motion to approve the consent agenda. Council Member Jensen made the second to the motion. Motion carried unanimously to approve the Consent Agenda.

1. Minutes and General Account of June 17, 2008 Council meeting.
2. Minutes and General Account of June 17, 2008 Council Closed Session (separate cover).
3. Minutes and General Account of June 18, 2008 Council Special meeting.
4. Annexation Petition # 437: Brian C. Yates, owner/petitioner, petitioning to annex 6.143 acres including NCDOT right-of-way into the Town's corporate limits and located on 2524 and 2528 Schieffelin Road (SR 1306); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for August 5, 2008.
5. Annexation Petition # 438: Jeanne S. Hack, owner/petitioner, petitioning to annex 0.359 acres into the Town's corporate limits and located on 1051 S. Hughes Street (SR 1158); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for August 5, 2008.
6. **Resolution No. 08-0715-28** Declare Surplus certain Town owned property located in Charleston Village known as a portion of Lot 327.
7. **Resolution No. 08-0715- 29** authorizing sale of certain property located in Charleston Village known as a portion of Lot 327, subject to Upset Bid Procedures.



## Consent Agenda continued

8. Consent to waive conflict of interest of the law firm of Womble, Carlyle, Sandridge & Rice with respect to contract negotiations with Elster Electricity.
9. **Resolution No. 08-0715-30** calling for a public hearing for Police/Fire installment purchase financing.
10. Set Public Hearing on August 5, 2008 Council meeting regarding 8324 Jenks Road Land Use Amendment and Rezone # 08CZ04 from Low Density revised to Office and Institutional classification to Industrial and Rural Residential to Light Industrial Conditional Zoning District that includes a 9.99 acre site.
11. Set Public hearing on August 5, 2008 Council meeting regarding The manors and cottages at Bella Casa PUD Plan Rezone # 08CZ08 and Master Subdivision Plan Phases 1-3 that includes 52.15 acres, 106 single-family lots and five stormwater ponds.
12. Recommend award of construction contract to Gelder & Associates, Inc: patch/resurface 3.6 miles of Town streets; roadway rehab \$519,180.
13. Recommend award of contract for Point of Delivery # 3 Power Transformer and adopt Project Ordinance Amendment: Delta Star, 2<sup>nd</sup> low bid \$1,114,777.00
14. Second Read: **Ordinance No. 08-0617-09** Illicit Discharge Detection and Elimination.
15. Second Read: **Ordinance No. 08-0617-10** Amend Traffic Schedule I and II: Referenced Sec 20-60.1 Traffic Schedules: Sec 20-68. Subsection (b) Stop Intersections & Sec. 20-70. Yield Intersections; to be kept on file by the Town Clerk.
16. Second Read: **Ordinance No. 08-0617- 11** Establish Division of Auxiliary Police Officers.

End of Consent Agenda

## REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented to be set prior to taking action on the following items. Council Member Sutton asked to amend the Regular Meeting Agenda by adding an item to Closed Session to discuss property acquisition. **Action:** Council Member Schulze made the motion to amend the regular meeting agenda as requested. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

## PUBLIC HEARINGS

Presenter: Reed Huegerich, Transportation Planner

### **Public Hearing # 01– Transportation Plan Amendments**

Public hearing and possible motion for approval of the Transportation Plan Amendments.

Reed Huegerich, Transportation Planner, presented Transportation Plan Amendments outlined in the staff report which is attached and incorporated as a part of the minutes, both the Thoroughfare and Collector Street Plan and the Pedestrian, Bicycle, and Equestrian Plan. Dianne Khin, Director of Planning, expanded on discussions with CAMPO regarding the removal of the US1 interchange.

Mayor Weatherly opened the public hearing at 7:15 p.m. and with no comments being made, the hearing was closed and referred the matter to the Council.

**Action:** Council Member Sutton made the motion to approve the Transportation Plan Amendments as presented including both the Thoroughfare and Collector Street Plan and Pedestrian, Bicycle, and Equestrian Plan. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01



Page 3

Council Meeting Minutes for July 15, 2008

Public Hearings continued

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 02– Unified Development Ordinance Amendments**

Review: Second Read for proposed Ordinance Amendments: Council continued this hearing to July 15, 2008 with the Hearing remaining open; Planning Board met June 9, 2008 and unanimously recommended approval with changes in text; Staff recommends approval as presented.

Public hearing and possible motion regarding amendments to the Unified Development Ordinance regarding: Section 7.2.1.L.3 - Traffic calming policy; Section 11.5.3 - Language allowing officials other than Planning Director to issue Notice of Violation and Correction Orders; Section 4.4.5.G.13 - Allow up to 900 square feet for self-service storage bays; Section 5.2.2B.4.a - Language for garages with alley access which is already part of the text in Figure 5.2.2.B.4.

Staff presented UDO amendments. Planning Board met June 9, 2008 and unanimously recommended approval of the amendments with changes in the text as stated on the cover sheet; changes are reflective in the staff report that is attached and incorporated as a part of the minutes. Proposed amendments will not impact any projects currently in the process of development review. Staff recommends approval of the amendments.

Mayor Weatherly noted the public hearing was held open from the previous meeting and asked if there were further comments, and with no one addressing the amendments, closed the hearing at 7:30 p.m. and referred the matter to Council.

Council Member Sutton questioned the requirement for 100% of homeowners to support the proposed petition to place calming devices fronting on or adjacent to the proposed calming device location, and noted one homeowner who did not agree with the placement could make the whole request fall through. Kent Jackson Director of Construction Management explained the practice that was currently in place, placing the humps on property lines. Chief of Police Jack Lewis stated there had been no past problems and negotiable to place the humps in other locations, and justified the placement of the speed humps with approval of the homeowners.

**Action:** Council Member Jensen made the motion to adopt the UDO amendments as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public hearing # 02

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. ***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Herman Jaffee addressed solar hot water heaters, asking town consider selling and maintaining them.

End of Public Forum

**NEW BUSINESS**

Presenter: John Brown, Director of Parks, Recreation and Cultural Resources

**New Business # 01 - Parks, Recreation, Greenways and Open Space Master Plan**

John Brown, Director of Parks, Recreation and Cultural Resources presented amendments to the existing Parks, Recreation, Greenways and Open Space Master Plan that coincided with the adopted Transportation Plan Amendments. In addition to the amendments he recommended the town-owned open space adjacent to Waterford Green Subdivision be removed from the map so citizens are not confused as to whether or not a public park is located at that site; noted it could be added back to the map if additional property is added to the site and developed into a public park.

**Action:** Council Member Jones made the motion to approve the amendments to the Parks, Recreation, Greenways, and Open Space Master Plan as presented. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Bruce Radford, Town Manager

**New Business # 02 – Electric Service Rate Schedules**

Manager Radford noted previous discussion regarding anticipated adjustments in electric service rate schedules associated with rising nuclear fuel costs. The 12.3% adjustment would become effective August 1, 2008 and would absorb the 14% wholesale rate increase from N.C. Eastern Municipal Power Agency; large commercial rate increase 10.3% with an addition of two new commercial rate classes. Base charge would be adjusted by \$1.00 to recover increased overhead. The Energy Adjustment Rider will be folded into the regular energy rate; rate schedules are attached. Council Member Sutton asked clarity of the increase with Director of Finance explaining the implementation plan and justification for the increase. Council Member Sutton thought it bad timing for the rate increases on top of recent tax increases. Council Member Jensen commented on his support for an alternative energy plan.

**Action:** Council Member Schulze made the motion to approve the electric rate increases as proposed. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 02

End of New Business



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly presented Closed Session to be discussed as follows:

- o Consider three potential or pending condemnation matters and receive legal advice about them, including discussion of the civil action pending with Julia and Thomas Roth
- o Receive legal advice and discuss potential litigation
- o Enter into a lease/property agreement for parking in the Central Business District.
- o Property acquisition

**Action:** Council Member Jones made the motion to move into closed session at 7:50 p.m. to discuss the items presented. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move out of Closed Session back into Regular Session at 9:07. Council Member Gossage made the second to the motion. Motion carried unanimously.

With Council having moved back into **Regular Session** the following action was taken:

**Action:** Council Member Jones made the motion to adopt a **Resolution No. 08-0715-31** Authorizing Eminent Domain Proceedings Related to the Improvement of the Apex Sewer System by Extending Gravity Sewer Lines to the North of Highway 64 and to approve the Unilateral Offer and Agreement to Pay Condemnation Expenses and Costs (Ronald C. Mann, et.al. Property). Council Member Jensen made the second to the motion. Motion carried unanimously.

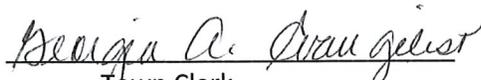
End of Regular Session

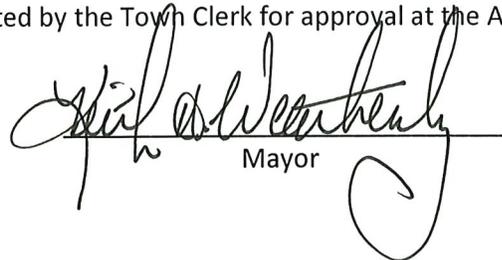
**ADJOURNMENT**

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

**Action:** Council Member Jensen made the motion to adjourn at 9:11p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of July 15, 2008 meeting were submitted by the Town Clerk for approval at the August 5, 2008 Council meeting.

  
Town Clerk

  
Mayor

## TOWN OF APEX, NORTH CAROLINA

August 5, 2008 Meeting Minutes

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 5, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

### COMMENCEMENT

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

### PRESENTATIONS

Mayor Weatherly presented the Appearance Awards:  
Residential: Robert & Mercedes Abeleda, 1009 Porchside Drive, Apex  
Non-Residential: Sovereign Grace Fellowship, 401 Upchurch Street, Apex

### CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Sutton made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously to approve the Consent Agenda.

1. Minutes and General Account of July 15, 2008 Council meeting.
2. Minutes and General Account of July 15, 2008 Council Closed Session (separate cover).
3. Annexation Petition # 439, David and Wendy Brockelbank, owners; property located at 2233 Kelly Road, and containing 4.733 acres and desiring to connect existing home to town water; 1) Resolution directing Clerk to investigate petition, 2) Certificate of Sufficiency by Clerk, and 3) Resolution setting date of public hearing for August 19, 2008.
4. Transfer and issue deed: Apex Cemetery Lot 22 Plots G&H Deceased Joe D. McIver to Judy M. Crumpler.
5. Revert unpaid lots/plots on reserve in Apex Cemetery to Town for resale Code of Ordinances Sec. 6-63.
6. Set Public Hearing: August 19, 2008 for Special Use Permit, 1200 Salem church Road by applicant, Thales Academy, Inc.
7. Set Public Hearing: August 19, 2008 for Various amendments to the Unified Development Ordinance.



Consent Agenda continued

8. **Resolution No. 08-0805-32** N.C. Governor's Highway Safety Program, Grant Form GHSP-02-A (Federal Traffic Safety Funding Program) for \$51,584 with \$25,792 matching cash contribution as required by the project contract, and authorization for Town Manager to file Contract on behalf of the Town Council.
9. Amend Traffic Schedule I and II: Sec. 20-60.1 Traffic Schedules; Sec. 20-68. Subsection (b) Stop Intersections, and Sec. 20-70. Yield Intersections in various subdivisions.
10. Wake County Board of Commissioners Tax Report for Town of Apex approved and accepted in regular session July 7, 2008.

End of Consent Agenda

### REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented to be set prior to taking action on the following items. Manager Radford asked to amend the Regular Meeting Agenda by adding a New Business item to consider a street closure for a portion of Salem Street for an upcoming event.

**Action:** Council Member Jones made the motion to amend the regular meeting agenda as requested. Council Member Jensen made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

### PUBLIC HEARINGS

**Presenter: Lee Smiley, Director of Finance**

#### **Public Hearing # 01- Installment Financing Agreement**

Public hearing regarding Installment Financing Agreement to be entered into by the Town to provide funding to pay the costs of expansion and renovation of the existing police station and acquisition, construction and equipping of a new fire and emergency medical services facility, and a possible motion to adopt resolutions: 1) accepting the proposal of the winning bidder, and 2) making certain findings and determinations and requesting the Local Government Commission to approve the financing arrangement.

Mayor Weatherly introduced Resolutions for adoption regarding installment financing for the above referenced projects, and called on Director of Finance Lee Smiley, who stated the Town had received four responses to its request for bank proposals regarding the installment financing agreement and noted on the staff report, and had accepted two of the four, with SunTrust having the lowest bid – 20 years at 4.57%. He expects future debt to be incurred for streets and parks and recreation, and recommended Town finance the borrowing over 20 years vs. 15 years (Sun Trust also had the lowest bid for 15 years at 4.39%) to minimize annual debt payments, and accept the proposal from SunTrust for the period of 20 years. He noted the principal amount was not to exceed \$11 million and the actual borrowing amount is \$9.1 million. Brief discussion followed regarding 15 year financing vs. 20 year financing with Council Member Jensen preferring 15 year financing and discussion followed on the impact to the Town's current bond rating and future debt service.

Mayor Weatherly opened the public hearing at 7:10 p.m. and with no one addressing this item, the public hearing was closed, and the matter referred to Council for a motion.

**Action:** Council Member Schulze made the motion to approve the Installment Financing Agreement with SunTrust for 20 years at 4.57% and also to adopt the related Resolutions: 1) Resolution Accepting the Proposal of SunTrust Equipment Finance and leasing Corp. In Connection with an Installment Financing for the Expansion and Renovation of a Police Station and the Acquisition, Construction and Equipping of a Fire and Emergency Medical services Facility, and 2) Resolution Making Certain Findings and Determinations Regarding the Financing of the Expansion and Renovation of a Police Station and the Acquisition, Construction and Equipping of a Fire and Emergency medical Services Facility Pursuant to An Installment Financing Agreement and Requesting the Local Government Commission to Approve the Financing Arrangement. Council Member Jones made the second to the motion. Vote on the motion was four in favor and with Council Member Jensen casting the one opposing vote. Motion carried.

End of Public Hearing # 01



Public Hearings continued

Presenter: June Cowles, Senior Planner

**Public Hearing # 02– Rezone # 08CZ04**

**Applicant has requested this item be taken off the agenda and brought back at a later date which would require re-notification for the Public Hearing.**

Public Hearing and possible motion regarding Rezone # 08CZ04, 8324 Jenks Road Land Use Amendment and Rezone from Low Density revised to Office and Institutional classification to Industrial and Rural Residential to Light Industrial Conditional Zoning District that includes a 9.99 acre site.

Mayor Weatherly stated the applicant had requested this item be pulled from the agenda; no action necessary and should this item return for consideration, would need to be re-advertised.

End of Public Hearing # 02

Presenter: June Cowles, Senior Planner

**Public Hearing # 03– Rezone # 08CZ08**

**Review:** Planning Board met July 14, 2008 and unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding Rezone # 08CZ08, The Manors and Cottages at Bella Casa PUD Plan Rezone and Master Subdivision Plan Phases 1-3 that includes 52.15 acres, 106 single-family lots.

June Cowles, Senior Planner presented the staff report that is incorporated as a part of the minutes, noting Bella Sera now Bella Casa has proposed changes in the PUD Plan and subdivision plan: 1) Phase 2 included 26 townhomes – proposed: 25 single family homes and eliminate townhomes. 2) Change side yard setbacks from 8 feet minimum aggregate 20 feet to 6 feet minimum aggregate 16 feet. 3) Overall subdivision plan change is that a total of four lots have been added for Phase 1, 2, and 3. Note: a neighborhood meeting was held. PUD Plan and Subdivision Plan are consistent with the Transportation Plan, and applicant is providing a 10-foot wide multi-use sidewalk along Evans Road and Street "A" to the west that connects with Town of Apex Park's 10-foot wide multi-use sidewalk. Planning Board met July 14, 2008 and unanimously recommended approval; staff recommends approval of the Manors and Cottages at Bella Casa PUD Plan Rezone Amendment and Subdivision Plan.

Mayor Weatherly opened the public hearing at 7:16 p.m.

Speaking in favor: Stewart Jones, Jones, Crossen Engineering, confirmed the average lot sizes 9,000 square feet and with the phasing and no issues related to setbacks. Joe Iannone, property owner, stated the total acreage for Phases 1 – 3 50 feet is more like 70 feet. With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:17 p.m. and referred the matter to the Council for a motion.

**Action:** Council Member Jensen made the motion to approve Rezone # 08CZ08, The Manors and Cottages at Bella Casa PUD Plan Rezone and Master Subdivision Plan Phases 1-3 as presented. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 04– Annexation Petition # 437**

Public hearing and possible motion regarding Annexation Petition # 437: Brian C. Yates, owner/petitioner, petitioning to annex 6.143 acres including NCDOT right-of-way into the Town's corporate limits and located on 2524 and 2528 Schieffelin Road (SR 1306).

Dianne Khin, Director of Planning presented the petition and oriented to the site for an approved minor site plan for a contractor and storage yard. Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing this petition, closed the public hearing and referred the matter to the Council for a motion.

**Action:** Council Member Gossage made the motion to approve annexation petition # 437 and adopt the ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04



Public Hearings continued

**Presenter: Dianne Khin, Director of Planning****Public Hearing # 05–Annexation Petition # 438**

Public hearing and possible motion regarding Annexation Petition # 438: Jeanne S. Hack, owner/petitioner, petitioning to annex 0.359 acres into the Town's corporate limits and located on 1051 S. Hughes Street (SR 1158).

Dianne Khin, Director of Planning presented the petition and oriented to the site for a request for water service to a house relocated across the street from the recent approved PUD at this location. Mayor Weatherly opened the public hearing at 7:21 p.m. and with no one addressing this petition, closed the public hearing and referred the matter to the Council for a motion.

**Action:** Council Member Sutton made the motion to approve the annexation petition # 438 and adopt the ordinance to extend the corporate limits. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 05

End of Public Hearings

**OLD BUSINESS****Presenters: Marty Mitchell, Director of Facilities and Fleet Services and Bruce Radford, Town Manager****Old Business # 01 – Police and Public Safety Projects**

Possible motion to award construction contract for Town of Apex Police Station renovation project and Public Safety Station # 04 project to lowest bidder.

Marty Mitchell, Director of Facilities and Fleet Services stated bids were received July 22, 2008 for proposed construction projects with bid tabulations attached. Manager Radford stated lowest general construction bid from New Atlantic Construction in the amount of \$9,096,100 inclusive of contingencies, P/M/E, allowances and all alternates; recommended cost be reduced by deleting Alternates 1-4 (1 and 2 landscape, can be accomplished in next year's budget by another contractor for less money, 3 and 4 irrigation at both sites, recommends deletion entirely) reducing total cost by \$110,000 for a total cost of \$8,985,700; recommends award of bid to New Atlantic Construction. Questions were answered regarding the alternates and their deletions; specifics were discussed regarding generators; construction time for both projects approximately 15 months. Mayor Weatherly referred the matter to Council for a motion.

**Action:** Council Member Sutton made the motion to award the bid for the Police Station renovation project and Public Safety Station # 04 project to lowest bidder New Atlantic Construction and recommended for the deletion of alternates 1 through 4 for a reduced total cost of \$8,985,700. Council Member Gossage made the second to the motion. Motion carried unanimously. It was consensus of the Council to hold the Ground Breaking at the Police Department site on September 2, 2008 Tuesday 6:00 p.m.

End of Old Business # 01

**Presenter: Kent Jackson, Director of Construction Management****Old Business # 02 – Beaver Creek Commons Drive/Kelly Road Intersection**

Kent Jackson, Director of Construction Management updated Council on changed conditions for Beaver Creek Commons Drive and Kelly Road Intersection. Proposed interim traffic plan for this intersection of June 14, 2006 was designed with a splitter island to discourage commuter traffic from entering Abbington from Beaver Creek Commons Drive Extension and for diversion of traffic, either to turn left or right onto Kelly Road instead of going straight across Kelly Road into Abbington; plan would still allow residents exiting Abbington to move in all directions. The proposed plan was presented to NCDOT, however was not approved; NCDOT did approve a plan to allow full movement at this intersection with no island allowing left turns, right turns and straight movements and with stop bars on Kelly Road pending traffic signal installation. Developer will install a full traffic signal at the intersection when Beaver Creek Commons Drive Extension is complete, with a bridge to carry Kelly Road over US64 and to future I-540 by NC Turnpike Authority, and square loops would be installed at US64/Kelly when I-540 is constructed. Turnpike Authority I-540 bids came \$62 million under estimate; Jackson was confident the project will go forward and square loops would be constructed; had been unsuccessful in getting permit information; thought this has merit to revise the approved plan; Beaver Creek Commons Drive is being graded with approaches to the bridge on grade; contractor is waiting for pavement due to fuel pricing and expects paving later this year; Turnpike Authority will fill in the gap with bridge and fill in the loops. Council asked staff to continue communication with NCDOT supporting the plan proposed by the town. Council Member Sutton will work with staff on this project.

End of Old Business # 02

**Old Business continued**

**Presenter: Hank Fordham, Town Attorney**

**Old Business # 03 – Recreation Fee-in-lieu**

Attorney Fordham stated staff seeks guidance on two issues related to recreation fees-in-lieu: (1) whether developments submitted prior to adoption of the Ordinance updating recreation fees-in-lieu should be grandfathered from fee increases (2) whether the mechanism for determining fair market value can be improved, and advised Council may wish to receive legal advice on the law of grandfathering prior to considering decision related to this matter.

**Action:** Council Member Schulze made the motion to move into Closed Session at 7:45 p.m. Council Member Gossage made the second to the motion. Motion carried. Minutes of Closed Session are recorded separately. Council Member Gossage made the motion to move back into Regular Session at 8:05 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

Attorney Fordham asked Dianne Khin, Director of Planning for a report regarding staff's request. Khin noted Bella Sera/Casa project had been approved prior to May 20, 2008 UDO amendment, and has now come back with changes to the PUD; referenced a letter from the project Attorney requesting the amended PUD submitted and set for August 5, 2008 be grandfathered and subject to the fee schedule in effect on the date of the original approval of December 18, 2007 rather than to the amended fee schedule. Khin noted pending projects: Colvin Estates and Salem Village had not received approval prior to the May 20, 2008 amendment.

Staff seeks guidance as the UDO does not give guidance, with these three project developers having asked their projects be grandfathered from the recreation fee-in-lieu increases under the ordinance adopted May 20, 2008, noted all three projects would probably end up in appraisal committee. Also stated Director of Planning is named the person to determine the applicable fair market value and expressed she was not comfortable with making this determination and not sure she was the most qualified to do so; felt there should be some input from a real estate professional, whether a market analysis or whether the developer hires a real estate appraiser, town hires their appraiser, or both parties have to pay for an appraiser for the committee, or a possible option without the appeal process.

Attorney Fordham advised Council may wish to consider UDO amendments to add specific types of information that an interim decision maker can rely on to determine fair market value and could also consider who should be the decision maker and offered for consideration: have an outside realtor on standby when issues arise similar to TIA where the Town has someone that can review the developer submittals, or to have staff generate documents and the Manager make the determination, or go straight to a committee, or have Council decide, thinking this may not be a good idea, and could be others; advised there is definitely enough sentiment that someone with real estate expertise should be involved in the process, if someone asked for determination rather than the straight formula or appealed to the fair market value provisions of the ordinance.

Mayor Weatherly offered Attorney and staff could develop new UDO guidelines and would require a Planning Board review and public hearing prior to Council decision. Mayor Weatherly opened discussion related to grandfathering. Brown reported the latter two pending projects had been before Parks and Recreation Advisory Commission with both given approval to pay a fee-in-lieu however had not come before Council for final approval. Attorney Fordham stated Colvin had initially applied with the County and during the jurisdiction change was switched to the Town and had worked through several issues related to the jurisdiction taking more time than anticipated.

Discussion continued regarding the decision making process, with Council Member Jones noting both later two projects had been quoted their fees based on the ordinance in place at that time, with their business plan based on what they had been told for fees-in-lieu; he was concerned now that later in the process make a change however, totally supports the raise in fees-in-lieu; the Town had been charging way too little for way too long for what's being planned; he was not sure about a change in the fees later in the process.

Council Member Sutton felt sure changes in recreation fees had been discussed for a long time, over a year, and were operating under a possible change; they knew the old ordinance was a moving target, but did not know what the new fees would be; Brown responded that was a fair assumption and there was discussion that fees were being looked at, not giving a number but alerted the number could change. Council Member Schulze agreed it was a moving target and a business man needs to know the numbers, felt also that waiting for a decision is wrong too, and thinks grandfathering is the way to go. Council Member Jensen agreed to some amount of grandfathering; Town had given a good deal on old data but felt Town didn't charge enough fees to keep high-end recreational facilities and were trying to balance this, wanting to make fair decisions blending the two for middle ground.



## Old Business # 03 continued

Khin noted the three projects submittals were prior to the fee schedule change and any changes to a PUD plan must go back through the Planning process and for approval are suppose to go by the ordinance in place. Bella Serra/Casa had a change in the PUD plan in the process; there could be others that could come back for changes and asked if they pay the new fees, that even with street changes, would go through the planning process and there still would be the fee issue. Khin noted certain UDO amendments with grandfathering clauses; staff received the request for grandfathering, and are not comfortable with this and reason to come before Council asking guidance.

There was discussion regarding former grandfathering granted by Council related to setbacks and granted for those having submitted their plans prior to a change in the fee schedule. Attorney Fordham advised if the projects were approved there was no problem with grandfathering. Council Member Sutton stated they are now talking about when a plan is submitted and asked if the Attorney was telling them they were submitted prior to the time the fee schedule was changed, which was correct. Council Member Sutton felt a precedent had been set with grandfathering of setbacks, with those having submitted their plan and gone through TRC review. Mayor Weatherly noted this was an excellent point, and wanted to assure Council knew where the projects were in the process, and as to the request for future changes and dealing with grandfather issues. Council Member Gossage stated he was fine with the grandfathering of these three projects, and anyone else now should know and asked if there was a way to have a provision for a cut off time, for any projects in the process.

Attorney Fordham asked when Bella Serra/Casa submitted their application to amend their plan. Joe Iannone, owner, stated he was never informed of nor had ever heard of any recreation fee increase until he received his TRC comments the end of June that said there was an adopted new fees ordinance; June Cowles, Planner had even commented that he was not going to like it, but the fees had gone up; this was the first he had heard of the change in fees. He started talking at that point and continued if this had been going on for a year, maybe he hadn't attended a meeting when Council talked about it, but he didn't know about this and had talked with a lot of people in the Town. Brown responded Bella Sara/Casa had been approved and probably reason he didn't hear about it from him.

Council Member Jones felt there was need for Council to receive legal advice regarding changes in the subdivision plan for Bella Serra/Casa, however was the same number of units; recreation fee-in-lieu whether to give the whole acreage is based on the number of units; he could see if there was a change in the number of units then it should be reviewed, but if it's the same number of units and never went to the Recreation Advisory Commission for re-review of the land dedication and or fee-in-lieu, he doesn't think it should be a part of this discussion. Attorney Fordham stated he would have to research this point before giving legal opinion.

Mayor Weatherly stated the Town Attorney had asked for time to research the legal issues and asked if Council wished to proceed with the two other projects with different circumstances or move on. Council consensus was they were talking about giving guidance to Town staff, and given this, Mayor Weatherly asked with the grandfathering laws did Council want to bring it back in two weeks. Attorney Fordham responded if Council chose to proceed with this, then staff would begin the UDO amendment process, or could bring Council options to consider before proceeding. Mayor Weatherly felt there was sentiment on both sides regarding the grandfathering issue and had gotten bogged down on the question, and suggested in regard to Council Member Gossage's question about a time provision, could they not stipulate in a motion that the grandfathering issue, if they so chose to make such a motion, would either put a date certain on future amendments to the site plan that would trigger another amendment that would cease after this action, or something of this nature to signal staff to tell folks they have established a cut-off point for such grandfathering issues, asking the Town Attorney if this would suffice, they could submit a plan change but not a grandfathering issue.

Attorney Fordham advised Council could pass an ordinance that grandfathered the initial submittals that were prior to the fee-in-lieu change and amendments that were submitted prior to tonight; could ultimately, not saying Council will but could be the ultimate decision. Mayor Weatherly continued then the others would have to make a business decision whether their submittal would incur an additional fee-in-lieu. Mayor Weatherly asked Council if there were interest tonight to resolve this issue, to include Bella Sera/Casa with the other two pending projects, all three projects, and make a motion that they grandfather all three regardless of the legal opinion on what Bella Casa would be, and include them in the grandfathering, but stipulate in the motion with an ordinance that would come later to say, if an amendment was not submitted as of tonight, then there would be no further grandfathering considered; that's what the spirit of the ordinance would be so we wouldn't incur additional grandfathering requests; this is the universe being considered, the three pending projects, and any future submissions for changes would have to be made with the knowledge that they incur a new fee structure with it.



Council Member Schulze felt if they didn't grandfather these tonight others would come in before the deadline, with Council Member Gossage adding potential, with Mayor Weatherly adding if they have amendments that they would want to make, he was saying that would conclude the issue and not sure he would want to separate the issue – the equity issue that has been suggested, he thinks is something that ought to be considered as far as when information given from the staff submissions on the business plan, and those kinds of things, with the universe being these three only.

Council Member Sutton stated he wouldn't want to name subdivisions and more comfortable with the precedent set that you are grandfathered if you formally submit the plan to the Planning Department prior to a UDO amendment which includes the recreation fees, then you are grandfathered. Council Member Gossage added and had an amount from parks and recreation for the fee-in-lieu, thinking this was the real issue and relevant. Attorney Fordham advised an ordinance would not speak to a specific subdivision but could amend in effect the ordinance that adopted the new fee schedule to make it include a grandfathering provision and the provision, if anything, whatever Council chooses it to be, it could be that development application submitted prior to the date the recreation fee ordinance was adopted would be grandfathered or amendments to prior approved plan and submitted prior to tonight; Council could vote tonight to ask or instruct staff to bring back or start process of an ordinance amendment to that effect and that would put anyone on notice of what very likely would happen or could happen.

Mayor Weatherly added that would put the decision on the developer as to whether or not he wanted to make such a submission. He asked Council if any of them were interested in pursuing that. Council Member Jensen stated he was fine with that but would like to add to give staff leave way to say, if a change is deemed to be an ecological improvement to the plan by staff, there would not be a change in fees. Mayor Weatherly indicated this puts the burden on them, with Council Member Jensen agreeing it does and he trusts them. Attorney Fordham asked if they were saying that going forward even with plans submitted in the future with Council Member Jensen responding changes in future plans if they are deemed to be an improvement made and staff could decide if its ecologically an improvement. Mayor Weatherly asked for a motion, and then would begin debate on the motion.

Attorney Fordham advised the motion should be stated to the effect: to instruct staff to start the process of a UDO amendment that would provide grand fathering from the fee-in-lieu ordinance change of May 20, 2008 to grandfather projects submitted prior to that date and also grand father amendments to previously approved projects where such amendment applications were made prior to August 5, 2008.

**Action:** Motion by Council Member Schulze to follow the advised motion by the Town Attorney as he had stated. Council Member Jones made the second to the motion. Motion carried.

Mayor Weatherly noted the motion was not to enact anything, but to give staff guidance and would see it as soon as it was ready. Khin noted two projects submitted previous to May that had not be re-submitted: Broadstone Village (the apartments near the Wal-Mart) and West Street Subdivision not very many lots, and unsure how they will deal with these.

Mayor Weatherly stated the following: he had thought for a while as mixed use developments come forth to Council, they seem to have a major proponent of rental apartments and has become a concern as stock grows with rental apartments; the developer presents them as top level apartments with commanding high rent and a niche in the market; he's always been a proponent of market driven development that allows developers to be able to build to the market, but wondering should they do something to de-incentivize the large number of rentals units in these mixed use developments, noting ones in process: 300 rental units, 280 or 300 units at NC55 and US1 and thinks the fee-in-lieu might be the way to not provide or to de-incentivize rental units as compared to how many owner units are in the project and asked was there any appetite to ask staff to come back with what the fee-in-lieu would be if they are comparable to a unit not being less than a single family dwelling, so they don't provide an incentive for developers to put a large number of rental units; our growth rate spiked up 3 or 4% when Creekside with 300 units, not to be candied thought the number was a little bit greater; the last time he asked for the stock of rental units in Apex was 30% several years ago, now 15%, but 300 approved last year, 300 coming on line, 280 that will be here soon, it's jacking it up and asked if anyone wanted to ask staff to come up with an increase in the fee-in-lieu for apartments.



Council Member Jensen was not sure this could be done, but has always been against too many apartments and thought we have. Manager Radford added they may want to think about making the fees the same. Attorney Fordham's opinion was Council would need legal advice regarding this matter. Council Member Schulze offered that he was also in support of this. Council Member Jones would support getting legal advice on this matter not necessarily from the same motivation but from the impact on recreation; as the market changes, this was adopted on the assumption that a single family detached home would have more kids in recreation and the parents would be more likely to participate in recreation, than a single-family attached home, but he's not sure that with the market the way it is, its appropriate. He's seen some pretty big townhomes, with three care garages, and why wouldn't they have three kids in the recreation program, with Council Member Jensen commenting and no yard to play in. Mayor Weatherly added maybe there's a need for a mechanism for the same if we are looking a de-emphasizing. Council Member Jensen was also supportive for legal advice, if there could be a cap on rental apartments if they so chose – the percentage. Attorney Fordham would prefer to look further into this before giving legal opinion. Mayor Weatherly asked this be included in the request to staff as well.

**End of Old Business item # 3**

**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.  
***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

Stewart Jones, Jones and Cnossen Engineering and DTA2 LLC Meckes Building, 221 N. Salem Street, Suite 200, addressed the parking issue in the historic downtown, specifically the 200 block of North Salem Street, stating the public parking was being taken away for future construction, he is a building owner and there's no allowance for temporary or interim parking and may currently work fine, but concerned for future with currently 98 public parking spaces and 44 private spaces and when all the buildings are fully occupied by 2009, there would be 120 employees in five buildings, and when the town removes the 96 parking spaces and the private spaces, and downtown continues to grow, where do they park, and their customers and is a problem to him. Mayor Weatherly responded the town continues to address the parking issue and is a shared mutual concern to all.

Heather O'Sullivan-Canney addressed 1) the parking in the downtown, former studies, and indicating her employees did not all know about the public parking, 2 of the 7 think it was for the police department and should address more parking in the future, anticipating more people in the future. 2) Fee-in-lieu – other issues involving grandfathering, by the time of application and get approval a significant time goes by, and thinks there's a better way to find a cut off; and 3) with the issues of changes and not necessarily want to deter them from making changes,, noted the town makes money on those changes and in fact may be better and if the cut-off is the application submittal it might be a good point, and 4) if town is not sure how they are going to calculate those fees, its something that should be considered, how to determine market value, if not decided. Attorney Fordham responded it's not an issue of how it would be calculated, the question is who will determine it, the fair market value doesn't change; the fee structure has been adopted.

Lady in Abbington addressed the issues with the NCDOT plan that was not approved and matched up with the town's plan and the impact of the plan upon the residents of this subdivision, gap in timing and the effectiveness of a citizens group lobbying NCDOT, and approaching them again regarding safety, property values, etc., and better notification in the process. Mayor Weatherly responded this to be a state maintained road, and council makes the request, and she should not assume it to be an open process with NCDOT, and a very arbitrary process and not a democratic process.

**End of public forum**

**NEW BUSINESS**

**Presenter:** Brendie Vega Mkhwanazi, Principal Planner

**New Business # 01- Subdivision Plan Variance for Cul-de-sac**

**Review:** Planning, Engineering and Fire staff have reviewed the proposed cul-de-sac and recommend approval of the requested variance. Possible motion regarding Subdivision Plan variance requiring Council approval for Magnolia Creek Subdivision (Apex Barbecue Road); phasing plan for this subdivision has created a cul-de-sac longer than 500 feet in length on Churchwood Drive requiring Town Council to approve the longer length.

Principal Planner presented the plan showing an extended cul-de-sac on Churchwood Drive that exceeds the 500 feet in length up to 1000 feet for an undetermined amount of time, and would require council approval per the UDO; item was overlooked by staff during the master subdivision plan review and variance is to this ordinance is being requested; condition of the rezone was there would not be a connection of Churchwood Drive to Kelly Road. Staff reviewed the proposed cul-de-sac and recommends approval of the request for variance.

**Action:** Council Member Jensen made the motion to approve the variance request as recommended by staff. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of New Business # 01**

**(Add-on) New Business # 02- Request for Street Closure**

Manager Radford had received a request the closure of a portion of Salem Street from Center Street to Chatham Street over the weekend, Sunday 8 p.m. to 12 p.m. for a local producer that would be filming a movie in Apex and would be using vintage style cars along the streets. Off duty officers will be hired. Discussion followed and the following action was taken.

**Action:** Council Member Schulze made the motion to approve the street closure as stated. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

**End of New Business**

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly presented the following items asking Council for a motion to move into Closed Session for discussion:

- o Discussion of potential litigation and receive legal advice.
- o Discuss pending condemnation litigation and receive legal advice related to the Julia and Thomas Roth condemnation action for the Peakway project.
- o Discussion of and receive legal advice related to potential condemnation action.
- o Discuss purchase of real property located at 400 W. Williams Street.

**Action:** Council Member Jones made the motion to move into Closed Session at 9:05 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. Council Member Jones made the motion to move out of Closed Session at 10:08 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. With Council having moved back into Regular Session, the following action was taken: **Action:** Council Member Sutton made the motion to approve a **Resolution No. 08-0805-33** authorizing eminent domain proceedings related to the improvement of the Apex Sewer System by extending gravity sewer lines (Widewaters Haddon Hall Co. LLC). Council Member Schulze made the second to the motion. Motion carried unanimously.



**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 10:09 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of August 5, 2008 meeting were submitted by the Town Clerk for approval at the August 19, 2008 Council meeting.

*Georgia A. Evangelisti*  
Town Clerk

*Keith A. Weatherly*  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**August 19, 2008 Meeting Minutes**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, August 19, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

**Council:**  
**Mike Jones**  
**Bill Jensen**  
**Bryan Gossage**  
**Gene Schulze**  
**Bill Sutton**

**COMMENCEMENT**

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

**RECOGNITIONS**

- Town Construction Management Employee Rudy Baker for Professional Accomplishment.
- Town Fire Department Employee Mark Coats honored by Electricities as "Home Town Hero."

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Schulze made the motion to approve the consent agenda. Council Member Jones made the second to the motion. Motion carried unanimously to approve the Consent Agenda.

1. Minutes and General Account of August 5, 2008 Council meeting.
2. Minutes and General Account of August 5, 2008 Council Closed Sessions (separate cover).
3. Abandonment of an existing sewer line/easement and addition of a new sewer line/easement (new alignment) at proposed Promenade at Beaver Creek (HH Gregg) site.
4. Wake County Board of Commissioners Tax Report for Town of Apex approved and accepted in their regular session August 4, 2008.

End of Consent Agenda



## REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented to be set prior to taking action on the following items.

Attorney Fordham asked to amend the Regular Meeting Agenda by adding an Old Business item to review options related to grandfathering and fee-in-lieu.

**Action:** Council Member Jones made the motion to amend the regular meeting agenda as requested. Council Member Schulze made the second to the motion. Motion carried unanimously.

The Regular Meeting Agenda was set as amended.

## PUBLIC HEARINGS

Presenter: Brendie VegaMkhwanazi, Principal Planner

### **Public Hearing # 01- Special Use Permit # 08SUP01**

**Review:** Property owner has withdrawn the request for the Special Use Permit

Public Hearing and possible motion for a Special Use Permit # 08SUP01 for 1200 Salem Church Road, by the applicant, Thales Academy, Inc.

Petition was withdrawn and will be readvertised if brought back for Council's consideration.

End of Public Hearing # 01

Presenter: Brendie VegaMkhwanazi, Principal Planner

### **Public Hearing # 02 – 2025 Land Use Plan Amendments**

**Review:** Planning Board met August 11, 2008 and recommended approval; staff recommends approval

Public hearing and possible motion regarding amendments to the 2025 Land Use Plan to incorporate the approved Western Area Plan along with other changes town wide.

Staff presented the report for this item that is attached and incorporated as a part of the minutes. Planning Board met August 11, 2008 and unanimously recommended approval; Staff recommends approval to the amendments to the 2025 Land Use Plan.

Mayor Weatherly opened the public hearing at 7:15 p.m. and with no one addressing the amendments, closed the public hearing and referred the matter to Council.

**Action:** Council Member Sutton 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 hearings continued

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 03- Conditional Rezone # 08CZ06**

**Review:** Planning Board met June 9, 2008 and voted to not recommend approval (motion was to approve with conditions and the motion failed 3 to 2; staff did not recommend approval of the conditional zoning and removal of the property from the Small Town Character Overlay District; Town Council met June 17, 2008 and continued the public hearing to August 19, 2008.

Public hearing and possible motion regarding Conditional Zoning # 08CZ06, Walter and Laura Hollingsworth, petitioners, seeking a conditional zoning from B1 (Neighborhood Business) to PC-CZ (Planned Commercial Conditional Zoning) and removal from the Small Town Character Overlay District; property located at 400 N. Salem Street.

Staff presented the report that is incorporated as a part of the minutes, oriented to the site, noted adjacent zoning and land uses, and showed slides of the site and surrounding areas; gave the review as stated above regarding the request; reasons staff does not recommend approval is stated on the cover sheet of the report; slides shown for other uses for gas stations included restaurants, floral shops, antique shops, visitors center, offices spaces; example Abbey Road Grill in Cary.

Mayor Weatherly opened the public hearing at 7:20 p.m.

Speaking in support: Walter Hollingsworth, property owner 400 N. Salem Street, spoke in support of his request for an auto sales related business at this location; he didn't know about the overlay district ruling of not using the business for six months; when he bought the property it was zoned and used to clean cars; in past years the property was used for auto related businesses, and noted it suitable for a car lot; property has been vacant for one year, with past tenants being ran off and that his property taxes are up; noted trucks sit there while putting in water mains; stated his willingness to do whatever to fix up the property; noted the original zoning was for detailing, tires and cleaning cars, and now has lost use of the property. Hollingsworth then presented a conceptual site plan for a proposed auto sales lot. Attorney Fordham advised unless he was offering this as a formal condition of the rezoning, he could not do it. Khin stated the proposed was being offered as a formal condition and was included in the report; Attorney Fordham advised it must be a formal condition, and couldn't rely on intent.

Speaking in opposition: Ewan Pritchard, 323 N. Salem Street, recognizes owners property rights; thinks auto dealership doesn't match and would become one of the other zone uses; removal from Small Town Character Overlay District doesn't make sense, asking why create it if you are going to pull out from the downtown and noted the newer section of town that was to be a pedestrian friendly area; doesn't think auto dealership would survive in a pedestrian oriented area, and made more sense to stay a small building; loves the plan proposed.

Joe Williamson, 401 N. Salem Street, supports the proposal vs. three-story building; wants to see it remain in the Small Town Character Overlay District - does not want it removed; assumed it would loose the structure.

Joe Zublena, 317 N. Salem Street, wants to see the property remain in the Small Town Character Overlay District; respects Mr. Hollingsworth, but doesn't want to change the zoning.

Heather O'Sullivan-Canney, 311 Olive Street, noted changes to the area should be a separate issue; doesn't want to remove the property from the Small Town Character area; noted the history of the property was unfortunate, and was not the only possible way to handle this.

Kathy Dyer, Real Estate Office Duncan Commons Condo, 320 N. Salem Street, supports removal of the property from the Small Town Character Overlay District; property sits on edge at railroad tracts; appreciates the Small Town Character Overlay area; noted it unfortunate that Hollingsworth was not informed or included in the overlay process an over site that was impeccable; to look at any changes helps the rest; as far as pedestrian friendly noted there were no sidewalks and possibly no sidewalks for a long time; he has been prevented from using his property and making money; she has no issues with having a car lot there, seeing it from the adjacent building looking onto the property; noted Planning Board members Colhoun and Smith wanted to do this with conditions.



Mayor Weatherly closed the public hearing at 7:35 p.m. Khin noted the motion had failed by the Planning Board and no other motion was made; to receive a special use permit, another option would be to change to the requirements of the UDO; noted the property had never been used for vehicle sales; property can't be used for car detailing due to the illicit discharge ordinance, and the property has other site issues that would have to be brought up to UDO requirements. She noted as far as notification, questionnaires sent out were anonymous, and was not published the way it should have been, however all public meetings were advertised; Small Town Character Overlay District was adopted July 2006, and time has lapsed for an appeal.

Hollingsworth asked the public hearing be continued to September 16, 2008 meeting of the Council to allow time for him to work further with staff. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to continue the public hearing to the September 16, 2008 Council Meeting as requested. Council Member Jensen made the second to the motion. Council Members voted 4 in favor of the request to continue with Council Member Sutton voting no noting its previous continuance. Motion carried to continue the hearing to September 16, 2008 Council meeting.

End of Public Hearing # 03

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 04 – Unified Development Ordinance Amendments**

**Review:** Planning Board met August 11, 2008 and recommended approval; staff recommends approval.

A public hearing and possible motion regarding amendments to the Unified Development Ordinance:

Principal Planner VegaMkhwanazi presented the staff report regarding proposed amendments that is attached and incorporated as a part of the minutes and includes regulations for single-family accessory recreational uses; a grandfathering on requirements for curb and gutter; a new section for stub street fee-in-lieu; exempting projects disturbing less than one acre from stormwater control; regulations for yard sales; a 24 month waiting period for traffic calming study requests; moving subdivision exemptions to Sec. 7.1 *Subdivision*; adding landscape maintenance service to contractor's office and storage yard and removing it as it's own use; removing produce stand from the use table as it presently exists as a temporary use; allowing non-profit signs to be slightly larger and to allow the temporary structures that hold them to remain in place between events; limiting the height of incidental signs to four feet; requiring sales center signs to be removed at 100% of sales completed; side yard setbacks shall never be less than five feet; appurtenances can encroach where the setback is less than three feet on the side; including modular homes into the Small Town Character Overlay District and the Manufactured Housing District; and Planner Simmons presented the architectural standard to residential projects in the Small Town Character Overlay District. Questions were answered by staff.

Mayor Weatherly opened the public hearing at 8:05 p.m.

Joe Iannone questioned amendments to landscape requirement # 15 and expressed he did not want to see people put out of their homes. Director of Planning noted these being impacted by the amendment were illegal uses when in Wake County and prior to being included in the ETJ.

John More opposed amendments: # 1 screen or eliminate, # 2 setbacks for courts thinks 50' inadequate as with courts on town parks average 300 to 500 feet; # 3 amend 75% capacity to protect residential properties and made reference to 8.5.3 sound measurements.

Brenda Steen Apex Chamber of Commerce asked definition for non-profits regarding number of signs allowed per lot # 20 (non-profit on premise limitation three signs per organization for length of event but no more than 30 days) and (non-profit off-premise limitation 30 signs per event for 30 days or length of event) 8.7.1.22(a)(b)



Carter Crawford expressed concern with the discussion of the noise issue with tennis and basketball courts; noted the site plan process; and felt sound levels with traffic had more of an impact on measure devices rather than tennis players and ball machines; 60 foot x 120 foot courts were approved 15-20 years and lots barely minimum of 160' in width, not so in Apex.

Council Member Jensen addressed lot sizes of five acres or more and the allowance of more than one truck and trailer with mowers, not wanting to eliminate the smaller business. Khin noted this amendment had come as a request from zoning compliance officers regarding operation of businesses in residential districts. Mayor Weatherly commented on home occupations with Khin explaining home occupations begin with one employee and no signage and when one becomes successful and expanded was not fair to neighbors. Russ Dalton Transportation Engineer addressed comments made regarding traffic calming studies # 11, in that traffic does not make a significant change in a two year period and reason for this amendment was so police department does not have back to back petitions for any one location.

Mayor Weatherly closed the public hearing at 8:17 p.m. Attorney Fordham questioned appurtenance setbacks # 19, with Principal Planner VegaMkhwanazi responding there were no grandfather issues related to this. Council Member Jensen questioned buffer requirements for courts and impacts to neighbors, thinking some sound and lighting would tone down suggesting Type A buffer or opaque along the court side next to residential property lines. Council Member Jones agreed with buffer, maybe not 50', noting basket ball and tennis courts in town in most places had three or more acres and didn't think there was need to buffer the entire perimeter of the lot. Council Member Schulze felt there was protection provided under the sound ordinance. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Sutton made the motion to approve the UDO amendments with the condition for a 10' Type A buffer between tennis and basketball courts and property lines. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public hearing # 04

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 05– Annexation # 439**

Public hearing and possible motion regarding Annexation # 439: David and Wendy Brockelbank, owner/petitioner, petitioning to annex 4.733 acres into the Town's corporate limits and located on 2233 Kelly Road and known as Lot 4 Farrar land and including public right of way; and desires to connect existing home to town water.

Staff presented the request for annexation, noting the applicant's wanted to connect to town water. Mayor Weatherly opened the public hearing at 8:25 p.m. and with no one addressing this petition for annexation, closed the public hearing and referred the matter to Council.

**Action:** Council Member Jensen made the motion to approve annexation # 439 by adopting an ordinance to extend the corporate town limits. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 05

End of Public Hearings



## OLD BUSINESS

Presenter: Reed Huegerich, Transportation Planner

**Old Business # 01 – Safe Routes to School Construction Project and Agreement**

Possible motion for approval of the 1) Safe Routes to School Construction Project and 2) Safe Routes to School Municipal Agreement with NCDOT.

Staff presented a Municipal Safe Routes to School Agreement from NCDOT and noted the proposed project elements and funding of project as provided for in the proposed agreement, and recommending approval of the agreement approving the construction project.

**Action:** Council Member Schulze made the motion to approve. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Attorney Hank Fordham

**Old Business # 02 – Add-on**

Attorney Fordham presented options for fair market value determination per the attached, seeking Council's guidance regarding the preferred option. After comments and discussion, it was consensus of Council that the Attorney and Staff make a recommendation regarding the most workable option. Attorney Fordham presented draft ordinance to grandfather pending development applications from the recreation fee-in-lieu UDO amendment of May 2008. Comments and discussion evolved around concerns of being more definitive or specific after developers had been given a fee in lieu determined number by Parks and Recreation Commission, calculations and recommendations, and possible number of others that may be included in the thought of grandfathering; no final decision was made by Council.

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.  
***Your comments must be limited to 3 minutes to allow others opportunity to speak.***

*No one spoke during public forum.*

**NEW BUSINESS**

**Presenter:** June Cowles, Senior Planner

**New Business # 01 –Master Subdivision Plan Salem Village Phase 1 and 2**

**Review:** Planning Board met August 11, 2008 and unanimously recommended approval; staff recommends approval.

Possible motion regarding Master Subdivision Plan for Salem Village, Phases 1 and 2 that includes 143.5 acres and 247 single family lots.

Staff presented the report that is attached and incorporated as a part of the minutes, orienting to the site and its existing conditions, giving adjacent zoning and land uses and background information, noting the conditions recommended for approval of the subdivision for Phases 1 and 2; RCA noted at 22.5 % of Salem Village Phases 1, 2, and 3; comments on the grading, noted parks and recreation recommendation for fee-in-lieu, and the Traffic Impact Report prepared by Kimley-Horn and Associates that supports the traffic generated by the project; subdivision plan is consistent with 2025 Land Use Plan and Transportation Plan. Planning Board met August 11, 2008 and unanimously recommended approval; staff recommends approval of Phases 1 and 2.

Traffic crossing the railroad topped the discussion, with Russell Dalton, Transportation Engineer noting Phase 3 and 4 cannot be allowed without the railroad tracts crossing connection access. Mike Horn, Kimley-Horn, presented the Transportation Impact Report to assess projected traffic impacts up to 340 units, and the plan has been reduced to 247 units, and informed the proposed access can accommodate the proposed number of units and up to 340 units without the connection across the railroad tracts. It was noted the project would have to carry the future access through there; noted access aligns with the Peak Way across Tingen with the corridor in place, with discussion concerning crossing of the Seymour property with Horn responding engineering wise, do not want a 90 degree turn on the Peak Way. Council Member Jones asked if it were a condition for the Peak Way to be built, with Jason Bertoncino responding an ordinance was created that this condition is clear, and no way around it, the connection has to be made for the second access after 340 units.

Council Member Jensen addressed stormwater ponds and noted the commitment for 25 year stormwater control, with Bertoncino responding that to be correct. A developer contribution was discussed with a possible \$1000 per household to defray costs to develop the Peak Way. Bertoncino stated this was discussed back when they had the PUD; Phase 3 in review process takes them past 340 units, and connection was to be born by the developer and was not being proposed at this time, being problematic as the process becomes more formal and when they have an approved plan anticipates being back in advance of or before or near 340 lots; noted this would be for a proposed joint effort and \$1000 per household may be a part they have, to form a development plan. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Schulze made the motion to approve the Salem Village Master Subdivision Plan Phases 1 and 2 as submitted. Motion carried unanimously.

**End of New Business # 01**



Presenter: Lauren Simmons, Planner

**New Business # 02 – Colvin Estates Master Subdivision Plan**

**Review:** Planning Board met August 11, 2008 and recommends approval; staff recommends approval.

Possible motion regarding a Master Subdivision Plan for Colvin Estates; Matt Kirkpatrick, petitioner, seeking subdivision plan approval; proposed subdivision plan includes 21 single family lots; site is located on Smith Road adjacent the Symphony Run Subdivision.

Staff presented the applicant's request for continuation of this item to the Council meeting of September 2, 2008, to allow time for review of a developer agreement. Attorney Fordham noted this was a separate agreement and not part of this review. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Jones made a motion to continue this item to September 2, 2008 per the applicant's request. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02  
End of New Business

**WORKSESSION**

**There were no Worksession items for discussion.**

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session for the following: receive legal advice, discussion of potential condemnation litigation and receive legal advice, and a personnel issue

**Action:** Council Member Jensen made the motion to move into Closed Session for the reasons stated at 9:00 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at 9:43 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously. With Council having moved back into Regular Session the following action was taken:

**Action:** Council Member Schulze made the motion to release to Brubaker the Closed Session minutes redacted to reflect final action of the Town Council. Council Member Sutton made the second to the motion. Motion carried unanimously. **Action:** Council Member Sutton made the motion to amend the Road

Construction Agreement to relieve dedication of right of way for Ambergate Road from Apex 1<sup>st</sup> Development. Council Member Jones made the second to the motion. Motion carried unanimously. **Action:** Council Member Jones made a motion to move back into Closed Session regarding a personnel matter. Council Member Sutton made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. **Action:** The motion was made and seconded to move back into Regular Session at 10:47 p.m. Motion carried unanimously.

*(see 10/21/08 minutes)*

End of Regular Session



**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn, **Action:** Council Member Gossage made the motion to adjourn at 10:49 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

The minutes of August 19, 2008 meeting were submitted by the Town Clerk for approval at the September 2, 2008 Council meeting.

Georgia A. Evangelist  
Town Clerk

Keith A. Weatherly  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**September 02, 2008 Meeting Minutes**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 02, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street, Apex Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

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

**PRESENTATION**

County Commissioner Lindy Brown was to address the Town Council regarding affordable housing, however, was not in attendance.

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve. Council Member Sutton asked to pull item # 05 for separate consideration. **Action:** Council Member Jones made the motion to approve the consent agenda less #05 which will be considered at the end of the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously to approve the Consent Agenda as amended.

1. Minutes and General Account of August 19, 2008 Council meeting.
2. Minutes and General Account of August 19, 2008 Council Closed Session (separate cover).
3. Annexation Petition #440: Taycot LLC, owner/petitioner, petitioning to annex 8.351 acres including public right of way into the Town's corporate limits and located on Apex Barbecue Road (known as Lot 2); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for September 16, 2008.
4. Findings of Fact and Conclusions of Law and Ordinance Rezone # 08CU08, The Manors and Cottages at Bella Casa, JVI Development II, Inc., petitioner; for the property located at the end of Evans Road south of the Apex Nature Park (approved August 5, 2008).
5. **Resolution #08-0902-35** authorizing execution and delivery of documents related to the financing of police and fire facilities (considered separately).
6. Set public hearing September 16, 2008 to consider rezone of property located at 309 N. Salem Street from Medium Density Residential to Office and Institutional and inclusion of the property in the Central Business District.
7. Set Public Hearing September 16, 2008 for various amendments to Unified Development Ordinance.
8. Agreement with Fidelity National Title Insurance Company for police building property.

End of Consent Agenda



**Consent Agenda # 05**

Council Member Sutton asked questions regarding the fixed rate, Exhibit B attached to the Resolution authorizing execution and delivery of documents related to the financing of police and fire facilities. Director of Finance answered questions relative to this item.

**Action:** Council Member Sutton made the motion to approve Consent Agenda item #05. Council Member Jensen made the second to the motion. Council Member Gossage commented he was for the Police renovations; however had difficulty with the financing mechanism. Vote on the motion was 4 in favor and 1 opposed with Council Member Gossage voting no. Motion carried.

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set prior to taking action on the following items with no amendments.

**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. **Your comments must be limited to 3 minutes to allow others opportunity to speak.**

Herman Jaffee addressed protection of the electric supply and asked Council to write the State Utility Commission asking to give consideration to wind power; secondly asked consideration be given to solar power for hot water, not needing to suffer costs, noted the future Harris Plant Expansion, asking when Council will act on this.

End of Public Forum

**NEW BUSINESS**

Presenter: Bruce Radford, Manager

**New Business # 01 – Colvin Estates Master Subdivision Plan**

**Review:** Planning Board met August 11, 2008 and recommends approval; Staff recommends approval; Council approved Applicant's request for continuation of this item from August 19, 2008 Council meeting to September 2, 2008 Council meeting; Applicant requests another continuation of this item to the September 16, 2008 Council meeting.

Possible motion regarding a Master Subdivision Plan for Colvin Estates; Matt Kirkpatrick, petitioner, seeking subdivision plan approval; proposed subdivision plan includes 21 single family lots; site is located on Smith Road adjacent the Symphony Run Subdivision.

Manager Radford stated Applicant requests continuation of this item to the September 16, 2008 Council meeting.

**Action:** Council Member Gossage made the motion to continue this item to the September 16, 2008 Council meeting. Council Member Jones made the second to the motion. Motion carried unanimously.

New Business Item # 01 continued to September 16, 2008 Council meeting.



Presenter: Bruce Radford, Manager

**New Business # 02 – November 4, 2008 Council Meeting**

Manager Radford asked consideration whether or not to cancel the November 4, 2008 Council meeting due to the upcoming Election. After a brief discussion.

**Action:** Council Member Schulze made the motion to cancel the November 4, 2008 Council meeting. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss personnel. Manager Radford asked to include also, to receive legal advice from Town Attorney regarding potential litigation.

**Action:** Council Member Schulze made the motion to move into Closed Session at 7:15 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously. Closed Session minutes are recorded separately. Council moved back into Regular Session at 7:53 p.m.

With Council having moved back into Regular Session, the following action was taken:

**Action:** Motion was made by Councilman Jones to increase the Manager's compensation as outlined above. Motion was seconded by Councilman Sutton. Motion carried unanimously.

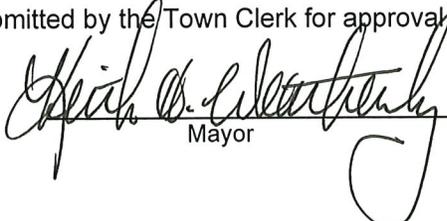
**ADJOURNMENT**

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

**Action:** Council Member Gossage made the motion to adjourn at 7:55 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

The minutes of September 2, 2008 meeting were submitted by the Town Clerk for approval at the September 16, 2008 Council meeting.

  
Town Clerk

  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
Minutes of the September 16, 2008 Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 16, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith Weatherly presided over the meeting.

Council Members present: Jensen, Jones, Schulze and Sutton.  
Council Member Gossage arrived at 7:20 p.m.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**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.

**PRESENTATIONS**

- o Chief Mark Haraway, Apex Fire Department presented each Council member with a copy of a book written by him regarding the EQ event entitled "Large Scale Incident Management".
- o The Anthemion Award was presented to the Town of Apex and given by Capital Area Preservation, Inc. for the adaptive re-use of the 1912 Apex Town Hall as the "Halle Cultural Arts Center of Apex", and located at 237 N. Salem Street.
- o County Commissioner Lindy Brown addressed the lack of affordable housing for the common working class in Wake County, asking Apex to do more; discussion followed regarding overall growth rate.

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Jones made the motion to delete item # 04 and approve the remaining items. Council Member Sutton made the second to the motion. Motion carried unanimously (Council Member Gossage had arrived and included in the voting).

1. Minutes and General Account of September 2, 2008 Council meeting.
2. Minutes and General Account of September 2, 2008 Council Closed Session (separate cover).



3. Capital Projects Ordinance Amendment for construction of police and fire facilities.
4. Award Contract for Phase II Beckett Crossing Greenway and to authorize Town Manager to sign all documentation related to project construction (**deleted from the agenda**).
5. Ordinance to amend Section 20-150. Addition of subsection (23): Prohibit parking along the east side of Commerce Street (behind the buildings fronting Salem Street) except in designated parking spaces.
6. Wake County Board of Commissioners Tax Report for Town of Apex approved and accepted in their regular session September 2, 2008.

End of Consent Agenda

### REGULAR MEETING AGENDA

The Regular Meeting Agenda was presented and modified to include an additional closed session item to receive legal advice prior to consideration of New Business item # 03. **Action:** Council Member Sutton made the motion to amend the agenda. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended and prior to taking action on the following items.

### PUBLIC HEARINGS

Presenter: Dianne Khin, Director of Planning

#### **Public Hearing # 01– Conditional Rezone # 08CZ06**

**Review:** Planning Board met June 9, 2008 and voted to not recommend approval (motion was to approve with conditions and the motion failed 3 to 2); staff did not recommend approval of the conditional zoning and removal of the property from the Small Town Character Overlay District; Town Council met June 17, 2008 and continued the public hearing to August 19, 2008; Town Council met August 19, 2008, and closed the public hearing, however, prior to the vote and upon request of petitioner, the matter was referred to the September 16, 2008.

Public hearing and possible motion regarding Conditional Zoning # 08CZ06, Walter and Laura Hollingsworth, petitioners, seeking a conditional zoning from B1 (Neighborhood Business) to PC-CZ (Planned Commercial Conditional Zoning) and removal from the Small Town Character Overlay District; property located at 400 N. Salem Street. Khin gave a review of the activity regarding this request as noted above and answered questions regarding the non-conforming use as a detail shop that had been discontinued for more than six months and would not be able to continue that use in this location, and had they not discontinued that use, could still be a detail shop but not expanded in anyway. Staff report is attached and incorporated as a part of the minutes. The Public hearing was opened at 7:25 p.m. Speaking in favor:

Attorney Alan Gardner, Louisburg, spoke in favor of the rezone, represents Hollingsworth and stated they had heard arguments regarding the proposed and the use was discontinued; two tenants were told by the town they could not use the side lot adjacent, and would be fined if they sat cars there, and the tenants left; stated tenants were given incorrect information; survey shows Hollingsworth has ownership of the property and noted use by Town for utility purposes; thinks the Hollingsworth request is reasonable and compatible with the grand plan for the town; location of the business is on the edge of the Small Town Character Area; has been an auto business for 80 plus years; proposed plan would be less adverse than many uses that would be allowed; would lease or rent the building after remodel; pave side yard and clean up; plan would be in compliance with town's plans, no gas station, no environmental issues, no detail shop, no run-off; no waste such as a convenient store would have and believes it would be allowed in B1; two story building are located to the right and a car lot and proposed plan is not out of character in the area. Photo's were shown of gas stores remodeled for new businesses; there are no sidewalks; is the first property from the corner on a triangle shaped lot and at/adjacent to the railroad tracts and not much use for the corner and thinks never would be; if the conditional zoning is allowed town could place



conditions on the business; whoever rents the business would close by 9:00 p.m.; there would be no adverse lighting, car lot has little traffic; would not be open on Sunday; conditions could be set and any contracts made, then the conditions could apply and could control it very well; Section 2.3.3 Conditional Zoning District the proposed plan would fit well, has a low impact, compatible with uses over the past years, clean and no large signage. There were no questions asked of Attorney Gardner.

No one spoke in opposition. Mayor Weatherly stated previous testimonies remain a part of the record. He asked Khin to give explanation for the discussion misinforming tenants that would discourage them to continue their business use. Khin informed at the time staff worked with this, the data from Wake County tax records stated the lot next door to the building site was shown as CSX right of way and never shown as owned by Hollingsworth and no tax bills sent to him; an attorney for him did a lot of work and now shows up as his property. Attorney Gardner corrected for the record the property does belong to Hollingsworth and had rights to the use of the lot.

Attorney Fordham pointed out that a person who has a legal non-conforming use and is given incorrect information by the Town and somehow loses their non-conforming use or is abandoned, the remedy wouldn't be a rezoning, that's something that should be considered with respect to rezoning; if that happened the person could make some type of case that they still have their non-conforming rights, he's not judging the facts, he's saying it's not relevant to a rezone; in a rezone you consider the relevant land use factors that are in existence at the time you would consider the proposal. Mayor Weatherly thought the points made by the statement was, it would still be a tenant in a business that would have been grandfathered, that's the allegation. Attorney Fordham continued it's relevant to whether it is grandfathered today, but not relevant to a rezoning.

Council Member Jensen asked clarification regarding a recourse for a resolve, perhaps the Board of Adjustment. Attorney Fordham responded if staff had made the decision, they did not have a non-conforming use, were still grandfathered, then they would appeal to the Board of Adjustment. Council Member Jones asked in the uses the applicant is proposing in the rezoning, the last three on the list that wouldn't be allowed in the B1 zoning with Khin adding that's correct and in the Small Town Character Area: carwash, auto detail and vehicle inspection center and vehicle sales and rental light are the three that would not be allowed by his current zoning. Map of the Small Town Character Area was shown. Khin wanted to clarify the following: they will be required no matter what business goes in there, car dealership or not to provide sidewalk there along north Salem Street on their frontage; whatever the argument about the sidewalks not being pedestrian friendly, they will be required to put a sidewalk in, people will use the sidewalk.

Council Member Jensen asked even if it were a detail shop and got a reprieve from the Board of Adjustment, with Khin responding, no, if they are not required to do a site plan then they would not be required to put in a sidewalk, that's correct. Khin pointed out that staff had never seen the architectural drawing shown to Council nor had a copy for the file as they wanted it to be a part of the record for condition. Attorney Gardner advised they could get a copy today; and if required as a part of the zoning, would put a sidewalk in and not a problem.

Speaking: Heather O'Sullivan Canney, 311 Olive Street, having served on the STC Committee would prefer to see a modification in the uses of the STC area over pulling folks out of the STC area; she doesn't see the point of having an overlay if someone doesn't like it and can come out of it; to evaluate the uses, and doesn't think it's necessarily a bad use, obviously and historically there were varied other uses in the downtown, but rather be the remedy to modify than to pull out.

The public hearing was closed at 7:40 p.m. and matter was referred to Council.



Council Member Jones agreed in the STC District these type uses, car dealership, inspection centers, vehicle sales, car washes, are within that STC District and some have been there for years, noting Clark Auto Sales in the Meckes Building back in the 60's and 70's, not necessarily saying it's a good thing, but rather than piece meal or removing things one at a time from the STC District, should decide what uses they want or don't want within any area of the STC Overlay District; otherwise looking on Center Street and thinking of a couple of businesses there and these type businesses on Williams Street in the STC area and would be discouraging people from remaining in that area; there are a lot of businesses in this area, and should have brought this up long ago.

Council Member Schulze expressed concern with the use of the building and how it would relate to the neighbors across the street; example auto detail shop with vacuums and power washers and if he lived across the street, its not something he would want to sit on his porch and hear that; he guess he could compromise but would like the stuff outdoor related removed. Council Member Jones continued as mentioned, should look at the entire overlay district. Mayor Weatherly added any modifications in the overlay district would not be a part of the proceedings with this item, with Khin offering basically would be a rezoning to change the overlay district and would go through the entire process, with Attorney Fordham advising it would be a text change in the UDO regarding uses in the STC District; Khin responded she didn't think they would be in favor of this at all, if you wanted to grandfather a particular use, it would be fine, but allowed everywhere would not be just the existing uses, but allow folks to set up new shops and would not allow them to put conditions, like the rezone they are trying to do, need conditions to balance out some of the concerns of the neighbors that you would not get if you just permitted it outright within that district; she sees pit falls to that approach.

Council Member Jensen stated it seemed to him Hollingsworth had in the interim an opportunity to go before the Board of Adjustment in terms of continuing on with the use that is there until deciding what changes may or may not make. Attorney Fordham added he was not prejudging this, but didn't know when the first decision was first made by Planning Staff and if a formal decision was rendered, might be some time applied in an appeal to the Board of Adjustment. If a formal decision hasn't been rendered, then it could be, then the time would start when a decision was rendered. Khin added if the notice of violation would be considered a formal decision, with Attorney Fordham responding he would have to read the paper to have an opinion on it.

Mayor Weatherly referred the matter to Council to deal with the issue at hand regarding rezone and removal from STC area; other issues can be dealt with in the formal process, asking if there were a motion.

**Action:** Council Member Schulze made the motion to deny the request. Council Member Sutton made the second to the motion. Council Member Schulze felt to allow folks to pull out of the STC District sets a bad precedent, people will start to pull out, and why have a district at all; noted alternative course of action would be 1) to go before the Board of Adjustment or 2) amend the overlay district that would allow the uses Hollingsworth is interested in. Council Member Jensen agreed with this and with the Town Attorney's opinion. Mayor Weatherly stated staff had made a solid recommendation, had spent a lot of time on the Overlay District and an important part of the downtown to maintain its distinct identity and need to keep it in place or it would fall apart, piece by piece. Vote on the motion was unanimous to deny.

End of Public Hearing # 01



Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 02 – Unified Development Ordinance Amendments**

**Review:** Planning Board met September 8, 2008 and recommended approval; staff recommends approval.

A public hearing and possible motion regarding amendments to the Unified Development Ordinance to include the following: Amendments to Parks and Recreation Fee Payable In-Lieu of Dedication (determination of fair market value; procedure for the committee's membership and action; grandfathering of developments having been granted a recommendation by the Parks and Recreation Advisory Committee); an amendment requiring a one foot side setback for driveways; a change to setbacks for communication towers; a statement in the UDO clarifying that no site work shall commence prior to being granted development approval; an amendment to add a \$500 fine where site work is started prior to the granting of development approval; and a change to correct the UDO where it refers to Residential Agriculture rather than Residential Agricultural.

Staff presented the proposed amendments as stated in the staff report which is attached and incorporated as a part of the minutes. Revised ordinance was provided by the Town Attorney. Mayor Weatherly opened the public hearing at 7:57 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 proposed UDO amendments as presented. Council Member Jensen commented on scrutinizing low appraisals, with Council Member Jones noting the mechanism in place to get a second opinion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 03– Annexation # 440**

Public hearing and possible motion regarding Annexation # 440: Taycot LLC, owner/petitioner, petitioning to annex 8.351 acres into the Town's corporate limits, including public right of way and located on Apex Barbecue Road and known as Lot 2 (future subdivision requesting town services).

Staff presented the request for annexation, orienting to the site, and approved Subdivision Magnolia Creek – 30 units; owners will continue to live in existing single family home until vacated, and included in the sewer allocation. The public hearing was opened at 7:57 p.m.

Speaking in favor: Pete Clossen, Jones and Clossen Engineering, stated the sewer capacity for the subdivision was included for allocation. The public hearing was closed at 8:00 p.m. Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to adopt the ordinance to extend the corporate limits for Annexation # 440. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearings

Attorney Fordham and Planning Director Dianne Khin were excused to speak with Attorney Gardner regarding decision related to Hollingsworth property and returned prior to the New Business items.



## 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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

The following business owners addressed parking concerns - a lack of parking for business owners and patrons of the downtown Salem Street with each identifying their own concerns and asking and identifying temporary solutions during the police facility renovation and urging Council to make more long term solutions as town continues to grow and as they continue to operate businesses in the downtown and for future business owners, and that their businesses were suffering, and offered their assistance in finding resolutions to the parking problems that was before them in the downtown.

Laura Kelly, 421 Hillcrest, Laura Kelly Designs; Lynn Willis; Mark Lloyd; Wendy Burns; Renee and Lee Lloyd, Hair Salon; Pat, Piggy Back Market 100 Block of Salem Street; Heather O'Sullivan Canney, 100 Block of Salem; Mike Andrews, V.P. Downtown Business Association; Marsha Phelps; Pete Crossen, Jones and Crossen Engineers; Brenda Stein, Apex Chamber.

Mayor Weatherly and Manager Radford responded to each of their concerns, with the Manager giving previous activity regarding the downtown parking and police renovation measures, and with Mayor Weatherly recommending the formation of a committee and that Manager Radford spear-head the committee and that they be committed to finding solutions for parking in the downtown.

Public Forum closed at 8:40 p.m.

## NEW BUSINESS

Presenter: Lauren Simmons, Planner

### **New Business # 01 – Colvin Estates Master Subdivision Plan**

**Review:** Planning Board met August 11, 2008 and recommends approval; Staff recommends approval; Council approved Applicant's request for continuation of this item from August 19, 2008 Council meeting to September 2, 2008 Council meeting where Applicant requested continuation of this item to the September 16, 2008 Council meeting.

Possible motion regarding a Master Subdivision Plan for Colvin Estates; Matt Kirkpatrick, petitioner, seeking subdivision plan approval; proposed subdivision plan includes 21 single family lots; site is located on Smith Road adjacent the Symphony Run Subdivision.

Manager Radford asked this item be pulled from the agenda until all items are addressed and ready for consideration.

New Business # 01 pulled



## New Business continued

Presenter: June Cowles, Senior Planner

**New Business # 02 –Salem Village Phase 3 Master Subdivision Plan**

**Review:** Planning Board met September 8, 2008 and unanimously recommended approval with conditions presented by staff; staff recommends approval with conditions.

Possible motion regarding Salem Village Phase 3 Master Subdivision Plan that includes 51.1 acres; 115 single family lots, and located South of South Salem Street and west of Tingen Road.

Cowles presented the staff report which is attached and incorporated as a part of the minutes, oriented to the site, noting conditions, medium density zoning, for the 115 single family units or Phase 3 and to the east are the approved Salem Village Phase 1 and 2 and large lot single family residential; this site was zoned prior to the adoption of the UDO and prior to the 2025 Land Use Plan; staff recommends approval with conditions listed within the report; proposed subdivision plan is consistent with the UDO, and Transportation Plan; Planning Board recommends approval with the conditions presented by staff. Applicant was present and accepts the conditions. Jason Bertoncino, Withers and Ravenel, confirmed and acceptance of condition # 4 in that prior to platting of the 341<sup>st</sup> residential lots of Salem Village Phases, 1, 2, and 3, connection of the Apex Peakway to South Salem Street shall be completed. With no other questions, Mayor Weatherly referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the Salem Village Phase 3 Master Subdivision Plan with the conditions as recommended. Council Member Jones made the second to the motion. Motion carried unanimously.

## End of New Business # 03

Presenter: Council Member Mike Jones

**New Business # 03 – Recommendations of the Finance Committee**

Consideration of an agreement with JVI and Parkside LLC to contribute toward road construction, recreational property purchase and details regarding a developer agreement per the recommendations of the Finance Committee.

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney before giving consideration to this item. **Action:** Council Member Jones made the motion to move into Closed Session at 8:45 p.m. Council Member Sutton made the second to the motion. 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 at 8:55 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

Council Member Jones (Chair of the Finance Committee) stated the Committee met September 10, 2008 and discussed a potential developer agreement between the Town and JVI and Parkside LLC, regarding the construction of Milano Drive, a major collector street on the south side of Nature Park with potential for purchase of a piece of property on the south side, and discussed credits for expenses. Finance Committee developed a recommendation, however, now has new information and may want to meet again, and defer action regarding this item. Council Member Sutton (Finance Committee member) agreed they should meet prior to the next regular Council meeting. Joey Iannone, JVI, stated he has an October 15, 2008 date to commit to the landowner, and willing to meet. Mayor Weatherly referred the matter to the Council.

**Action:** Council Member Jones made the motion to defer this item to the Finance Committee for further review. Council Member Jensen made the second to the motion. Motion carried unanimously.

## End of New Business



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session for the following reasons.

**Action:** Council Member Jensen made the motion to move into Closed Session at 9:00 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of the Closed Session are recorded separately.

- 1) To receive legal advice and discuss pending condemnation litigation designated Town of Apex v. Christopher Williams et. al, and
- 2) To receive legal advice from Town Attorney and discuss potential condemnation litigation, and
- 3) To seek legal advice from the Town Attorney for discussion of possible litigation.

**Action:** Council Member Gossage made the motion to move back into Regular Session at 9:24 p.m. Council Member Sutton made the second to the motion. The motion carried unanimously.

With Council having moved back into Regular Session, there was a brief discussion regarding the Wake County Board of Elections decision concerning not having a one-stop voting in Apex.

**Action:** Council Member Jones made a motion to adopt a **Resolution No. 08-0916-36** Authorizing Eminent Domain Proceedings Related to the Substation No. 3 Project for the Improvement of the Apex Electric System. Council Member Jensen made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:29 p.m.

**Action:** Council Member Jensen made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of September 16, 2008 meeting were submitted by the Town Clerk for approval at the October 7, 2008 Council meeting.

Georgia A. Cavanaugh  
Town Clerk

Heidi A. Weatherly  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**October 07, 2008 Minutes of the Apex Town Council Meeting**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 07, 2008, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Pro tempore Mike Jones presided over the meeting in the absence of the Mayor.  
Council Members Jensen, Gossage, Schulze and Sutton were present.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

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

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 Mike Jones presented the Consent Agenda to be set prior to taking action to approve. Manager Bruce Radford asked to amend the agenda to include a New Business item # 6 to consider a change from the Code Red System to Connect CTY System. Attorney Hank Fordham asked to amend the agenda to include a Closed Session item: potential litigation.

**Action:** Council Member Jensen made the motion to amend the consent agenda.  
Council Member Schulze made the second to the motion. Motion carried unanimously.

**Action:** Council Member Sutton made the motion to approve the consent agenda as amended.  
Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of September 16, 2008 Council meeting.
2. Minutes and General Account of September 16, 2008 Council Closed Sessions (separate cover).
3. Set Public Hearing on October 21, 2008 for rezone request of 740 S. Salem Street from Medium Density Residential to Office and Institutional.
4. Set Public Hearing on October 21, 2008 for rezone request of 309 N. Salem Street from Medium Density Residential to Mixed Office Residential and Retail and inclusion of the property in the Central Business District.
5. Set Public Hearing October 21, 2008 for various amendments to the UDO.
6. **Resolution # 08 – 1007 - \_37\_** Accepting Offer of Dedication of 5' of additional Public Right-of-way for the Apex Peakway in and near Whitehall Manor and former Cardinal Boulevard.



Consent Agenda continued

7. **Resolutions # 08 -1007 – 38, 39, 40, 41, 42, and 43** Declaring highest bid pursuant to the Upset Bid Procedure and authorizing completion of sale of certain properties located in Charleston Village, known as a portion of Lots 324, 325, 326, 327, 328 and 329.
8. **Resolution # 08 – 1007 – 44** Imposing gross receipts tax on rentals of heavy equipment in lieu of property tax.
9. Award contract for Phase II of the Beckett Crossing Greenway and to authorize Town Manager to sign all documentation related to project construction.
10. Authorize Manager to sign License Agreement with Local Government Federal Credit Union to put a computer kiosk with electronic access to the Town’s employee intranet and LGFCU in the Public Works and utilities building for use by field employees.

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set prior to taking action on the following items.

**PUBLIC HEARINGS**

There were no scheduled Public Hearings.

**OLD BUSINESS**

Presenter: Reed Huegerich, Transportation Planner

**Old Business # 01 –Updated Safe Routes to School Municipal Agreement with NCDOT**

Possible motion for approval of the updated Safe Routes to School Municipal Agreement with NCDOT.

Staff presented an updated Safe Routes to School Municipal Agreement with NCDOT, having been previously approved by Council August 19, 2008; now modified as some language in the version of the agreement approved by the Town was rejected by NCDOT; major components of the Agreement remains the same. Attorney Fordham explained the modifications to the Agreement. Staff explained to become eligible for the award reimbursement, the Town must approve and accept the updated municipal agreement and remit to NCDOT, and recommended approval of the Agreement as modified.

**Action:** Council Member Gossage made the motion to approve the Agreement as modified. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Town Manager Bruce Radford

**Old Business # 02- Provision for Additional Parking in Central Business District**

**Review:** Council asked Manager Radford to organize committee and investigate parking alternatives in the Central Business District after Downtown Merchants addressed parking issues.

Consideration and discussion regarding the provision of additional parking lots/spaces in the Central Business District. Manager Radford stated Committee and Downtown Merchants had discussed solutions for additional parking in the Central Business District; potential solutions are outlined on attached cover sheet; options included possible land purchase(s) for long term parking and options for short term parking: gravel, restriping, and placement of bike racks. Discussion followed; money is available in General Fund too cover associated costs, however not budgeted. Council agreed to the importance of land purchase(s) long term; business owners were encouraged to have employees park in the rear of businesses freeing front parking for patrons. Real estate data and site maps are attached.

**Action:** Council Member Schulze made the motion to direct the Manager and Attorney to negotiate and pursue parking options for leases and/or purchases and to expense the funds necessary to construct the parking areas as proposed. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Old Business # 02

End of Old Business



**PUBLIC FORUM**

Public Forum allows the public an opportunity to address the Town Council.  
Mayor Pro tempore Jones 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.  
*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Tom Colhoun, Planning Board, addressed need for a Town public information officer position to get information throughout town due to growth that includes the ETJ.

Mike Callis recommended Town consider select miniature recycle bin, larger than standard, with tops and wheels, more in keeping with larger garbage carts; could recycle more with larger containers. Manager Radford stated he had discussed this with Waste Industries and would require extended contract for five years and a cost of \$1.40 per residence; if Council had an interest in this choice, he would pursue it.

Mark Lloyd, business owner, Tobacco and Mule Exchange, addressed a site plan of a business owner, Scott McAllister that shows parking spaces approved by the Town and questioned those being taken away; had felt misled and would not have signed a lease had he known there would be no available parking. Attorney Fordham advised site plans do not include public parking. Dianne Khin, Director of Planning, advised there was no off-street parking approved and the plan for additional parking in this site plan requested on his property did not get approved, and Town was not blocking spaces and spaces behind the business was owned by the Town. Lloyd expressed the need for confidence that town should have business owners best interest at heart. Mayor Pro tempore Jones noted associated costs and time to deal with the parking issue. Council Member Sutton noted the town was reactive vs. pro-active and perhaps should have taken action earlier. Manager Radford reassured his commitment to find workable solutions regarding parking issues and the money needed to make those solutions happen was available.

End of Public Forum

**NEW BUSINESS**

Presenter: Tim Donnelly, Director of Public Works

**New Business # 01 – Agreement Between Kirkpatrick and Associates, LLC and Town of Apex**

**Review:** Finance Committee from their October 3, 2008 met with Developer of proposed Colvin Estates; recommendation regarding proposed Agreement will be presented; Agreement will be provided by Town Attorney at Council Meeting  
Possible motion to approve a Utilities Infrastructure Reimbursement Agreement between Kirkpatrick and Associates, LLC and Town of Apex for proposed Colvin Estates Subdivision.

Donnelly recommended approval of a standard Agreement between Kirkpatrick and Associates, LLC and the Town that provides \$25,185 in off-site waterline acreage credits and a maximum of \$33,000 in over-sizing waterline payments from Town to Kirkpatrick and Associates, LLC upon completion and acceptance of a 12-inch waterline serving Colvin Estates Subdivision; Finance Committee October 3, 2008 addressing off-site water line, credits and oversizing and recommends approval of the Agreement, also approved by Kirkpatrick and Associates, LLC.

**Action:** Council Member Sutton made the motion to approve the Agreement as recommended. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 01

**New Business continued**

Presenter: Lauren Simmons, Planner

**New Business # 01-A – Colvin Estates Master Subdivision Plan**

**Review:** Planning Board met August 11, 2008 and recommends approval; Staff recommends approval; Council approved Applicant's request for continuation of this item from August 19, 2008 Council meeting to September 2, 2008 Council meeting where Applicant requested continuation of this item to the September 16, 2008 Council meeting; Finance Committee reviewed same September 10, 2008 and the item was continued from September 16, 2008 Council meeting to October 7, 2008; Finance Committee reviewed same October 3, 2008 and findings will be presented to Council.

Possible motion regarding a Master Subdivision Plan for Colvin Estates; Matt Kirkpatrick, petitioner, seeking subdivision plan approval; proposed subdivision plan includes 21 single family lots; site is located on Smith Road adjacent the Symphony Run Subdivision, with seven acres of open space, including pond..

Staff presented the attached staff report and is incorporated as a part of the minutes, orienting to the site, the layout and location in Apex ETJ and would be annexed into the Town's corporate limits to receive water; subdivision would not connect to public sewer, because sewer is not available in the area; subdivision will be served by septic for each individual lot and would be the homeowners' responsibility to maintain same. Tim Donnelly Director of Public Works noted approved and agreed to Developer Agreement and noted the line for future sewer easement; 25,000 square foot lots are about one acre in size. Subdivision is less than 35 acres and a fee-in-lieu is required; includes 10 foot wide landscape; access is provided off Smith Road and includes connection to Timpani Trail to the west.

**Action:** Council Member Schulze made the motion to approve the master subdivision plan for Colvin Estates. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of New Business # 01-A**

Presenter: Reed Huegerich, Transportation Planner

**New Business # 02 –MTIP Project Priorities**

Discussion and possible motion for approval of the amended Metropolitan Transportation Improvement Program (MTIP) project priorities. Proposed changes were recommended by Capital Area Metropolitan Planning Organization in that smaller projects have a better chance for funding in the MTIP than larger projects; MTIP priorities are outlined on cover sheet and recommended for approval; complete priority list is attached. MTIP Project Priority list had been approved by Council on February 20, 2007.

**Action:** Council Member Gossage made the motion to approve the amended MTIP priorities as presented. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

Presenter: Tim Donnelly, Director of Public Works

**New Business # 03 – Utility Relocations / I-540 Toll Road Project**

Possible motion to approve Budget Ordinance Amendment No. 1 with Capital Project Ordinance Amendment for the purpose of Town of Apex Utility relocations for the I-540 Toll Road Project.

Donnelly described utility construction arrangements related to Utility Relocations / I-540 Toll Road Project and associated costs; recommended approval of the project and associated Budget Ordinance Amendment and Capital Project Ordinance Amendment providing engineering, surveying, legal, cost estimates and easement support for the utility relocations. Subsequent Budget Amendment and NC Turnpike Authority/Town Agreement will be provided to Council when the actual costs of the proposed utility work are known and will include breakdown of costs. Mayor Pro tempore Jones noted money associated with the project well spent. Question were answered regarding sale of associated bonds for regional wastewater plant: response was bonds do not have to be sold anytime soon.

**Action:** Council Member Schulze made the motion to approve the documents for the proposed utility relocations as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of New Business # 03**



## New Business continued

**Presenter: Kent Jackson, Director of Construction Management**

**New Business # 04 – Rail Corridor Project Master Agreement**

Consideration for approval of a Rail Corridor Project Master Agreement between NCDOT and Town of Apex and CSX Transportation, Inc.

Jackson presented Rail Corridor Project Master Agreement between NCDOT and Town of Apex and CSX Transportation, Inc. necessary for construction of northern Peakway project and roadway improvements that requires new public at-grade crossings and requiring permanent closure of East Moore Street crossing for vehicular traffic and pedestrian traffic. At-grade crossing on Tingen Road will be closed upon opening of future southern Peakway bridge access is in place at Salem Village; unsure who will build the bridge at this point. Council Member Schulze expressed displeasure in that CSX has all power regarding this activity; Mayor Pro tempore Jones was in agreement with closing Tingen once another access is in place. Jackson reported upgrades at East Chatham Street and Center Street, Hunter Street, and associates costs with those improvements; noted the closures of three private rail crossings in Villages of Apex development and three private rail crossings within Salem Village. Access to the Cell tower will be provided inside Trackage development and agreed too by the property owner. Attorney Fordham advised there would be a private developer agreement associated with the private rail crossing closures. No action was taken by Council to approve the Agreement as it will be presented to Council for consideration after the scheduled public hearing.

**End of New Business #04**

**Presenter: Kent Jackson, Director of Construction Management**

**New Business # 05 – Resolution of Intent Regarding Rail Corridor Project Master Agreement**

Possible motion to adopt a **Resolution # 08-1007 – \_38\_** of Intent to close the highway at-grade rail crossing on East Moore Street and to set date of public hearing for November 18, 2008 relative to and a requirement upon full execution of the Rail Corridor Project Master Agreement between NCDOT and Town of Apex and CSX Transportation, Inc.

**Action:** Council Member Schulze made the motion to adopt the Resolution of Intent to begin the public process for the Intent to Close the at-grade crossing at East Moore Street and set date of public hearing for November 18, 2008 relative to the Rail Corridor Project Master Agreement. Council Member Sutton made the second to the motion. Motion carried unanimously. Note: Town Clerk will begin the public process: advertisement of Resolution of Intent, notify adjacent property owners, and post public notices.

**End of New Business # 05**

**New Business # 06 – Add-on Connect CTY Services Agreement**

Manager Radford recommended change in service from Code Red emergency notification system (not used since EQ event and with agreement ready to expire; Town was limited to emergency messages only; recommend service with Connect CTY, noting it the same system used by the schools and has a more friendly service at a cost of \$16,000 asked authorization for he and Town Attorney to pursue and negotiate details; Attorney commented on language and indemnification provisions; BellSouth white pages patrons would be assigned on this service, and others could sign up on the town's website; cell phones would no longer be recognized, and provides isolated geographic area messages.

**Action:** Council Member Sutton made the motion to authorize the Manager and Attorney to pursue, negotiate and work out details for the Connect CTY notification system and subject to the matters stated by the Attorney. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of New Business # 06**



**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

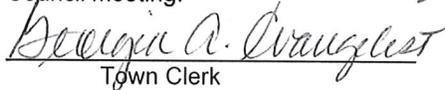
Mayor Pro tempore called for a motion to move into Closed Session at 8:15 p.m. to receive legal advice from Town Attorney and discuss potential condemnation litigation.

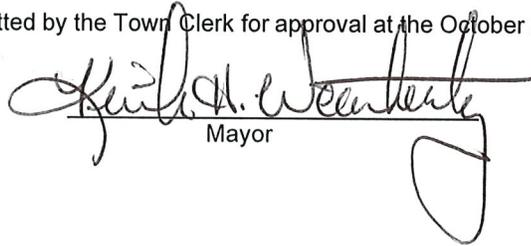
**Action:** Council Member Gossage made the motion to move into Closed Session for the reason stated. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 8:45 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before the Council Mayor Pro tempore Jones called for a motion to adjourn at 8:46 p.m. **Action:** Council Member Jensen made the motion to adjourn. Council Member Sutton made the second to the motion. Motion carried unanimously.

The minutes of the October 7, 2008 meeting were submitted by the Town Clerk for approval at the October 21, 2008 Council meeting.

  
Town Clerk

  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
Minutes of October 21, 2008 Meeting of the Apex Town Council

The Regular Meeting of the Apex Town Council scheduled for Tuesday, October 21, 2008, 7:00 p.m.,  
was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly will preside over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

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

**PRESENTATIONS**

Mayor Weatherly presented the Residential and Non-Residential Appearance Awards:

Residential: Larry and Vanessa Jenks, 105 Hunter Street, Apex

Non-Residential: Petroliance, 1013 Schieffelin Road, Apex

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve. Manager Radford asked to amend the agenda to include an Old Business Item: Parking in the Central Business District and Budget Amendment; Closed Session: Acquisition of Real Property. Attorney Fordham asked to add a Closed Session item: potential litigation.

**Action:** Council Member Jensen made the motion to approve the consent agenda with the modifications requested. Council Member Sutton made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of October 7, 2008 Council meeting.
2. Minutes and General Account of October 7, 2008 Council Closed Session (separate cover).
3. Minutes and General Account of the September 10, 2008 Finance Committee meeting.
4. Minutes and General Account of the October 3, 2008 Finance Committee meeting.
5. Budget Ordinance Amendment No. 2 providing funding for purchase and improvement of property near the downtown area for additional parking.
6. Policy relating to prevention of identity theft under rules adopted by Federal Trade Commission.
7. Budget Ordinance Amendment No. 3 with Capital Project Ordinance Amendment for the purpose of Town of Apex electric utility relocations for the I-540 Toll Road Project.
8. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners on October 6, 2008.

End of Consent Agenda



## REGULAR MEETING AGENDA

The Regular Meeting Agenda will be set prior to taking action on the following items.

### PUBLIC HEARINGS

Presenter: Lauren Simmons, Planner

#### **Public Hearing # 01 – Conditional Zoning # 08CZ10**

**Review:** Planning Board met October 13, 2008 and recommends approval; staff recommends approval with conditions. Public hearing and possible motion regarding Conditional Zoning # 08CZ10, to rezone from Medium Density Residential to Mixed Use Office Residential Retail (MORR-CZ) and inclusion of the property in the Central Business District, Jeff and Jennie Zdenek; site is .21 acres located at 309 N. Salem Street.

Staff presented their report that is incorporated as a part of the minutes, orienting to the site and noted the request for rezone and inclusion in the Central Business District for proposed law office; noted permitted uses and condition proposed and agreed to by applicant (medical/dental office to be removed from allowable uses). Planning Board recommends approval based on consistency with 2025 Land Use Plan and compatibility of surrounding land uses and recommends inclusion of the property in the Central Business District. Staff recommended approval with condition.

Public hearing was opened at 7:05 p.m. with Jeff and Jennie Zdenek speaking in support of their request. With no one else addressing this request, the public hearing was closed.

**Action:** Council Member Gossage made the motion to approve the request as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Presenter: Lauren Simmons, Planner

#### **Public Hearing # 02 – Conditional Zoning # 08CZ11**

**Review:** Planning Board met October 13, 2008 and recommends approval; staff recommends approval with conditions. Public hearing and possible motion regarding Conditional Zoning # 08CZ11, 2025 Land Use Plan amendment from Medium Density Residential to Mixed Use Medium Density Residential and Office & Institutional, and to rezone from Medium Density Residential to Office & Institutional Conditional Zoning, Tom McKay and Harold K. Jordan, Jr.; site is 2.11 acres and located at 740 S. Salem Street.

Staff presented their report and is incorporated as a part of the minutes, oriented to the site and noted the request for rezone and amend the 2025 Land Use Plan for use as proposed daycare. Planning board and staff recommends approval with condition proposed and agreed to by applicant (any proposed building will be at least 60' brick masonry on the front façade), noted this as a transitional zone.

Public hearing was opened at 7:10 p.m. with Tom McKay, Fuquay-Varina, speaking in support of the request. Heather O'Sullivan-Canney, Olive Street, Apex, spoke in support of the request noting the shape of the parcel and for good use. With no one else addressing this request, the public hearing was closed.

**Action:** Council Member Gossage made the motion to approve the request as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

Presenter: Lauren Simmons, Planner

#### **Public Hearing # 03 – Major Site Plan Candlewood Suites**

**Review:** Planning Board met October 13, 2008 and recommends approval; staff recommends approval. Public hearing and possible motion regarding Major Site Plan for Candlewood Suites, Michael Hicks petitioner, seeking site plan approval for 81-room extended stay hotel on 3.7 acres, and located on NC55 and will be accessed off of Marco Drive.



Public hearing # 03 continued

Staff presented their report that is incorporated as a part of the minutes, orienting to the site and noted the request to approve major site plan for proposed hotel; Planning Board met October 13, 2008 and recommends approval. Access off Marco Drive noted Marco Drive is extended to serve another hotel. Staff recommends approval of the plan and proposed four-story building and due to visibility from the site, noted the grade plan, Type E buffers, utilities, landscape and RCA (43% above what's required), showed an architectural brick elevation, also a part of the approved White Oak Plan and approved construction plans.

Public hearing was opened at 7:15 p.m., with Michael Hicks, speaking in support of the request for the proposed hotel, and echo from staff's report and noting access off Marco Drive. With no one else addressing this request, the public hearing was closed.

**Action:** Council Member Gossage made the motion to approve the request as recommended. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

Presenter: Reed Huegerich, Transportation Planner

**Public Hearing # 04 - Transportation Plan Amendments**

Public hearing and possible motion for approval of the Transportation Plan Amendments and focusing on Collector Street Realignments and Intersection Improvements.

Staff presented proposed as stated. Consensus by Council was to pole property owners regarding Mt. Zion Church Road realignment (major collector) as it cuts through properties preference to follow property lines.

Public hearing was opened at 7:25 p.m. and with no one addressing the proposed amendments, the public hearing was closed.

**Action:** Council Member Gossage made the motion to approve the amendments as presented with the Mt. Zion Church Road realignment to be discussed with property owners and seeking their approval, giving feedback to Council for future approval, as the road would not be built anytime soon. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

Presenter: Brendie VegaMkhwanazi, Principal Planner

**Public Hearing # 05 – Unified Development Ordinance Amendments**

**Review:** Planning Board met September 8, 2008 and recommended approval; staff recommends approval.

Public hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance with possible motion regarding the same. Proposed amendments include: a change to administrative adjustments; allowing residential, non-conforming structures to expand; set a height limit and clarify setbacks for constructed stealth towers; changes to self-service storage facilities; a change to the required ROW width for alleys; a new section allowing directional signage for sales centers; and allowing bracket and projecting signs in the Small Town Character Overlay District and Planned Developments.

Staff presented their report regarding the proposed which is incorporated as a part of the minutes. Staff asked # 5 in the report be pulled for further review regarding alley widths. Council Member Schulze asked clarification regarding hardships by administrative adjustment vs. Board of Adjustment - response was 10% rule; stealth tower constructed heights, after balloon tests revealed heights of 200 feet, and asking height limitations of 100 feet as there were no previous height limitations.

Public hearing was opened at 7:40 p.m. and with no one addressing the proposed amendments, the hearing was closed.

**Action:** Council Member Schulze made the motion to approve the UDO amendments. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearings

**OLD BUSINESS**

Presenter: Hank Fordham, Town Attorney

**Old Business Item # 01 - Ambergate Station Road Construction Agreement**

Possible motion to approve a revised proposed Ambergate Station Road Construction Agreement.

Attorney Fordham presented the proposed agreement, noting modifications in that the Hunter Street Park tract would be reduced by a small amount or approximately one-half acre, to accommodate a larger storm water detention pond than initially thought, and to reduce the amount of area in the future Ambergate Road right-of-way that Apex First is obligated to convey to the Town. Reported Director of Parks and Recreation, and with Council Member Jones reaffirming, would rather not own a portion of the stormwater pond, with preference to reduce the park size to accommodate the storm retention pond, since the acreage of the park in question that would be reduced was a wet area and would have no impact on the functionality of the park, and no detriment to the town. Apex First Development requests revised proposed Road Construction Agreement to allow it to increase the amount of land that it will donate to Thales Academy. Dianne Khin, Director of Planning noted a map configuration noting the lots that must face the right of way and the Thales final site plan; and noted dedication of any right of way that falls on their property.

**Action:** Council Member Schulze made the motion to approve the proposed agreement with modifications noted by the Attorney, with final agreement prepared by the Attorney. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Old Business # 01

Presenter: Manager Bruce Radford

**Old Business Item # 02 – (Add-on) Downtown Parking Project**

Possible motion to award construction contract for downtown parking project.

Manager Radford introduced the item, calling on Kent Jackson, Director of Construction Management for presentation. Jackson noted bids were evaluated based on three parking lots in the downtown identified as the Maynard Property, the Cattano Construction Property, and Seaboard Street (maps attached), and seeking authorization for and recommending award for the Maynard property to be graveled for temporary parking and Cattano property purchased and paved for permanent parking, and authorization to amend the budget to do so, for a total increase in parking spaces 20 paved and 80 graveled. Manager Radford would bring Seaboard Street back to Council for authorization if arrangements for parking were to take place (estimated cost \$83,775.00). Lowest Bid Award was recommended to Narron Contracting, with bid tabulation attached, recommending \$47,218.00 for the Maynard temporary parking, and \$25,436.00 for the permanent Cattano property or a total of \$72,654.00. Attorney Fordham advised there is a purchase contract for the Cattano property.

**Action:** Council Member Sutton made the motion to award the construction contract for the downtown parking project as recommended for the paved and unpaved properties and authorization for the funds to purchase and for construction of the parking projects.

End of Old Business # 02

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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

No one spoke during public forum

**NEW BUSINESS**

**Presenter:** Lee Smiley, Director of Finance

**New Business Item # 01 – 1<sup>st</sup> Quarter FY08-09 Financial Summary**

Director of Finance gave a review of 1<sup>st</sup> Quarter FY08-09 Financial Summary, with benchmark for the first quarter financial performance to be 25% for revenues and expenditures. Significant variances are noted on the attached report. Also, in light of the current economic situation, an analysis of General Fund revenues is attached which outlines those that are subject to an economic downturn and the estimated impact on the current year budget. Manager Radford will keep a watch on this activity and report on issues that they may have to face. Also attached is a letter issued by the State Treasurer discussing recent liquidity problems and its effect on the debt market. Discussion followed regarding borrowing power and sale of bonds for projects such as the Peakway Bridge and Nature Park, and electric sub-station project which the town is committed too regardless (revenue bonds), and if there is no market for the bond sale, would scrap from other funds to complete the project. Noted: ElectriCities does not agree with borrowing from financial institutions to complete such projects, as would not be in a position to use substation as backup collateral. Council accepted the report as presented.

**End of New Business # 01**

**Presenter:** John Maclaga, Electric Department

**New Business Item # 02 – Elster Contract**

Possible motion to approve Contract between Town and Elster Electricity detailing a relationship where Town gets assistance and large discounts from Elster to set up a two-way commercial electric meter reading system in exchange for Town providing assistance to Elster with a test system in the Town for Elster research and development purposes. Mike Couch Electric Superintendent and John Maclaga, Electric Department presented the project: 2000 commercial electric meters would benefit from the automated meter reading devices, an improvement over manual reads reducing manpower and labor costs, at a cost of \$12,500 to setup equipment in exchange for helping Elster with a test system; estimated pay back time-five years. Goal is to replace all commercial meters in one year. \$120,000 of hardware/software would be provided to the town for Elster to test their technology over a 10-year period. Remote would also be available for residential meters and in-home displays. Cecil Shaffer, Elster was present to answer questions regarding software license and maintenance fees and gave further information regarding the pilot program. A rough draft of the contract was presented by the Town Attorney and discussed, noting uncertainty's regarding the needs for both parties to be met, and long term results, and if agreed to, would need an amended contract, advising Council could agree in concept but needed a more defined contract. Council was in agreement with the attorney asking for more information, and what they could expect long term, and what the cost would be going forward.

**Action:** Council Member Sutton made the motion to approve the agreement allowing staff to proceed, research and develop a permanent contract, and to authorize \$12,500 for start-up costs. Attorney Fordham advised Council could approve in concept but not approve the agreement until there was a more defined document in place and a more defined contract would include the \$12,500. Council Member Sutton felt the need to get started. Mayor Weatherly was in agreement with the concept but needed a more contractual agreement to move forward. Elster representative noted some things were vague and couldn't identify as with the initial agreement was more complicated, and needed to be identified and willing to work with the attorney to finalize the contract. Council was in agreement to approve the agreement in concept and to proceed work on a finalized contract and bring back to council for approval.

**Action:** Council Member Sutton made the motion to do what was agreed to by Council. Council Member Jensen made the second to the motion. Motion carried unanimously.

**End of New Business # 02**

**End of New Business**



**WORKSESSION**

There were no Worksession items for discussion.

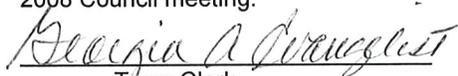
**CLOSED SESSION**

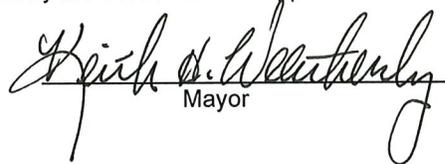
Mayor Weatherly called for a motion to move into Closed Session at 8:40 p.m. to discuss the following items as allowed under the General Statutes: Acquisition of property, and potential litigation. **Action:** Council Member Jones made the motion to move into Closed Session for the items stated. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 9:13 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

**ADJOURNMENT**

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 9:14 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the October 21, 2008 meeting were submitted by the Town Clerk for approval at the November 18, 2008 Council meeting.

  
Town Clerk

  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**Minutes of the November 18, 2008 Council Meeting**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 18, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

Mayor Weatherly called the meeting to order and gave the Invocation and welcomed those in attendance. Presentation of Colors and Pledge of Allegiance was led by Scout Troop # 209

**PROCLAMATIONS**

Mayor Weatherly issued the following proclamations: 1 ) 2008 Scout Luminaria Project (sponsored by Scout Troop # 205 and Apex community Scouts during the month of December). 2) National Geographic Information System Day: November 19, 2008 (recognizing Geography Awareness Week, November 17-21, 2008).

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve. Council Member Sutton asked to consider items # 10 and 11 separately; Council Member Jensen asked to consider item # 13 separately; Manager Radford asked to consider item # 14 separately.

**Action:** Council Member Jones made a motion to consider items # 10, 11, 13, and 14 separately under New Business. Council Member Gossage made the second to the motion. Motion carried unanimously.

**Action:** Council Member Schulze made a motion to approve the consent agenda as amended. Council Member Sutton made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of October 21, 2008 Council meeting.
2. Minutes and General Account of October 21, 2008 Council Closed Session (separate cover).
3. Minutes and General Account of the October 27, 2008 Personnel Committee meeting.
4. Minutes and General Account of the November 6, 2008 Finance Committee meeting.
5. Annexation # 441 Town of Apex, North Carolina, owner/petitioner, petitioning to annex 1.220 acres into the Town's corporate limits and located on NC55 South of US1, and adopting the Resolution of Intent to Annex Town-owned Property and setting date of Public Hearing for December 2, 2008 (future site of the Apex Fire Department Station # 4).



Consent Agenda continued

6. Budget Ordinance Amendment for insurance refund (Police) and Capital Projects Ordinance Amendment for Apex Peakway Bridge.
7. Rezone Case # 08CZ06 Hollingsworth: Statement of Council's action taken September 16, 2008 and pursuant to GS 160A-383 addressing action on denial of zoning petition for property located at 400 N. Salem Street.
8. Rezone Case # 08CZ10 Zdenek: Statement of Council's action taken October 21, 2008 and pursuant to GS 160A-383 addressing action on approval of zoning petition for property located at 309 N. Salem Street.
9. Rezone Case # 08CZ11 Jordan: Statement of Council's action taken October 21, 2008 and pursuant to GS 160AI-383 addressing action on approval of zoning petition for property located at 740 S. Salem Street.
10. Resolution No. 08-1118- 45 Authorizing Interlocal Agreement between Town of Apex Fire Department and Moncure Fire Department.
11. Fire Protection Mutual Aid Agreement between Town of Apex Fire Department and Moncure Volunteer Fire Department.
12. Yard Waste Service Agreement with Highway 55 C&D Landfill, LLC.
13. Developer Agreement with McCar Homes for construction of public greenway associated with Middle Creek Greenway; part of the development of Miramonte Subdivision.
14. Apex Jaycees request regarding the street closures for annual Apex Christmas Parade on Saturday, December 6, 2008 as follows: The Apex Peakway between Salem Street and NC55 from 3:00 p.m. to 8:00 p.m., and Salem Street between Brittlely Way and NC55 from 4:00 p.m. to 8:00 p.m. (Add on – to close Salem Street Friday, December 5, 2008 for Christmas on Salem Street).
15. Personnel Committee recommendation regarding the following:
  - 1) Reclassification of General Maintenance Worker II to Senior General Worker
  - 2) 2) Overhire of Police Sergeant position and 3) Revisions to Personnel Policies
16. Wake County Tax Report for Town of Apex.

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda will be set prior to taking action on the following items.

**PUBLIC HEARINGS**

**Presenter: Kent Jackson, Director of Construction Management**

**Public Hearing # 01 – Closure of a Portion of East Moore Street**

Public hearing regarding the closure of a portion of East Moore Street at-grade public rail crossing # 630 694U to vehicular and pedestrian traffic in preparation of a new at-grade crossing of the CSX right of ways for proposed Apex Peakway through certain parcel(s) of real estate known as "Villages of Apex"; possible motion to approve and execute the Corridor Project Master Agreement between the NC Department of Transportation, the Town of Apex and CSX Transportation as it relates to this matter, and adopting the Street Closing Order.

Jackson reviewed past activity relative to the status of the CSX East Moore Street at-grade public rail crossing and presented the Corridor Project Master Agreement between the NC Department of Transportation, the Town of Apex and CSX Transportation as it relates to proposed new at-grade crossing of CSX right of ways, with the provision of proposed Apex Peakway through parcel(s) of "Villages of Apex", and further requiring adoption of the Street Closing Order. John Dillard, Director of State Government Affairs, CSX Transportation was present, and noted the work by staff relative to the thoroughfare plan, and stated CSX does not want at-grade crossings as a part of the CSX safety plan; plans are with NCDOT as to what new roads are needed and if it involves railroad tract crossings.



## Public hearing # 01 continued

Council expressed concern related to Moore Street closure appearance, not wanting a berm, with Mayor Weatherly asking Attorney Fordham for advice. Attorney Fordham advised the town has no authority to deny CSX berm, if in the right of way. Dillard stated NCDOT would be the ones to work with town on appearance of right of way to town's liking, and no intent to install berm or barrier, however would try to deter trespassing. Manager Radford expanded on the closure procedures with Attorney Fordham expanding on the hearing process to consider the closing, however not obligated to close, but advised the agreement does have a provision for alternative crossings, and Council could exercise their independent judgment after the hearing; provision for at-grade crossings for the northern Peakway are a part of the agreement; if not agreed too, there would not be need to close Moore Street, and if agreed too, CSX would allow new crossings at the northern Peakway. Attorney Fordham continued to give an overview of the proposed agreement relative to private crossings, action to close Moore Street, time frame for approving the agreement, barricades, time for action on resolution for Tingen Road at S. Peakway crossing; Town required to close three crossing – three private crossings in order to access one – further commented on the monetary obligations mainly the town's, and presented revisions to the agreement as it relates to their independent judgment, and no further requests for rail crossings through 2035.

Mayor Weatherly commented on past experiences with CSX have had few options to consider relative to the at-grade crossings to build out the Peakway, and CSX was not asking if we wanted to close, but was obligated to close one of three (Chatham, Center, and Moore) and the least egregious of the three being Moore Street, and had no other options. The public hearing was opened at 7:30 p.m.

Speaking in opposition: John Allen, resident, expressed: felt it premature to close Moore Street, points in contract he didn't understand, consequences on their lively hood, unfound option, town growth should not be at expenses of other parts of town, negative impacts, citizen arguments against the closure of Moore Street, no four way stops, kids walking from school, legality with CSX crossings (buy out from other towns and exchanges – noting this new and innovative), urged Council give this more time and fine another way.

Mayor Weatherly responded the options are those of CSX and very finite, with one closure for the new crossings, with staff having tried to meet with CSX to discuss further options, however, not successful. He saw no other options and felt could worsen. Dillard noted Council's intent to move ahead with construction of the Peakway, in choice to go ahead, not having too choose over existing established neighborhoods.

Mayor Weatherly expressed legal actions had been discussed, and would be a lifetime of litigation, and noted railroads with a much deeper pocket. He expressed confidence in staff and legal counsel, in having explored all options, the expense and was time consuming, and was convinced there have been no stones unturned to reach this agreement with CSX, under federal law. Allen expressed this action has marked the council, in having chosen this option over an established neighborhood, and asked if they didn't see this coming and did not negotiate the crossings, and not even offer for a pedestrian crossing. Mayor Weatherly responded it was an unfortunate option, and expressed town's obligation to complete the Peakway and noted the proposed Peakway had been on the transportation plan for 29 years.

Lee Howell, owner of the shops at S. Salem Street and Moore Street, opposed the closing of Moore Street, as well as neighbor Hollands Jewelers owner Charlie Holland; noted it a choice and a development issue; noted studies that had been done to evaluate this intersection; noted CSX historic in transportation and highway coming later; respects the position and the control of the railroad, knowing hands are tied, and felt the issues addressed hold merit to be discussed with CSX; he expressed concern with 911 issues and emergency traffic, and felt all crossings are needed in that when one is blocked, traffic could move to another, and felt adjustments could be made at Moore Street, noting the number of kids that cross here regularly; has not checked the monetary damage with the closing, however felt this was a done deal in closure and not another option, and asked about closing private crossings, with Mayor Weatherly responding all smaller vehicle crossings in town would be closed.

Margaret Allen felt the public hearing was a bit late and Council should be careful when signing the contract; noted the Peakway as a detriment to the downtown and expressed aggravation and disappointment as Council has shown it more important to construct a field and in turn flushed the downtown, and was a detriment to people that had been here a long time.



## Public hearing # 01 continued

David Brownly, Pastor Apex United Methodist Church, expressed the closure of Moore Street would create limited access to the church campus; noted often the trains block Moore Street and traffic goes over to Center Street, with both streets sometimes cut off. Discussion occurred regarding the N. Salem Street Bridge and the Apex Peakway crossing, and the one at-grade requirement to close to get one at-grade separation; further there was discussion regarding a pedestrian walkway across Moore Street.

John Dillard, CSX, noted staff had put a lot of work in preparing the agreement and for the frustrations, he apologized, and noted the need to move forward with the agreement and representing challenges in today's environment, noted growth and the Town having become much larger and that CSX is now delivering more freight and offering more passenger service, now felt need to eliminate crossings and further expects train traffic to continue to grow, and CSX wants to protect the rail corridors and is true that rail system had taken a hard stance in this safety issue. Noted policy to close 3 for 1 at-grade crossing and that CSX had tried to work with the Town. Noted the proposed pedestrian crossing at Thompson Street and the lengthy time in regards to that issue and being opposed to pedestrian traffic, not wanting pedestrians to come in contact with trains, neither students nor residents, and are ready to work and address these issues.

Mayor Weatherly asked clarification regarding federal mandates to close more crossings in the future, with Dillard responding this to be true, in that the Federal Railroad Administration plans to reduce a number of at grade crossings rather than take chances and risks for safety reasons, and noted there would be impacts on residents, and represents progress and with new crossings that will be requested, in that CSX and NCDOT would be active and supportive.

Council Member Jones asked Dillard if he would address the trains being stored in the block of Center, Moore and Hunter Streets. Mayor Weatherly also noted the trains run nightly and uncalled for. Dillard feels this will get better, and would work to minimize the impact. Council Member Jensen felt the Thompson Street pedestrian crossing was not so critical and suggested an exchange of Thompson Street pedestrian crossing with Moore Street to better serve the town, where at Moore Street people walk, bike, cut through town there and to close Moore Street would take away from the quality of life, and also stops the flow. Council Member Schulze noted the Thompson Street crossing was to connect the downtown to the Town Campus and Apex Villages, with Council Member Sutton feeling Moore Street is more used vs. Thompson. Dillard noted the state funding that is attached to the current agreement and not wanting to slow down the process; with NCDOT movement on crossings and materials and further respects his position, noting it a long priority of CSX to have a safe environment for products and people and have done so in a safe and efficient way. Manager Radford further noted Council on record to tie into the development with the new crossings however the thought and suggestions given should be taken by separate action.

Jackson noted the potential impacts, and the monetary involvement with sidewalk improvements on Moore and Hughes Streets, the rehab on Chatham Street with sidewalks, the intersection improvements at Salem Street and NC55, anticipating what would be lost if Moore Street were to close. The public hearing closed at 8:05 p.m.

**Action:** Council Member Jensen made a motion to continue the public hearing to the December 2, 2008 Council meeting to review changes presented. Council Member Sutton made the second to the motion. Attorney Fordham advised the revisions to the agreement recognized the right to independent judgment and was fine to agree in principal, with the revisions being consistent with state law. Motion carried unanimously.

Public hearing # 01 continued to December 2, 2008

End of Public Hearings

**OLD BUSINESS**

There were no Old Business items to be discussed.

**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. *Your comments must be limited to 3 minutes to allow others opportunity to speak.*

No one spoke during public forum.

**NEW BUSINESS**

**Presenter:** Kent Jackson, Director of Construction Management

**New Business Item # 01 - Contract for Wetland Impact Mitigation Credits related to the Apex Peakway**

Possible motion to approve the purchase of wetland impact mitigation credits from NCEEP up to the amount of \$74,560 and to approve a contract with Earthmark Mitigation Services to purchase stream impact mitigation credits in the amount of \$124,160; total mitigation amount \$198,720.00.

Jackson explained the wetland impact mitigation credits and stream impact mitigation credits process and relative to the Apex Peakway, where the Town would pay approximately \$200,000 for crossing wetlands and streams. Council Member Jensen questioned the mitigation process noting wetlands were in trouble, and gave attention to Old Raleigh Road; he supports a retention pond to benefit Apex in mitigation effort, and felt they should be looking into our own Town. Kent was not aware of any mitigation program here. Council Member Jensen noted a significant storm drainage that was agreed to in the area and adequate to accommodate a 25 year storm and commented it had been degraded by dumping into it. Council Member Jones recalled the Williams Creek Study of the stream area. Mayor Weatherly shared information on a mitigation project in Chatham County and was not a stream improvement project, asking what constitutes a mitigation-worthy project, with Jackson responding the ability to control the activities requires land ownership. Russ Dalton expressed environmental projects far exceeds costs of mitigation projects. Jackson explained they had been able to offset some mitigation with the Evans Road project in reduction of the credit impacts and would have to have the land to do so, and was not the case with the Peakway project. Discussion continued regarding restoration and conservation projects with Parks and Recreation Director Brown commenting on conservation easements relative to Nature Park.

**Action:** Council Member Schulze made the motion to approve the purchase of wetland impact mitigation credits from NCEEP as stated and approve a contract with Earthmark Mitigation Services to purchase stream impact mitigation credits in the amount stated. Vote on the motion was 4 in favor and 1 opposed (Council Member Jensen voting in opposition). Motion carried.

End of New Business # 01

**Presenter:** Kent Jackson, Director of Construction Management

**New Business Item # 02 – Apex Peakway Survey and Design Services**

Jackson gave explanation and asked approval for additional survey and design services with Wilbur Smith Associates for the Apex Peakway project, as the design became more detailed the scope changes were necessary, and due to the exact alignment and slopes the initial thought was impact to 10 properties now there are 20 properties in consideration. Total amount of additional services \$41,624.39. Amended total design contract: \$421,206.01. Council Member Jones commented on the change order requests.

**Action:** Council Member Gossage made the motion to approve the additional survey and design services with Wilbur Smith Associates for Apex Peakway project. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 02

End of New Business

**Consent Agenda items that were asked to be considered separately follows:**

**Consent Agenda Item # 10:** Resolution No. 08-1118- 45 Authorizing Interlocal Agreement between Town of Apex Fire Department and Moncure Fire Department.

Council Member Sutton asked clarification relative to Fire Protection Mutual Aid Agreement with Moncure Volunteer Fire Department Consent Agenda Items # 10 and # 11. Chief Mark Haraway gave an explanation regarding the standard mutual aid agreements and its needs and value with other towns and counties, and noted the Apex service area provides fire protection for the larger part of the county, noting mapping locations and areas currently not served by water service and need to draw water from ponds, and stating the agreement would benefit both parties. Council Member Sutton shared concern with the language in responding to fires in the Moncure area - "all". Town Attorney Fordham offered alternative language which was agreed to by Council. Council Member Sutton would like the number of documented calls in response to mutual aid assistance by the Fire Department.

**Action:** Council Member Jones made the motion to adopt the resolution with the amendment in language proposed by the Attorney. Council Member Gossage made the second to the motion. Motion carried unanimously.

**Consent Agenda Item # 11:** Fire Protection Mutual Aid Agreement between Town of Apex Fire Department and Moncure Volunteer Fire Department.

With the service areas being defined and clarification that came from the discussion regarding the resolution, Council was satisfied with the agreement.

**Action:** Council Member Gossage made the motion to approve the Fire Protection Mutual Aid Agreement between Town of Apex Fire Department and Moncure Volunteer Fire Department. Council Member Jones made the second to the motion. Motion carried unanimously.

**End of Consent Agenda Items # 10 and # 11**

**Consent Agenda Item # 13:** Developer Agreement with McCar Homes for construction of public greenway associated with Middle Creek Greenway; part of the development of Miramonte Subdivision.

Council Member Jensen questioned the informal bid requirement referred to in the proposed agreement vs. the real costs associated to construct the greenway, knowing the developer puts in the greenway. Attorney Fordham advised the informal bid requirement complies with the statues and specifications of the town and are detailed in the attachment. John Brown, Director of Parks and Recreation noted staff is satisfied with what will be required to build the greenway, noting costs associated with the construction will be more to build according to town standards as shown on the plans vs. what the credit will be and they pay for it; credit \$231,000. Attorney Fordham expanded on the informal bid process with Council feeling comfortable with staff's response to their questions.

**Action:** Council Member Jensen made the motion to approve the Developer Agreement with McCar Homes for construction of public greenway associated with Middle Creek Greenway; part of the development of Miramonte Subdivision as recommended. Council Member Gossage made the second to the motion. Motion carried unanimously.

**End of Consent Agenda Items # 13**

**Consent Agenda Item #14:** Apex Jaycees request regarding the street closures for the annual Apex Christmas Parade on Saturday, December 6, 2008 as follows: The Apex Peakway between Salem Street and NC55 from 3:00 p.m. to 8:00 p.m. and Salem Street between Brittley Way and NC55 from 4:00 p.m. to 8:00 p.m.

Manager Radford stated Council should also consider the closure of Salem Street from Moore Street to Center Street on Friday evening December 5, 2008 for the Christmas on Salem Street activities from 6 to 8 p.m.



Consent Agenda # 14 continued

**Action:** Council Member Sutton made the motion to approve Salem Street closures for both Friday December 5, 2008 and Saturday December 6, 2008 as requested for both events. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Consent Agenda Items # 14

**WORKSESSION**

There were no Worksession items for discussion.

**CLOSED SESSION**

Possible motion to move into Closed Session to discuss a personnel matter.

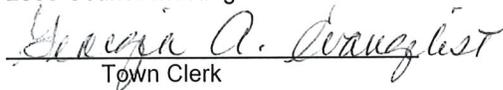
**Action:** Council Member Gossage made the motion to move into Closed Session at 8:55 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Jones made the motion to move from Closed Session into Regular Session at 9:25 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

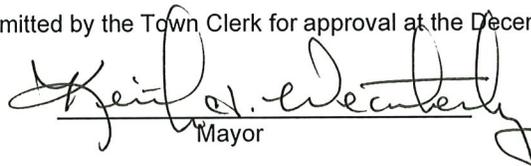
**ADJOURNMENT**

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 9:26 p.m.

**Action:** Council Member Schulze made the motion to adjourn. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the November 18, 2008 meeting were submitted by the Town Clerk for approval at the December 2, 2008 Council meeting.

  
Town Clerk

  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
**December 02, 2008 Meeting Minutes**

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 02, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

Mayor Keith H. Weatherly presided over the meeting.

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**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.

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Gossage made the motion to approve the Consent Agenda. Council Member Schulze made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of November 18, 2008 Council meeting.
2. Minutes and General Account of November 18, 2008 Council Closed Session (separate cover).
3. Set Public Hearing December 16, 2008 for various amendments to Unified Development Ordinance.
4. Set Public hearing December 16, 2008 regarding Westford PUD Plan Rezone # 08CZ09.
5. Budget Ordinance Amendment No. 5 and payment to JDN Real Estate Apex, LP for completion of the Town of Apex/JDN, November 30, 2003, Utilities Infrastructure Reimbursement Agreement.

End of Consent Agenda

**PUBLIC HEARINGS**

Presenter: Kent Jackson, Director of Construction Management  
**Public Hearing # 01 – Closure of a Portion of East Moore Street**  
Review: Continuation from November 18, 2008 Council Meeting

Public hearing regarding the closure of a portion of East Moore Street at-grade public rail crossing # 630 694U to vehicular and pedestrian traffic in preparation of a new at-grade crossing of the CSX right of ways for proposed Apex Peakway through certain parcel(s) of real estate known as "Villages of Apex"; possible motion to approve and execute the Corridor Project Master Agreement between the NC Department of Transportation, the Town of Apex and CSX Transportation as it relates to this matter, and adopting the Street Closing Order.

Mayor Weatherly continued the public hearing at 7:05 p.m. (general account of the hearing is almost verbatim).



## Public hearing # 01 continued

Steve Gesner commented on negative aspects: 25 year band to negotiate with CSX on additional new crossings would not allow for discussion; impact to businesses and effect on neighborhood; reduction of traffic on Moore Street to other streets; did not see Council as turning their backs on downtown, however taking an overall view of the town; safety of kids crossing the tracts and noting the distance of only 2/10 mile to the next point for them to cross; impact to emergency/fire services – services are close if Moore Street is closed; do not move the pedestrian crossing that's planned as it took five years to negotiate where pedestrians could cross, and they can cross 2/10 mile down; asked Council continue to represent the town as a whole.

Debbie Douglas, 211 S. Mason, a walker stated it sounds as this action is a done deal; asked for a safe pedestrian crossing at Moore Street for those going to the pool and to church, for bikers and kids; noted there are no sidewalks along Chatham Street on left side; wants to continue to have a walk/friendly town.

Susie Freedle, 309 S. Hughes Street, stated that 2/10 mile is not much further to walk to a safe crossing; concerned there will be a parking lot of railroad cars at this location, and when the cars are stopped it would cut off Chatham Street from the downtown; asked consideration of a pedestrian crossing or bridge at this location; if they could say the cars would not block Chatham Street, but what happens to those on the wrong side of the tract if they are blocked, as they could not get pass the crossings; asked consideration of stop signs on S. Hughes Street.

Town Manager Radford reported on inquiry with CSX regarding the swap of Thompson Street pedestrian crossing project for one at Moore Street. Engineering is complete and package is prepared for bid; crossing panels purchased and three tracks prepared for installation; cost incurred to date on Thompson Street: \$101,654 with pending invoices not yet charged to the project. If accept the Thompson Street crossing where it is (lacks gates), Town would be responsible for 20% of total costs or \$40,000 of a \$200,000 project – 80% of the costs borne by NCDOT Rail and US Department of Transportation Federal Rail. CSX considered this and discussion with CSX Melvin High, reports there are three tracks at Moore Street where CSX currently switches trains and two tracks at Thompson Street and are not willing to make the swap based on the fact that Moore Street is a much higher activity area than the Thompson Street crossing. Mayor Weatherly stated Council had thought this to have some merit and had led the Manager to pursue this however it's not much flexibility in getting a sanctioned pedestrian crossing at Moore Street, and having outlined all the options and CSX says no, with the Manager responding this was accurate.

Mike Andreas, Vice President to the Downtown Business Association, understood concern by residents at Moore Street and their kids safety, and noted the crossing there was a safety issue; Villages of Apex the new downtown, and the longer view is tying the old to the new and the link if not there between the two could damage the downtown and decisions to the priorities will be made, and counting on the pedestrian/green, the walking/biking corridor to the old downtown.

Mayor Weatherly noted this doable and interest on the Council to work this out, noting the Peakway had been a 30-year plan and reason to get the crossing was driving the Villages of Apex, causing the timing to be as it is and no option in the deal with CSX.

John Allen, 202 S. Hughes Street, stated Jackson had sounded as though the residents were resentful of the town and what was being done to the neighborhood and not appreciating all the infrastructure by the town and informed they do appreciate it. Three points: 1) exchange of crossings/buy in other towns - had never received an answer from CSX as to why this was not acceptable and wanted an answer; 2) what do we know about the timing to close Moore Street – noted: Villages of Apex construction appears to be slowing down, and would like to postpone closure of Moore Street as long as they can until the open crossing of the Peakway; 3) Pedestrian crossing – noted it unfortunate the town did not anticipate need to close Moore Street, and noted the financial costs that come with opening a pedestrian crossing; noted it inevitable the kids will cross Moore Street and concern for the safety of kids crossing Moore Street walking to school – they will not take a detour; he gave examples of pedestrian crossing (photos) arms, gates, fencing.



Melvin High, CSX Community Affairs addressed concerns as they were brought to his attention.

Mayor Weatherly: What was the policy decision regarding the option not to swap/close and entering into agreement with another community? High response: They needed the closures on the line and in the municipality or the road authority area that it's in, and this had never been an option. Council Member Schulze questioned his response and asked if it had the same equivalent count, why it would matter to them. High response: It depends on the line it's on: Apex is on the "S Line" or main line, Amtrak, Freight, and so forth and when they come into a municipality to close a crossing, they have to do it for the area its in and on the same line; if they need to go to another municipality, they will do it themselves on their own, rather than have people going to other communities to solicit crossing closures for them. Manager Radford stated the response from CSX at that time was that they would not consider it and it was unorthodox; he had looked at all options and was looking on the "S Line" and with one place having had an industry to close and also had previous 90 day traffic counts and knew the traffic count would be reduced and was more than happy to close it. High response: CSX goes to the municipality themselves and does not have municipalities going across the state or down the line to another area to try to close crossings for them; they come to one area and focus on it and is their policy.

Mayor Weatherly: The talk of no sanction for a pedestrian crossing for Moore Street should the closure go through, noted there would still be pedestrian traffic, asking if the railroad would work to mitigate that to allow some sort of access across Moore Street, if people insist on using it would still have some liability there. High response: He thinks all would share in that liability; first, noted it private property and against the law to trespass on private property; if need be, put up trespassing signs and would do that and Apex Police have an obligation to help them support that law to keep people off the property as well as CSX police. He thinks the education goes back to the parents and not to cross their main lines and goes to the schools through operation life saver and other safety programs; going out of your way to cross in a safe way is certainly not that much of an inconvenience, just remember, its private property, just like ones back yard; say it's a short cut to school, its the same instance here.

High addressed the transfer and the crossing: He had worked on this issue all day, and late today the issue came up regarding transfer and so forth; naturally anytime they make a change, its not just for public projects or property services, it goes to their division level and is a transportation issue as well, because the backbone of the railroad is transportation, and in discussion with the division manager today, this is simply not an option for Moore Street to have a pedestrian crossing. Reason, you have three tracks at Moore Street, you have two tracks at Thompson Street with a different set up. You have "S Line or thoroughfare that goes to Raleigh, SDS Line that goes to Durham; on Moore Street they consider it a siding where they bring cars in and switch cars there. He didn't know if they had noticed, he has in his 45 years or railroading that pedestrians have more of a tendency to dart in front train more so than someone in a motor vehicle, and if a train is sitting there switching and in operation, even with the zigzag crossing, you are going to have tendency kids and adults, mostly adults try to beat the train and get in front of them, and they feel from an operation standpoint this is simply not an option.

Mayor Weatherly: What kind of cooperation can the town expect from the railroad if this closure goes through on Moore Street, that there want be switching activity that would cause a blockage of Chatham Street, the next exit point that had been suggested.

High response: He's not going to tell him what will happen in a year, but will tell him with the closure of Moore Street, will give them more track capacity or room, where they were having Chatham Street blocked, wouldn't have that issue, would have the room at Moore Street where they can switch these cars, where they can stop, clear Chatham Street and not have it blocked, and thinks it will certainly be a great improvement for the town, going in this direction.

Mayor Weatherly: Being able to speak with you (High) do not speak with the engineer of the train, or brakeman that controls that kind of thing, so obviously any concessions may not be kept by the guy that's running the train that night; asked, would he commit for the railroad that he would do what can, not knowing how he would do that, understand the concern:



## Public hearing # 01 continued

High response: Understands concerns and can certainly pass this on to the division manager and gave a phone number 877-tellCSX; any issues he may have, you call this number and comes straight to him, and he in turn goes to the train master for this area to express the concern; he can't commit and crazy to do it, would be afraid to, and to say all the problems would be over, he can commit that CSX would do all possible, especially with the extra room of trackage not to block Chatham Street and certainly make every endeavor possible to do this. Mayor Weatherly said he thinks they can commit that he would hear from them, and added to the list running in particular the cold months, the noise from diesels in a residential neighborhood running all night long, a constant complaint. High asked the area and the Manager responded it was at Center Street and where they sit, with High adding it was their depot location. High responded its true that anytime the temperature drops under 40 degrees, these locomotives have to run because they don't have a closed system where they can put anti-freeze; they are in the process of refitting all the locomotives with an auxiliary power unit that comes on at the temperature level and circulates the fluids in that engine; no all of them do not have it on them yet, but in the process of getting as many as they can; where they save is fuel conservation, cheaper to run the small diesel engine than that diesel in that locomotive and certainly do not have the noise; hopefully it will not be too long before all engines are equipped and can then laugh about.

Council Member Gossage asked Town Attorney Fordham to refresh them memory regarding the clause that Town would not approach CSX until 2035 - p. 20 sec. 3; Attorney read the paragraph regarding the request that the municipality will not request any additional grade crossings of rail corridors operated by railroad or their assignees through 2035. High response: He was floored by this, because all the agreements he's been too – he puts other. Attorney Fordham asked if CSX has any plans to build new tracks in the Apex area at anytime. High response: To his knowledge and he's pretty familiar with what's going on, there's no plan for any new tracks not unless some big industry located that they do not know about tonight, to serve them. Attorney Fordham asked if he had someone that could give them an absolute definitive answer to that question, and if there is any pre filing requirements that the railroad has with the Federal Government or otherwise before it can seek new tracks, and how do we get that information. High response: He asked if he were referring to a high speed rail corridor that news has been filtering around, any kind of rail tracks. Attorney Fordham: Any tracks, in a new location; any plans for new rails track in Apex. High response: He will certainly find out tomorrow and get back with whoever he wanted him to call. Attorney Fordham responded he could call him or the Town Manager. High response: He has the Manager's number and would give him a call. High clarified the request of the Attorney, wanting to know, if there is any plans to build any new rails in the Apex area, mainline track, any track of any sort. Council Member Gossage further added and procedures to do this.

Council Member Sutton asked the estimated time of completion for the northern Peakway. Kent Jackson, Construction Management Director stated it would go out for bid in the spring 2009 and in spring/summer 2010 to be open for traffic, bridge and everything. Council Member Sutton stated the agreement with CSX to close Moore Street within 24 hours of the full execution of the project agreement, the municipality with permanently close the Moore Street crossing. Will not have the crossing for a year and a half and seems to him that its quick to have to close and would like to keep Moore Street open as long as could for the convenience of the citizens for another year and a half. He continued on paragraph 16 on page 10 ...all terms and conditions of this agreement are dependent upon and subject to the allocation of departmental funding (NCDOT) and fiscal constraints and the agreement shall automatically terminate if funds cease to be available. Concern, the budget of the state is getting tighter, we approve this agreement, 24 hours we close Moore Street, and in a few weeks DOT says they are out of funds or allocate somewhere else, we've closed Moore Street and the deal is off. To him, what he's asking, he thinks they should close Moore Street before they open the other crossing, and during the construction of the other crossing, seems like they should keep Moore Street open. High response: This was discussed today and a public project with CSX is a fact that when an agreement is signed, that is what was agreed, and what will be expected. Council Member Sutton asked agreed by who. High responded, the city, DOT, and CSX on the agreement. Council Member Sutton said the city has not agreed to that and why they are here now to discuss it; understood he had worked with staff. High response: The agreement he has is that the crossing would be closed 24 hours after Agreement is signed.

Council Member Jensen stated it didn't make sense when you look at the same agreement with Tingen and it would not be closed until after the level crossing of the Peakway on the South. One you say you close Moore Street in 24 hours and next you don't close Tingen until after you set up and have traffic flow; it's a traffic flow situation and agrees with Council Member Sutton, it doesn't make at all sense with item 16 that we should be required to close Moore Street anytime soon, as a matter of fact he would say the moment we get ready to open that then we close Moore Street, and a fair trade. High response: This was what he was told today and would be carried out.



Council Member Gossage added it seems reasonable that Moore Street would be closed shortly before the new crossing is opened and trade one for the other; the private crossings may already be closed. High response: What he was told today Moore Street 24 hours.

Mayor asked Attorney Fordham where this came from, and no negotiation. Manager Radford response: He was involved and when this agreement appeared in draft terms, saw it for the first time, and not discussed as far as he knows. Mayor Weatherly added this provision or anything else about it. Attorney Fordham reviewed things that we needed to change tonight, with Manager Radford stating that to be correct. Attorney Fordham stated that he does think CSX should anticipate that when a governing body looks at a contract, there should be some input that the Governing body would have, where CSX wouldn't get back exactly what staff had done, staff would do there very best to anticipate all parameters, but Council has the view that no one else has, and that's a decision of the Council of the town; he doesn't think CSX should be surprised to get some input from governing body. He was saying this to give them a comfort level that they would not be surprised that they were giving input as the governing body. Mayor Weatherly added if there were modifications, speaking to High, noting wanting to put him on the spot with his senior management people, hopes that he would convince them to be able to see the wisdom and reasonableness of the suggestion to make that change. High response: Certainly he would do that. Council Member Jensen added the logic was there in one case used the logic of closing Tingen after the cross over. Attorney Fordham added there was a way to meet CSX concern which is a resolution to close it can be not effective until those things happen; they don't have to be in the dark about the resolution being adopted; there's a way to protect their interest in when its going to happen, but doesn't happen until the time its most appropriate from Council's standpoint.

Mayor Weatherly added if Council decides to make modification to the agreement they may want him to write and put some legislative history with it as they send it on to the railroad so they get the full advantage of Council's discussion tonight, and addressing High, not that he wouldn't carry it back, but that they need to put it in their language as far as why they need certain modifications they choose to make.

Council Member Jensen addressed the photos of the pedestrian crossing where there are warning devices best for Moore Street, seeming the safest operation railroad to put into place cattle guard or other warning devices; warning signal for cars at Moore Street seems to him could be easily modified for warning pedestrians if CSX so desired; it appears from what he's saying plans are to use that area for a switching yard in town, that's the whole goal.

High response: That's what it will be used for; the impact it will have on their operation for a pedestrian crossing at that location is what they are talking about. Thompson Street would not have that bigger impact, but Moore Street it would and transportation would not sign off on that.

Council Member Jensen commented it seemed to him, pushing the switching yard out of town would be beneficial to everybody and when we have engines running all night and not below 40 degrees, November to April of next year; seems there's no relief from that; hopes he will take this issue back. High response: He deals with this on almost a daily basis, he covers two states, and as he said, they are going to run unless auxiliary powered, and unfortunate it's in middle of town, but that's where they are located. Council Member Jensen stated there are methods that could mitigate that, not knowing if its possible sound walls like along the freeway where you would be parking locomotives, at least giving some relief to the local neighborhood; obviously you don't like spending the cost of diesel fuel and certainly we don't like the smell of the diesel fuel; you want that as a switching yard so you are not going to address anything even with the safest methods of crossing. High response: He's telling him that it's a siding or storage track, 3 tracks there, they do their switching there, and for a pedestrian crossing to be there, it would not be a safe move.

Council Member Schulze question the closure of Moore Street within 24 hours Sect 3 paragraph 1, that the railroad would rip up the road, put in ditches adjacent to the tract, and the municipality would reimburse the railroad, and it doesn't talk about the financial cap or costs, he wanted to see this in the contract, and read the complete paragraph, and historically it cost to do anything with the railroad and was worried about the cost – the \$100,000 and more to do this. Attorney Fordham responded that CSX could provide an estimate and put cap on it, something they do routinely and should be able to predict the costs. High responded they do have cost estimates for moving asphalt, and do have a cost for that. Council Member Gossage clarified the change is right at crossing for tearing out part of the street and not tearing out from Moore Street to Salem Street High responded the only thing the railroad would be doing is on their project, cross tie to cross tie, and NCDOT or city and he wasn't in this on the beginning and can't speak on that, but the road authority is up to the cross tie, and they do from cross tie to cross tie.



Council Member Gossage asked if it were a town maintained street, with Manager Radford responding it was. Council Member Gossage continued, asking if there was potential for a bit of parking there. Manager Radford responded, yes there would be; he would tell him, having closed five or six of these, that the cost of closing is not significant, the ditching is inexpensive, removal of the asphalt is very easy, if CSX will act with us on the 24 hours contained in that same paragraph, we would come out the better for it by paying the amount of money required to remove it, based on the savings that we would see over the next year or to in order to be able to keep that crossing open longer.

Galan Smith, 313 E. Moore Street, the discussion with CSX, thinks the crux behind the resistance of being open to our request, is the switching they have in the city limits is their only priority, not looking at our community or what we might need, and if we move the switching station out of the city limits would be a win-win for all of us, then they would not have the constraints that we are trying to put on them, and it would allow to have a safe passage that we want for pedestrians, so thinks it something the Council would want to press on, especially when the discrepancy in the contract, the only reason to have a discrepancy where Moore Street is closed in 24 hours, yet Tingen is open until its actually open and flowing, is that they want use of our real estate.

Mayor Weatherly closed the public hearing and referred the matter to Council. Council consensus was they were not ready to vote and needed to hear more, seeing CSX as inflexible, unresolved issues, and hopefully will see a bit of flexibility to keep Moore Street open until the Peakway is opened. Mayor Weatherly added at some point they have to agree to a contractual wording, could make modifications tonight and send it. Council Member Sutton added they could approve the agreement to say close Moore Street when we open the other at the Peakway; he wanted to make this modification, with Mayor Weatherly including and those of the Attorney, with Council Member Sutton adding and putting those modifications in too, with Council agreeing to come to a consensus on the modifications.

**Action:** Council Member Sutton made a motion to approve the agreement with the specification that we will close Moore Street upon the opening of the northern Peakway and rail crossing. Attorney Fordham advised the other modifications should be considered before the motion. Attorney Fordham advised on the modifications included in the agenda packet relative to Section III paragraphs 13, 17, 18, 20, and 21; each the council would have to exercise and has legal authority to do, and needing a disclaimer to exercise legal authority independently, without the constraints of the contract; a couple being done before the contract is executed; example: close three private crossings – he understands Apex 1<sup>st</sup> Development agrees to go ahead and close them and could sign a quick claim deed to CSX for those three grade crossings, and the additional language would not be need in 13. Council Member Sutton asked if CSX had these revisions, and Attorney Fordham responded he didn't think so. Attorney Fordham added until there was direction from Council he had not gone to CSX to ask if they agree to any of this; their attorney will know that the town of apex will try to close the street for example, you could not contract to close Moore Street, would have to hold a public hearing and decide on its merits; you can't close it conditioned upon various other things happening, that would be reasonable, but can't have a contract that says you can close one. Also, additional paragraphs says the town would exercise its developer authority to cause the closure of private crossings, and can't contract to do that; the disclaimer language he had added makes this clear, the town acted in good faith to exercise that regulatory authority independent; also says the town would not suffer any consequences under the agreement by following that paragraph. That is applicable to each of the paragraphs there. One additional comment in Section 4 of the agreement, paragraph 3, there should be additional language not on the handout, substance to say if the town can't perform something its suppose to perform under the agreement, because its constrained by its regulatory authority not to do it, it will not relieve CSX from its duty to allow the at-grade crossing. Tingen Road is a DOT road and will have to go through some process constrained by the Statutes and not be able to do so, because the contract says so, and have to take into account whether someone needs the road for access, etc. They may have already done those procedures so they can say they can do, he doesn't know whether they have or haven't; it's an important legal question. Mayor Weatherly ruled the motion out of order and agreed to do in mass, the modifications.

Council Member Gossage stated we are still missing the cap on costs and the information the Attorney had requested as it relates to new at grade crossings requests through 2035, if there's going to be new rail laid somewhere in Apex; we don't have this information. Council Member Sutton asked what this had to do with the agreement, and with Council Member Schulze wanting to strike the whole line that talks about at-grade crossings. Council Member Jensen felt it was almost a first amendment right down the tubes, could say no, with communication being killed.

Attorney Fordham asked Council move into a brief closed session to receive legal advice.



Public hearing # 01 continued

**Action:** Council Member Gossage made the motion to move into Closed Session at 8:00 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously. No action was taken during closed session, no minutes were recorded. **Action:** Council Member Schulze made the motion to move back into Regular Session at 8:10 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

Mayor Weatherly asked after receiving legal advice from the Town Attorney, if there were a motion to be made, and with no motion being made, Mayor Weatherly stated counsel would address the CSX counsel addressing their concerns, and would bring the matter back to Council. With the public hearing having been closed, this item will be brought back to Council at a later date for consideration.

End of Public hearing

Presenter: Dianne Khin, Director of Planning

**Public Hearing # 02 – Annexation # 441 (Future site of Fire Station # 4)**

Public hearing regarding Annexation # 441 Town of Apex, North Carolina, owner/petitioner, petitioning to annex 1.220 acres into the Town's corporate limits and located on NC55 South of US1 and adopting the Ordinance to extend the corporate limits.

Staff presented the annexation request for the parcel of land for Fire Station # 04 and portion of land in a land swap that needs to be brought into the corporate limits.

Mayor Weatherly opened the public hearing at 8:11 p.m. and with no one addressing this request for annexation, closed the public hearing and referred the matter to Council.

**Action:** Council Member Gossage made the motion to approve the annexation by adopting the ordinance to extend the corporate limits by the 1.220 acres. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02

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. *Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Mike Andreous, Downtown Business Association, expressed appreciation to Council for the resolve of the parking issues in the downtown. John Allen expressed appreciation for the time spent in working with CSX regarding proposed rail corridors and proposed closure. Galan Smith expressed appreciation for the sidewalks along Chatham Street from Salem Street to Hunter Street. Kent Jackson, Director of Construction Management reported no additional sidewalks are planned and no further changes to Chatham Street at this time. Susie Freedle asked consideration of a four way stop at S. Hughes and Moore Street and would like all in the historic downtown to slow down traffic for safety, and for the children. Manager Radford reported Chief of Police sees four way stops being confusing and not serving the proper purpose, while increasing congestion, however, will have Chief Lewis look into this.

End of Public Forum



**NEW BUSINESS**

There were no New Business items to be considered.

**WORKSESSION**

**Worksession Item # 01**

Bill Kreuzberger with CH2M Hill noted their work for the Army Corp of Engineers and was contracted with the Partners Project. He gave an update on the proposed Western Wake Regional Wastewater Management Facility as it relates to the need for new wastewater facilities, giving the regional project description, the EIS/Permitting status, design status, alternative discharge evaluation, schedule and Summary. The presentation is attached.

End of Worksession

**CLOSED SESSION**

Mayor Weatherly asked for a motion to move into Closed Session at 8:55 p.m. for the following: to receive legal advice concerning potential litigation and to discuss a personnel matter. **Action:** Council Member Gossage made the motion to move into Closed Session for the stated reasons. Council Member Jensen made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Schulz made the motion to move out of Closed Session at 10:00 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

**Action:** With Council having moved back in Regular Session, Council Member Schulz moved for the Town to waive a conflict of interest related to the Town Attorney's partner's representing Staley Smith in unrelated matters so that the Town Attorney could continue to assist in the Town's eminent domain action against Mr. Smith. With a second to the motion, the motion carried unanimously.

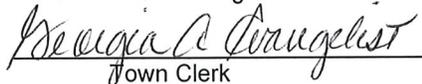
End of Regular Session

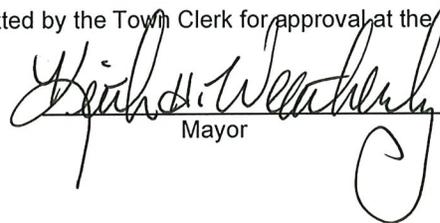
**ADJOURNMENT**

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 10:05 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the December 2, 2008 meeting were submitted by the Town Clerk for approval at the December 16, 2008 Council meeting.

  
Town Clerk

  
Mayor

**TOWN OF APEX, NORTH CAROLINA**  
Minutes of the December 16, 2008 Council Meeting

The Regular Meeting of the Apex Town Council scheduled for Tuesday, December 16, 2008, 7:00 p.m., was held in the Council Chambers of the Apex Town Hall, 73 Hunter Street and Town Campus.

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

Mayor: Keith H. Weatherly



Web site: [www.apexnc.org](http://www.apexnc.org)

Council:  
Mike Jones  
Bill Jensen  
Bryan Gossage  
Gene Schulze  
Bill Sutton

**COMMENCEMENT**

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

**CONSENT AGENDA**

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the 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 to approve.

**Action:** Council Member Schulze made the motion to approve the consent agenda as presented. Council Member Sutton made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of December 02, 2008 Council meeting.
2. Minutes and General Account of November 02, 2008 Council Closed Session (separate cover).
3. Authorization for Mayor Weatherly as the Governing Body Official of the Town of Apex, to sign 2008 Apex Fire Department Certification Roster for the NC State Firemen's Association, having been verified and recommended by Apex Fire Chief.
4. Amend Code of Ordinances Section 20-150 with addition of subsection 24 prohibiting parking along both sides of Town Side Drive from Magdala Place to Village Commons Lane in Scotts Mill Subdivision except in marked parking spaces. #08-1216-14
5. Amendment to Traffic Schedule 1 and II: Sec. 20-60.1 Traffic Schedule; and Sec. 20-68(b) Stop Intersections; and Sec. 70-70 Yield Intersections; to be kept on file by the Town Clerk.
6. Award construction contract to Thompson Contracting, Grading, Paving and Utilities, Inc. for a total bid of \$929,160.07 for R-08-1 Evans Road Extension Project.
7. Approval of Discontinued Service Retirement Allowance for William R. Britt.
8. Wake County Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners in their regular session on December 1, 2008.

End of Consent Agenda



**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set as presented prior to taking action on the following items.

**PUBLIC HEARINGS**

Presenter: June Cowles, Planner

**Public Hearing # 01 – Apex Hazard Mitigation Plan Annual Report**

Review: Planning Board met December 8, 2008 and recommended approval of the Report

Public hearing and possible motion to approve the Town of Apex Hazard Mitigation Plan Annual Report.

Staff presented Apex Hazard Mitigation Plan Annual Report (staff report attached and incorporated as a part of the permanent minutes) noting FEMA requires an annual report outlining progress on Mitigation Action Implementation; stated the goals and objectives that continue to address current and expected conditions, and noted other agencies and departments participated in the process, and preparation for updates are being done to be given to the Hazard Mitigation Members. Planning Board met December 8, 2008 and recommends approval of the Hazard Mitigation Plan Annual Report; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one addressing this item, closed the public hearing and referred the matter to Council.

**Action:** Council Member Jones made a motion to approve the Hazard Mitigation Plan Annual Report as presented. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Presenter: Transportation Planner Reed Huegerich

**Public Hearing # 02 – Transportation Plan Amendments**

Review: Planning Board met December 8, 2008 and unanimously voted to approve the proposed amendments to the Bicycle, Pedestrian and Equestrian Plan.

Public hearing and possible motion to approve an update to the Bicycle, Pedestrian and Equestrian Plan map from the Apex Transportation Plan.

Staff presented Transportation Plan amendments outlined in the staff report that is attached and incorporated as a part of the permanent minutes, noting the proposed as follows: Changes to the Bicycle, Pedestrian, and Equestrian Plan: 1) Apex Nature Park Equestrian Connection: designate greenway with equestrian use to connect the Apex Nature Park with the American Tobacco Trail. 2) Milano Avenue multi-use path: remove equestrian designation. 3) Wimberly Road/Jenks Road multi-use path: remove equestrian designation, and 4) Davis Drive: add multi-use path designation to Davis Drive to link between Cary's multi-use path and the proposed Jenks Road multi-use path. Planning Board met December 8, 2008 and unanimously recommends approve of the proposed amendments to the Bicycle, Pedestrian, and Equestrian Plan. Staff asked Council endorse the plan amendments. Staff answered questions relative to the amendments.

Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing this item, closed the public hearing and referred the matter to Council.

**Action:** Council Member Sutton made a motion to approve the Bicycle, Pedestrian and Equestrian Plan map from the Apex Transportation Plan. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 02



Presenter: Principal Planner Brendie VegaMkhwanazi

**Public Hearing # 03 – Rezone Case #08CZ09**

Review: Public hearing was set at the November 18, 2008 Council Meeting; Planning Board met December 8, 2008 and asked this item be continued to their January 12, 2009 meeting; staff asks this item be continued to Council's January 20, 2009 meeting.

Public hearing and possible motion regarding Rezone Case # 08CZ09 Westford PUD Plan; staff asked continuation of the public hearing to the January 20, 2009 Apex Town Council Meeting. Mayor Weatherly called for a motion to continue the hearing as requested by staff.

**Action:** Council Member Jones made the motion to continue the public hearing for rezoning case # 08CZ09 Westford PUD Plan to January 20, 2009 Council meeting, as requested by staff. Council Member Schulze made the second to the motion. Motion carried unanimously.

Public Hearing # 03 continued to January 20, 2009

Presenter: Principal Planner Brendie VegaMkhwanazi

**Public Hearing # 04 – Unified Development Ordinance Amendments**

Review: Public hearing was set at the November 18, 2008 Council Meeting; Planning Board at their December 8, 2008 meeting unanimously recommended approval of the first seven UDO amendments and continued discussion of UDO amendment #8, the Use Table, to their January 12, 2009 meeting. There were two separate votes held. Staff recommends approval of UDO amendments.

Public Hearing regarding possible amendments to various sections of the Unified Development Ordinance with possible motion regarding the same. The proposed amendments include: Section 2.3.16 Site Work Prior to Development Approvals to make reference to where development approvals can be found; Article 12 to amend the definition of a Historic Structure; Section 8.7.2 to specifically prohibit LED signs; Section 7.2.1(H) and Section 4.4.1 to change the required ROW and street width for public alleyways; Table 8.3-1 to add Congregate Care and Assisted Living to the Parking Schedule; Section 8.2.7(B) to allow fence posts to be up to 6 inches higher than a front yard fence; Section 4.4.3.B to remove the districts where Communication Towers are allowed from this section; and an amendment to 4.2.2 Use Table to remove uses where not appropriate, change uses to Special Use Permits where needed, and add uses where suitable.

Staff reported Planning Board met December 8, 2008 and unanimously recommended approval of the first seven UDO amendments as stated and voted to continue discussion of UDO amendment # 8, Sec. 4.2.2 Use Table to the January 12, 2008 meeting. There were two separate votes taken by the Planning Board (reports attached).

Staff reported Planning Board held a special meeting December 16, 2008 to consider UDO amendment # 8, Sec. 4.2.2 Use Table; staff reported on action taken by Planning Board; four separate votes were taken (reports attached). Planning Board due to time constraints voted not to change the table on the last two pages of the Use table, leaving as is.

Staff reviewed the proposed amendments and recommends approval of UDO amendments as submitted by planning staff and as outlined in the staff report that is attached and incorporated as a part of the permanent minutes. Council considered the first seven UDO amendments and with discussion regarding signs, recommended under 8.7.2 Prohibited Signs (Q): Exposed LED signs... with the exception of LED signs used to display gas prices as permitted by Section 8.7.1.A.8.b.

Staff reviewed items that were under discussion of the Use Table and appropriate uses for those districts: permitted or special use in zoning districts (staff report is attached and incorporated as a part of the permanent minutes).

First page – no changes made by the Planning Board.

Second page – Utilities: Communication tower, constructed stealth: B1 District – Staff does not recommend it be allowed in the B1 District; Planning Board recommended it be allowed as a special use permit and not removing it entirely as a permitted use in the B1 District only and agreed with other changes recommended by staff for this use. Utilities: Recycling Plant: Staff recommends change from Permitted use in LI to Special use LI (staff could place conditions for esthetics, noise, etc.); Planning Board recommended no change and it stay in LI as a Permitted use. Khin stated this also could be chipping and mulching facilities (current one in town does not use a building).



## Public hearing # 04 continued

Recreational Uses: Entertainment, outdoor: Staff recommends removal as a special use permit (includes go cart, race tracks; RA is the old ETJ near Town and staff doesn't think it appropriate in this district); Planning Board recommends it stay the same as a special use permit in RA. Staff feels it is appropriate in PC, LI, TF, still listed in TND (probably not want that), PUD, could be an amphitheater – all special use permitted.

Commercial Uses Adult Use: Bar or nightclub: Planning Board agreed with staff recommendation – one member wanted it permitted.

Communication: Radio and television recording studio: Staff recommending changing this to a special use permit in O&I and B1; Planning Board recommended leaving it as a permitted use and staff agrees, it's broadcasting station that has antennas.

Food and Beverage: staff recommends drive through be removed from B1; Planning Board recommends it be left as a permitted use.

Office and research: Medical or dental laboratory: staff recommends removal as a permitted use from B1 (odor from making prosthetics); Planning Board recommended to change it from permitted use to special use.

Retail sales and service: Gas and fuel, retail: staff recommends removal from B1; Planning Board agreed and recommends adding it to LI district and staff agrees. Greenhouse or nursery, retail: staff proposes it be removed in B1; Planning Board proposes it be left as a permitted use. Kennel, indoor: staff recommends it be removed from the RA district as a special use permit (reasons barking and howling), Planning Board recommended it be left as a special use permit in RA and leave it permitted in the B1 district; staff recommends removal Kennel, outdoor under RA and it be permitted in LI. Upholstery shop: Planning Board voted 4 to 2 to remove it from B1 district (noise and car upholstery, tend to want outdoor storage and best served in TF or LI districts where it is allowed). Discussion followed.

Vehicle repair and service: Automotive service station (vehicle maintenance and automotive repair and fuel sales – an old model business – one in town): Planning Board voted to keep it as a permitted use in B1 district and added it to LI district; staff agrees with LI district, not in agreement in B1 district. Discussion followed (convenience store and gas sales is allowed in B1 district – almost all of those in town; there is two industrial type fueling station). Staff would be happy to have it special use and not permitted as it gives more opportunity for conditions).

Repair and maintenance, general: Planning Board did not have time to consider all the use tables, so at this point they voted 4 to 2 on the last six items, to deny the changes as proposed by staff, and stay with the ordinance table currently in the UDO. Khin stated Planning Board had noted which ones they were opposed to: three were opposed to repair and maintenance, general; four were opposed to repair services, limited; four opposed to vehicle inspection center; two opposed to dry cleaning and dyeing plant, laundry plant, and wood or lumber processing; because they didn't have time to discuss it, the motion was made and second to not make any changes, as a default. Khin explained the difference in the repair and maintenance and general and repair services, limited (repair of things other than vehicle – staff believes it should be allowed, and will come back with an amendment to get it out of vehicle repair and service, or might be special use, and will ask it be removed to retail sales and service section). Khin gave definition of vehicle inspection center; noting she's not been to only a vehicle inspection center – they do other things; staff was willing to search this more.

Council Member Sutton noted much disparity between the Planning Board and staff recommendations; Khin stated she wasn't surprised and actually told them they didn't expect them to be in 100% agreement, mostly bringing these forward for discussion, with a vast majority of these recommendations coming forth from having received complaints or where other communities have struggled with these issues. Staff wanted Council to see and agrees these uses belong in these particular districts; she would not be surprised if Council did not agree with all of these either expanding on calls received in regard to allowing uses in certain districts, and that it is allowed in the ordinance. Khin led discussion and expanded on the defined reasons staff recommended changes in the use types, and noted some could apply with special use permits or supplemental standards could be changed, not removing, but were more concerned with placing certain uses in districts that were more appropriate.

Staff stated with the proposed changes staff is asking for a grandfathering of any existing businesses that are in operation as of the approval date and were looking at what may be appropriate for the future; staff does not recommend grandfathering for any applications submitted that have not yet been approved; noted there is one here to address in public hearing: Haddon Hall Commercial Center, particular use, AAA Car Care Center.



## Public hearing # 04 continued

Council Member Schulze asked clarification of the ending of the grandfathering when an existing business may not operate for six months. Attorney Fordham advised it depended on the language in the ordinance; the non-conforming use ordinance has a six month clause that if you abandon the use for six months, then it's changed; this is one way uses are grandfathered; then the grandfathering can lapse; additionally could put a provision in the proposed ordinance – this ordinance shall not apply to lawful uses existing at the time of enactment – which would be another layer that the uses would be grandfathered.

Staff did not recommend grandfathering of any un-submitted site plan applications; further did not want to make any non-conforming uses with this ordinance change, non-conforming uses can not expand, they discontinue the use for six months or more, there are a few businesses out there and were not trying to put them out of business, but trying to look at what would be appropriate in the future.

Attorney Fordham advised he may have to tweak the language a bit to assure that they are not caught up in the non-conformity; as long as that lawful use continues, their site would not be considered non-conforming, he may have to bring some language back to get this right; you can add a general grandfathering to this and tweak it a bit.

Mayor Weatherly opened the public hearing at 8:00 p.m.

Jim Stella, Economic Development Director of the Apex Chamber of Commerce stated proposed amendments cover nearly all zoning districts and will affect many areas; no project has been submitted in three months; restriction on types and where businesses can locate, in the current economy could assure that trend the town has seen continue into the future; special use permits require additional fees be paid and could add increase time in the development process and vary depending on circumstances; when economy improves and market expands, new restrictions could make them look elsewhere less restrictive than Apex; noted changes could place a significant barrier in residential and commercial ratios vs a healthy ratio; staff has worked for smart growth incorporating the 2025 LUP, with significant recognition for business oriented development to balance out the extraordinary residential growth over the past eight years; these amendments well intended could undo much of that work; current process in most cases has worked well weeding out those that are detrimental; occasional adjustments to the use table are expected and welcomed; encourage growing in a way that would benefit all; placing restrictions on business at this time will not further serve that goal; could have a negative impact on future business that could select Apex; as an advocate for business in Apex, Chamber requests a more measured approach to concerns that is driving this effort to amend the UDO Use table.

Jimmy King, Garland C. Norris, Perry Road, noted from planners perspective understands why more items should be identified as special use; to balance the scale, developers and builders work within guidelines of the UDO; specific businesses have to refer to UDO; the fewer special use permits the easier for those that have to use them; makes planning easier to look at everything case by case, but takes away the process when identifying and making business decisions. Planning Board just voted tonight, and if council votes tonight, and just hearing about these, doesn't give the community much chance to respond to the planning board process recommendations vs. staff recommendations; lot of ground to cover, and not much time to consider them.

Lacy Reeves, Fayetteville Street, Raleigh, represented AAA Carolinas, Brad Mur, AAA Carolinas stated plans are proposed for a location on Apex Peakway, site plan vacant parcel adjacent to the shopping center and with a site plan submittal filed in November; were advised an ordinance change would affect the facility location proposed in B1 district and would benefit Apex; supposed to be located in B1 Haddon Hall vacant parcel adjacent to shopping center; approximately 500 feet across the lake (buffer) from the town home community; no common owned property but acts as a buffer; unique facility for NC; AAA Carolinas developed several; plan would be a unique facility for member services, mixed of uses for the public offering a travel agency, insurance office, and auto service facility.

Because of the auto service element proposed B1 would be captured by an ordinance change before council and would become a disallowed use; site plan pending since November. Brad Mur, AAA Carolinas representative gave a recap of the process to date, stating they had no complaints while working with staff and are asking they be allowed under the grandfathering clause for plans submitted prior to acting on the text amendment.



## Public hearing # 04 continued

Reeves stated they had no public discussion with the Planning Board, only talked with staff in review of the site plan application. Understands the basis for proposed in the B1 district has to do with esthetics, noise, where service bays are involved: service bays would be in one portion of this facility; proposed to eliminate service bays on side of building facing neighbors across the lake, placing them on the other side of the facility, would not park service or awaiting service, any vehicles in the parking lot proposed on the side of the parcel facing the neighbors, are prepared to address in the site plan submittal and are prepared to proposed as conditions of the site plan approval these two elements; keep existing natural vegetation on the perimeter of this site between them and the townhome community.

Attorney Fordham advised in considering whether or not to change the text of the UDO, it's appropriate to listen to a description of what's being planned specifically with this project, but not for the purpose of relying on that it will happen or some contract that it will happen; you need to consider that as it points out general issues related to planning considerations they are looking at. It might also be possible in a grandfathering clause to put certain restrictions on applications that have been submitted, otherwise, you are not in a situation where conditional use zoning requests and the applicant can add certain conditions, so its not that situation; you need to understand that Council's obligation is to look at all the uses that would be permitted before and after a change in public interest in light of that.

Reeves concurred with Attorney Fordham's views and is offering as elements, could be incorporated in any grandfathering and is what they are asking; because of the unique nature of this facility, a mixed use facility, the automotive service aspect is just one element of its operation; they are asking if Council should choose to eliminate the use in B1 that knocks them out, that Council adopt the grandfathering provision that would allow this project to continue and allows it to be approved and would be lawful use on this site. Mur stated they had received staffs comments today, and their intent would be to eliminate the service bays facing neighbors and placing them on the opposite side, would not park service vehicles in the lot on the side of the parcel facing the neighbors, and would keep existing natural vegetation. The concerns expressed were in regard to use type: automotive repair in the B1 district (repair and maintenance general).

Mayor Weatherly closed the public hearing at 8:20 p.m.

Mayor Weatherly asked for clarification from the Attorney regarding the grandfathering provision and asked should they know how many other plans may be in the submittal; Attorney Fordham advised how many was not important, with a grandfathering provision as to how many has been submitted, it should apply to all categories that have applications in the pipeline from the time the ordinance change is passed. Staff knew no others in any classifications that would be affected by the proposed changes consistent or inconsistent with changes being made.

Staff explained the special use permitting process requires public hearings, and basically be considered at the same time as site plan; through Technical Review Committee; Planning Board, public hearing with Quasi Judicial process, Town Council with public hearing with Quasi Judicial process, eight standards that must be met (stated) for permit to be issued; permit can expire with change in holder of permit; special permits for daycares and churches and expired with increase in number of students or daycare ceased for more than six months, and the flea market.

Staff noted Planning Board voted on all recommended changes, four separate motions made (stating them), some stating they leave the UDO as currently states as stated previously by staff; recommended those uses on the last two pages remain the same, no changes to the UDO as they ran out of time for discussion. Staff stated they had indicated whether they were in favor of the change or not, vehicle repair, service there were four on each one said it should be allowed to be permitted or changed to special use permit, but not removed entirely; two were not interested in seeing the ordinance changed for dry cleaning and dyeing plant, laundry plant, and wood or lumber processing; had there been more time, they don't know.

Manager stated he was not convinced the Planning Board didn't have time, this was the second time they had discussed it, discussed it two weeks ago on Monday, and an hour today. Mayor Weatherly stated if they had felt strongly about it they would have made a recommendation on this matter; with the level of understanding on these issues.

Mayor Weatherly moved to the consideration of the "stealth communication towers" stating staff recommended removing it entirely, asking what the Planning Board wanted to do. Khin responded this was in the neighborhood business district only – with the stealth communication tower – noted locations of such, one on a church; Planning Board recommended it not be removed completely from neighborhood business, but it be allowed with a special use permit. Mayor Weatherly stated they are needed, but he doesn't like to see them. Staff stated this one was pulled out by the Planning Board, they felt they had some kind of camouflage felt it might be alright in the neighborhood business district.



Council Member Schulze moved back to the repair/maintenance, general; he had no problems per say with the proposed, asking if they could place enough restrictions on it not to impact the neighborhood. Staff replied they currently could not having to go by the UDO, if changed to a special use permit, they could do that, or if there were an ordinance amendment, having specific supplemental standards to do this differently, would like to do that, or to do the grandfathering with conditions; the only way to make conditions he was speaking of.

Mayor Weatherly added if allowed problems would be if it were sold out, or changed hands, the business could change hands and the subsequent owner may not be as conscientious and would have to decide if it were an appropriate use next to residential neighborhood, noting bad examples. Manager Radford added another decision is whether or not to grand them the grandfathering provision they have asked for if acting on this. Mayor Weatherly agreed, two issues, if they go with the recommendation, and asked the Attorney how grandfathering would affect the subsequent owner, they would be grandfathered as long as the same use were maintained; would have to fight with them to comply with the same conditions.

Attorney Fordham advised the same conditions would apply to the subsequent owner. Mayor Weatherly added he would hate to restrict the property owner from use of his property, the primary legitimate use of zoning is wanted to protect the negative impacts from adjoining uses, and have been very consistent in trying to protect residential neighborhoods, and what makes Apex what it is, livable for our folks without over baring with businesses and certainly would not want to see that; some of the modifications would take out erroneous uses in some of these categories was a good thing; and special use obviously would allow with more restrictive conditions with the use over permitted use; he is in agreement with the direction that they are going in.

Council Member Jones agreed and was having trouble understanding the difference between staff and Planning Board recommendations; felt they have to take it on almost individual basis. Manager Radford stated that's how Planning Board got where they went; they had taken one section at a time for a motion, and felt that would be appropriate. Council Member Sutton noted the Planning Board had studied these for awhile nearly a month and Council got them tonight.

Mayor Weatherly stated Use Table was not carved in stone and consider those they didn't like later, but would hope to come to some agreement on this tonight and like was said, Planning Board had time to look at this. Council Member Sutton agreed with most of Planning Board recommendations, did put in some stipulations, and was said, didn't expect everything to be approved, noting the last had been left as was that they didn't have enough time; like they didn't give a recommendation, so he was inclined to go with staff, with Mayor Weatherly thinking the repair/maintenance was the more erroneous one, and thinks Council can decide; its pretty much cut and dry, do you like it next to a residential neighborhood or you don't. Council Member Schulze to him was not cut and dry, as he does like the service esthetics; noting other issues around it, he didn't like any inconvenience on the neighborhood. Mayor Weatherly stated he would not want to live aside this type business, but caring about the neighbors a block away, asking if this were a consistent use; he's had issues with what he has seen recently coming up in residential neighborhoods. Suggested Council could separate out the one coming up with public hearing and deal with that one, and the broad scope do we want any maintenance and repair that we may have issues with in the future. Council Member Sutton noted staff recommendation was against this as a permitted use in B1; if they approved staff recommendation to remove it entirely, they would not have to consider grandfathering. Mayor Weatherly stated you could, and would mitigate the impact of this issue, but doesn't change what's coming overall in the horizon. You could address the one we have heard about tonight separately by grandfathering if we adopt staff recommendation, with Manager Radford adding or the other way as well. Council Member Sutton thought it hadn't been submitted; Attorney Fordham advised it was submitted. Manager Radford stated staff would recommend it be eliminated and it not be grandfathered. Mayor Weatherly hoped Council could hold these in tact, and some agreed with the Planning Board recommendation, and having gone through the process.

Council Member Schulze and Council Member Jones were concerned over the way to make a motion. Discussion followed on ways to proceed with the motion. Attorney Fordham asked if there were any issues dealing with grandfathering in items 1 – 7. Mayor Weatherly opened the floor for a motion if Council so chose to do so with the non-controversial ones 1 – 7.

**Action:** Council Member Sutton made a motion to approve amendments 1 – 7 as modified by planning staff, and recommended by Planning Board 1 - 7. Khin noted modification to the language: exposed LED to the section noted. Council Member Jones made the second to the motion. Motion carried unanimously (see staff report).



## Public hearing # 04 continued

Mayor Weatherly moved to the use table to consider section by section, to approve with one motion. Council Member Schulze stated his issue he was troubled with was he would probably vote to remove this from B1 only because he doesn't want to see another issue that they have now, but would like to have it where they can allow it with restrictions such that it would not have a negative impact on the community. Mayor Weatherly noted it would be allowed somewhere, but not in the B1 district. Council Member Jensen commented on the location of the business and the buffering. With continued discussion staff was seeking direction, noting it a permitted use in B1 when the application site plan was submitted, and if grandfathering were permitted, would want to look at buffer requirements and felt the lake was not a visual buffer. Staff recommends the removal as a permitted use and no grandfathering. Mayor Weatherly referred the matter to Council. Khin stated the process if including grandfathering would be for all established businesses, lawful existing activities at time of adoption of any pending applications.

Council then considered each section of 4.2.2 Use Table separately taking the following action: Chart with Council's approval is attached. Mayor Weatherly turned to staff, with staff noting the first two sections, Planning Board and staff were in agreement. Attorney Fordham advised if grandfathering would make to make that inclusion with each motion. Khin added they were talking about businesses in operation, not knowing which falls under which category, grandfather all of them. Attorney Fordham stated his comments were directed towards lawfully existing activities at time of adoption of any motion; would have to consider grandfathering pending applications later; as they go through each segment, staff could tell them where there are any issues that relate to applications, apparently there is not except for one; but do need to include in the motion each time that lawfully existing activities at the time of adoption; doesn't apply to the one.

**Use Type: Residential Uses and Public and Civic Uses**

Attorney Fordham advised there were no changes in staff recommendation for this section, so the motion would be as submitted.

**Action:** Council Member Schulze made a motion to approve these two sections as approved by Planning Board and submitted by planning staff and grandfathering of existing lawful businesses as long as they maintain the operation and not abandoned for six or more months. Attorney Fordham advised that the ordinance amendment reflected in the motion would not apply to existing lawful businesses at the time adopted so long as the use is not abandoned for six or more months. Council Member Jensen made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Utilities**

Issue was communication tower, constructed stealth. Planning Board recommended it be allowed as a special use permit and not removing it entirely as a permitted use in the B1 District only; staff recommended this not be a permitted use in B1 district. Planning Board wanted to mitigate it to be used as a special use. Mayor Weatherly hoped Council would approve staff recommendation. Staff explained the various types of tower designs. Recycle Plant: staff recommended it to be allowed as a special use in LI deleting permitted use as recommended by staff.

**Action:** Council Member Jensen made the motion to approve the two as recommended by staff; removal of communication tower from B1 district and recycling plant recommendation, subject to the same language (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Jones made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Recreation Uses**

Issues related to entertainment outdoor in RA district (Khin stated uses - ongoing permanent as a business -with some businesses discussed) ;( question: gazebo with blue grass band playing - would be a special use permit not ongoing). Mayor Weatherly noted they would be subject to a noise ordinance; reference café or diner with concern by neighbors (accessory or temporary use permit). Certain outdoor mud bogs, etc. was discussed. Attorney Fordham advised you couldn't say no if they met all the criteria in a special use permit ordinance.

**Action:** Council Member Jones made a motion to approve recreation uses category, the adopted changes recommended by planning staff except entertainment outdoors under RA be allowed as special use as recommended by Planning Board, with same language (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Sutton made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Commercial/Adult Uses**

Issue: Planning Board agreed with staff on bar or nightclub uses, with Council agreeing with staff.

**Action:** Council Member Schulze made the motion to approve commercial/adult use as submitted by planning staff; and the grandfathering (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Sutton made the second to the motion. Motion carried unanimously (see chart).



Public hearing # 04 continued

**Use Type: Communication**

There were no changes in this section.

**Action:** Council Member Jensen made the motion to approve this section, and the grandfathering (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Schulze made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Food /Beverage Service**

Staff and Planning Board agreed on this section with Planning Board recommending it as a permitted use. Issue: Restaurant, drive-through and the high impact including odors. Staff recommends removal all together. Various restaurant types were discussed. Council Member Schulze shared concern with high impact – microphones; not saying he wanted to take it out, say allowing it with conditions; was not submitted for a special use. Mayor Weatherly stated if he were concerned about traffic didn't know how they could mitigate that with a special use permit.

**Action:** Council Member Schulze made the motion to approve food/beverage service as submitted by the Planning Board or planning staff with the same language for grandfather as submitted (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). No second to the motion was made. Motion died for lack of a second. Khin offered planning could come back with supplemental standards for drive throughs in B1 and could remain the same as current ordinance is written for food/beverage service. Mayor Weatherly stated current ordinance would stay until they do something different. Attorney Fordham advised there should be a motion to reflect the current ordinance would remain for a comprehensive decision.

**Action:** Council Member Jensen made the motion that the use type remain as is for food/beverage service Council Member Sutton made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Office/Research**

Issue: medical/dental laboratory, with staff recommending it be a special use in B1.

**Action:** Council Member Jones made the motion to approve the recommendation as special use under B1 and including of the grandfathering language (and grandfathering of lawful existing businesses as long as use is not abandoned for six or more months). Council Member Schulze made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Parking/Commercial**

No changes. **Action:** Council Member Jensen made the motion to approve the staff recommendation, with same grandfathering language, (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Schulze made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Public accommodation**

No changes. **Action:** Council Member Schulze made a motion to approve the staff recommendation, with same grandfathering language (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Jones made the second to the motion. Motion carried unanimously (see chart).

**Use Type: Retail sales and service**

Staff recommends removal of gas and fuel retail in B1 and Planning Board agreed and recommended adding as a permitted use in LI and staff agreed. Greenhouse or nursery, retail: Planning Board recommended it be left as a permitted use in B1; staff has no problem with this. Kennel, indoor: staff recommends it be removed from the RA district as a special use permit (reasons barking and howling), Planning Board recommended it be left as a special use permit in RA and leave it permitted in the B1 district; remove Kennel, outdoor under RA and permitted in LI. Upholstery shop: Planning Board voted to remove it from B1 district (noise and car upholstery, tend to want outdoor storage and best served in TF or LI districts where it is allowed), discussion followed, staff will come back with standards and leave it as permitted no change at this time.

**Action:** Council Member Jones made a motion to approve this section with adoption of the following changes: gas/fuel retail removed as a permitted use in with Attorney Fordham suggesting his motion be to go with it as presented subject to the following changes. Council Member Jones made the motion to adopt the changes as presented by staff, with the following changes: gas/fuel retail permitted in LI; kennel, indoor as a special use permit, RA and special use permit in B1, greenhouse or nursery, retail as a permitted use in B1, and upholstery shop no change at this time; studio art stay the same as proposed, and with the grandfathering language (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Jensen made the second to the motion. Motion carried unanimously (see chart).



**Use Type: Vehicle Repair/svc**

Repair and Maintenance General: Relative to this section, Council asked direction in preparing a motion addressing the grandfathering issue. Attorney Fordham advised there were two grandfathering issues one of existing business and two of application submittals; and best for Council to include in their motion how they will address grandfathering; also may want to consider conditions regarding pending applications; if planning staff has specific conditions they can propose they could be considered if that is what it takes to deal with the circumstance and would have to be related to concerns Council has about development that would be allowed to be grandfathered. Mayor Weatherly stated this could be taken out all together in the B1 district. Khin added Planning Board had recommended it stay the same in the B1 district and it be added in LI district. Staff agrees with LI district, but does not agree in the B1 district, as staff wanted to eliminate it, adding there is nothing pending on this one.

Council Member Jones noted everything after this one the Planning Board had recommended no change with Khin agreeing leaving UDO as currently is. Mayor Weatherly restated staff wanted to eliminate it altogether in those three categories. Council Member Jensen asked could they receive legal advice; Attorney Fordham stated they could.

**Action:** Council Member Jensen made the motion to move into closed session at 9:12 p.m. to receive legal advice from the Town Attorney. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of closed session are recorded separately. **Action:** Council Member Jensen made the motion to move back into Regular Session at 9:20 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

Mayor Weatherly stated Council would continue discussion on vehicle repair and service: repair and maintenance general. Council Member Jones asked staff's reason for removing vehicle inspections center from this section as a permitted use in B1. Khin responded staff felt it was similar to repair service, but sounds as if its not and would probably be best to leave it for now and could do more research on its aspects. Khin recommended Council could leave it as permitted, and based on description as Council Member Jensen understood it, could consider it more closely and see if there is any reason a special use permit might be needed. Planning Board recommended it stay the same; they never discussed it.

Mayor Weatherly added repair/maintenance, general: agrees with the homeowners who have put up with the situation next to their homes; he totally agrees with their concerns and objections to that and has explained to them that planning decision was made before any of this Council had anything to do with it, unfortunately 20 years later, something like that came to fruition that that was a permitted use that came in and he doesn't want to subject anyone else to that, no matter what the intent to keep it a nice place, will always be an eyesore to him, and can't visualize something it wouldn't be, so he would hope Council would agree with planning staff and take it out of B1 all together. Council Member Jensen clarified items that would leave and would return or recommended to stay the same; he has mixed emotions on repair and maintenance, general, felt it was not a good fit, wanting to keep quality of town and protect the homeowners best we can.

**Action:** Council Member Jones was reluctant because of the Planning Board, however, agreed the had ample opportunity to review this and based on what he had heard of their conversations that they would come to a recommendation anyway, relative to this section and beyond in this use table, so for vehicle/repair/service category, moved that they adopt the changes as recommended by staff with the exception of adding automotive service station as permitted use in LI; vehicle inspection center as permitted use in B1 and MEC, with the grandfathering wording per previous motion (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Jensen made the second to the motion. Khin did not hear repair services, limited; with Council Member Jones adding leaving that as currently is shown in the table in the UDO (understood staff will come back on this one). Motion carried unanimously (see chart).

**Use Type: Industrial Uses and Industrial Service, Production, and Agricultural Uses**

**Action:** Council Member Jones made the motion to adopt it as recommended by staff with grandfathering language (and grandfathering of existing lawful businesses as long as use is not abandoned for six or more months). Council Member Schulze made the second to the motion. Motion carried unanimously (see chart).

Council Member Sutton added he felt it was a dis-service to Council and the public to bring all the UDO amendments at one time, as there was no time to deliberate or consider them, recommending they be brought to Council for consideration more often vs. all at one time.

**OLD BUSINESS**

Presenter: Attorney Fordham

**Old Business # 01 – Corridor Project Master Agreement**

Update by Attorney Fordham regarding potential Corridor Project Master Agreement with NCDOT and CSX Transportation. Spoke with Paul Worley, NCDOT representative, presented draft to both with Council requests and anticipates hearing back regarding adjustment to some terms and estimated costs and possible maximums. CSX prefers documents with tracking action, may hear from NCDOT but not CSX in January. Did not receive any report regarding additional tracks or new crossings. Will continue his communication with both.

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.

*Your comments must be limited to 3 minutes to allow others opportunity to speak.*

Joey Iannone, JVI expressed appreciation for what all the Town and staff has done, hoping next year is better. Thought Council Member Sutton had made a good point, that all were unprepared for things discussed tonight, and had made decisions that were not the right decisions; felt more time should be taken when rezoning developers or citizens land; tonight's action took away their zoning.

End of Public Forum

**NEW BUSINESS**

Presenter: Director of Planning Dianne Khin

**New Business # 01 – Lot Frontage, Perry Hills Subdivision**

Consideration of reduction of lot frontage from 30' to 20' on the Eva Jane Burt and United Estates of America, Inc. properties located on/near Litton Street, containing 0.57 acres; possible motion regarding same.

Staff noted the location of the Eva Jane Burt property, gave a review of the previous action taken leaving a 10' remnant piece which blocks Burt property from front street, and further regarding a request for the 20' lot width for Lot 3 for Eva Jane Burt property; stated necessary conditions that need to be taken; noted topographical conditions; staff recommends approval of the reduction from 30' to 20' for recombination of lots; review and plat map attached and incorporated as a part of the permanent minutes. **Action:** Council Member Jensen made the motion to approve. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business # 01

Presenter: Keith Joyce, Joyce and Company

**New Business # 02 - Comprehensive Annual Financial Report**

Presentation of the Town of Apex Comprehensive Annual Financial Report for Fiscal Year ended June 30, 2008 by Keith Joyce, Joyce and Company. Audit highlights, Management Letter and Audit are attached. Significant deficiencies in internal controls were noted. Finance Director responded to auditors comments; with a good portion of the deficiencies identified were due to the New World conversion; noted no additional staffing is needed at this time; will move forward with proposed action requests. Council accepted the report as presented.

End of New Business # 02



Presenter: Director of Parks, Recreation and Cultural Resources John Brown

**New Business # 03 – Parks, Recreation, Greenways and Open Space Master Plan**

Review: PR & Cultural Resources Advisory Commission during their October meeting unanimously recommended approval of concurrent changes to existing Parks, Recreation, Greenways and Open Space Master Plan

Motion to approve changes to Parks, Recreation, Greenways, and Open Space Master plan consistent with suggested changes proposed for the Bicycle and Pedestrian Plan. Brown presented the changes as proposed recommending approval for consistency with approved changes to the Bicycle and Pedestrian Plan. Equestrian traffic is not currently allowed on the greenway trails; could be in the future, and if so, discussion occurred regarding clean up behind equestrian traffic. **Action:** Council Member Jones made the motion to approve the changes as stated. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of New Business # 03

Presenter: Town Manager Bruce Radford

**New Business # 04 –Town of Apex Code of Ordinances**

Possible motion to adopt an Ordinance amending Town of Apex Code of Ordinances Section 12-48(f) to authorize refunds of sewer capacity fee prepayments.

Manager Radford stated JVI Development requested a refund of sewer capacity fees paid in connection with Phase IV of Bella Casa Subdivision, as prepaid capacity was not needed at this time. In review of the request, it was noted by staff and Town Attorney that relevant Town of Apex Code Section 12-48(f) does not specifically address whether refunds may be issued and noted fees are accumulated for the wastewater treatment facility and would need \$41 million in cash. Manager Radford stated here they ask the Manager be authorized to make refunds for undesired wastewater capacity, as currently there was no legal mechanism to allow for refunds for undesired wastewater capacity and needed language in order to refund the prepaid wastewater capacity fees. Staff recommends refunds only be allowed in circumstances where Town and utility fund would not be prejudiced and where the prepaid fees have been on deposition with the Town for at least six months and stated it was his job to accumulate as much money as possible and assured it would not be detrimental or prejudiced where the prepaid fees have been on deposition with the Town for at least six months. Attorney Fordham noted there was a mechanism to adjust, but not for the reasons the developer no longer desires it.

Mayor Weatherly asked if there were a motion to be made. Council Member Sutton began a motion, however, Attorney Fordham advised in formulating a motion, may want to consider a limitation on the amount in that it wouldn't exceed 10% on the prepaid funds of capacity on deposit in a three year period. He had spoken with Director of Public Works since the draft ordinance was formed and felt this was a legitimate concern.

Director of Public Works addressed the money collected in capacity fees that locked in capacity and the current amount of money in capacity fees remaining and unused or applied to building permits. Noted when wastewater treatment plant becomes reality there would be no need to prepay and those who had prepaid could come and ask for refunds; thinks 10% of uncommitted funds would be appropriate. He further explained the economy had been going down and Town was not growing at 4% and must have the cash on hand when time comes to sign the wastewater contract. Discussion occurred regarding holding prepayment of capacity fees with Attorney Fordham advising the Town has to have capacity to provide sewer for all pre-paid fees and not dependent upon build out of the regional plant.

Council Member Sutton debated need and reasons to keep the prepaid money with the method that was created by the Town was a way to distribute capacity. Donnelly noted this method was more restrictive and reserve of capacity had been around a long time and further stated problems relative to refunding the prepaid money; noted prepaid fees will always be on the books to reserve capacity in some way. Council Member Sutton felt with the economy as is, there are probably builders and developers that are strapped and felt if they needed the money, it should be refunded. Donnelly expressed problems that may come if it leaves, where Town would have to find money elsewhere. Council Member Sutton commented there had been interest made on the money. Council Member Jensen agreed; however felt maybe they should consider a possible penalty in the thought process.



## New Business continued

Joey Iannone, JVI, stated he was strong-armed into paying the capacity fees to guarantee him sewer; he had thought it was a guarantee of sewer as all thought would run out of sewer; discussion had followed regarding the number of lots that would be approved and how Town could oversell sewer; Town could not approve his subdivision, allow him to build out infrastructure, and record lots, and he found the Town can pull sewer from him; he said he would not worry about it at the time and the Town could keep the money; he started to record his lots at Bella Casa and received an invoice to record the lots and thought why should he pay additional money to record the lots when the Town was holding his money; why pay more money and wanted to use the money already being held to pay his recording fees. He noted over time there had been a change in mentality about what is being approved and they use to say they would continue to approve lots no matter how much sewer was available and now say there's only so much sewer capacity left and would only approve so many lots and better, less, because they saw it best not to oversell sewer and not thinking it was legal. He asked why he should prepay for sewer when Council says the subdivision is approved, and when he's issued a sewer permit, he's assuming he's getting sewer to that subdivision, and when he pays his money to record those lots, he's guaranteed sewer, and should be his third guarantee that he has sewer to those lots and doesn't think the Director of Public Works feels that way, because he can pull the permit, but feels he and the Judge would feel differently. He had not wanted to address this but he does want this sewer, and does not want to give it back but didn't see the need to prepay for it; fortunately he's still stable at JVI and noted the Town had made interest on his money for approximately 18 months since August 07; he was not asking for interest the town had made on the money but asking for what was rightfully his and when he wrote the check there was nothing on the receipt that said non-refundable nor other stipulations placed on it; he didn't understand the issue; he submitted a bill to Town August 08 and told by the Finance Director he couldn't write him a check because there was no language in the UDO that allows him to pay him back and he had to ask Council for necessary language to do so. Attorney advised it could have been brought to Council before now with Iannone stating he had discussed this and when he got the invoice to record the lots, felt it was time to get the refund of money; he doesn't understand why it went on this long.

Council Member Jones felt it was what it was, and agreed if town guaranteed capacity and it was no longer needed or wanted the guarantee, Town had made interest on the money, and should give the money back. Iannone expressed its still not a guarantee and had been clearly told him, that it's not a guarantee that you would get sewer. Council Member Jones asked what it mean, when said, you bought the capacity. Donnelly responded by stating the system, Council could approve as many subdivisions as they wanted, but there was no obligation to provide water/sewer or any utilities to any subdivision they approve; those are planning functions; people can plan the use of their land; the Ordinance makes it clear they have an option if they want to prepay capacity if they want to lock it in.

Attorney Fordham advised if they accept Iannone's proposition, Town can't continue to approve subdivisions once the capacity couldn't serve them all; in affects says that somebody doesn't have the right to get their land as far as they want in the planning process, so they are ready to pull as soon as the sewer capacity is no longer, and should put on notice, amending ordinance as far as planning, approval of subdivision is no guarantee of sewer capacity; he felt the key was that everyone should be put on notice by the ordinance, and if need be make it clearer in the ordinance, lets do, and by staff which he thinks they are clearly, the key that no one is ever have the mistaken impression that planning approval is a guarantee of sewer capacity.

Donnelly continued if people for a level of comfort want to prepay just the subdivision they can; he tracks that and actually removes that amount off what they think they have available. The State gets involved when he issues a sewer permit; regulations and statutes requires him to believe that adequate collection system and sewer treatment capacity of sewer of any sewer permit he signs, and he's the one that signs them; he also tracks that level and agrees Iannone does have a point that once he signs a permit, he believes at the time he signs it, that there was adequate system capacity to get the sewer where it needs to go, and adequate treatment capacity to treat it. The comment he said about the fine print is, that he also has the duty if he discovers he's somehow in error, something happens, he also has the duty to stop adding sewer until plant can treat it; that's the provision to revoke an existing sewer permit; theory you wouldn't pollute the stream worse if you could stop the houses from being built – he's right it would be exciting and he's trying not to get; not at subdivision phase do you have a commitment from the town, but try to make a commitment if you prepay or issue a sewer permit.



## New Business continued

**Action:** Council Member Sutton made the motion to adopt the Ordinance amending Town of Apex Code Section 12-48(f) to authorize refunds of sewer capacity fee prepayments as written with the Town Manager having the authority to under the circumstances as written to refund capacity fees. Council Member Schulze questioned the threshold, Council Member Sutton responded he didn't set one, it was as written. Attorney Fordham referenced the new part of the ordinance was the last two sentences. Council Member Sutton noted it could not be a hardship to the Town and have to be on deposit with the town at least six months. Council Member Jones made the second to the motion. Council Member Jones felt if prepaid and not used, should get the money back. Council Member Jensen didn't felt a cap would create a rush; he recalled a while back the Town of Apex put up \$3.4 million to get sewer capacity from Raleigh and upgrade the line; town helped by putting up money long term, and thinks the Town should give money back, but shouldn't be upset because they had put their money on the line when the town did also to help all of them. Mayor Weatherly stated it was not all for them, but didn't want to stop development dead in the water; worst without capacity couldn't have approved anything; should have wastewater plant under construction by now when we started this, however process was slowed down. Council Member Sutton called for the question. Motion carried unanimously. Iannone ended his comments by saying, he didn't have a problem paying for it; also when recording maps say you have to pay for it, but paying two years in advance, he would not put a drop in the sewer system for six more months. Attorney Fordham responded to his comment by saying, that just getting development approval does not guarantee utility capacity. Iannone felt when the gavel was rapped it was a done deal.

## End of New Business

**WORKSESSION**

There were no Worksession items to be discussed.

**CLOSED SESSION**

Mayor Weatherly called for a motion to move into Closed Session to discuss a personnel matter.

**Action:** Council Member Jones made the motion to move into Closed Session at 10:30 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously. Minutes of Closed session were recorded separately. **Action:** Council Member Schulze made the motion to move out of Closed Session at 10:20 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. **Action:** Back in regular session, Council Member Jones seconded by Council Member Schulze moved to employ Henry Fordham as in-house Town Attorney and Jennie Kirschbaum as a legal assistant on the following terms:

Mr. Fordham's regular work schedule will be four days per week and the Town Council's meetings; Mr. Fordham's compensation will be \$115,000.00 per year with full medical and dental benefits as well as other benefits as provided to regular Town employees; Four weeks of paid vacation per year will be provided to Mr. Fordham; A yearly budget of \$2,500.00 will be provided for Mr. Fordham's bar dues, legal association dues and continuing legal education; insurance will be provided to Mr. Fordham related to legal activities through the Town's regular insurer, which is now the North Carolina League of Municipalities; that Mr. Fordham's start date as in-house Town Attorney was to be determined by him and that it was anticipated to be in about 60 to 90 days, but that it was recognized that Mr. Fordham needed to make adequate arrangements with his private law firm; that Mr. Fordham would be allowed after his start date as in-house Town Attorney to complete private cases undertaken by his firm prior to his start date as in-house Town Attorney; that the other terms of the draft employment contract would apply. That Jennie Kirschbaum will be employed as a part-time legal assistant to assist the Town's in-house attorneys; that Ms. Kirschbaum will be employed for 22.5 hours per week and compensated at the rate of \$17.00 per hour; that Ms. Kirschbaum will receive benefits as provided to regular Town employees; that Ms. Kirschbaum's start date will be determined by Mr. Fordham.

Motion carried unanimously.

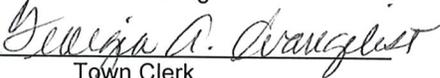


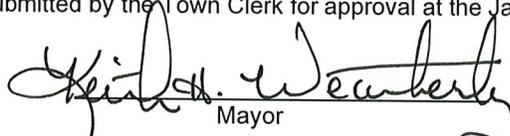
**ADJOURNMENT**

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

**Action:** Council Member Jones made the motion to adjourn at 10:25 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the December 16, 2008 meeting were submitted by the Town Clerk for approval at the January 6, 2009 Council meeting.

  
\_\_\_\_\_  
Town Clerk

  
\_\_\_\_\_  
Mayor