

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the Tuesday, January 02, 2007 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting with all Council Member present.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, led the Invocation, 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 for approval, asking if there were any modifications. Council Member Jensen asked Item #6 Budget Ordinance Amendment #9 and Capital Project Ordinance Amendment be considered separately.

Action: Motion by Council Member Jensen and second by Council Member Sutton to consider this as New Business Item # 2. Motion carried unanimously.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the consent agenda as modified. Motion carried unanimously.

- 1) Minutes of December 19, 2006 Council meeting.
- 2) Minutes of December 19, 2006 Council Closed Session (recorded separately).
- 3) Ordinance regarding Annexation Petition #407, Willie Lee Harris Heirs, owners/petitioners, petitioning to annex 60.32 acres into the Town's corporate limits; property located on Blazing Trail Drive, North off Humie Olive Road (SR1142); Public Hearing was held December 19, 2006.
- 4) Annexation Petition #408, Darin L. Fridley and Elizabeth M. Fridley, owners/petitioners, petitioning to annex 4.089 acres (1.99 acres plus 2.09 acres of public right of way) into the Town's corporate limits and located on Lufkin Road (SR1444) and;
 - 1) Resolution directing Clerk to Investigate Petition.
 - 2) Certificate of Sufficiency by Clerk.
 - 3) Resolution to set a public hearing for February 6, 2007.
- 5) Annexation Petition #409, Ruth W. Holleman, owner/petitioner, petitioning to annex 17.816 acres into the Town's corporate limits and located on Evans Road (SR1147);
 - 1) Resolution directing Clerk to Investigate Petition.
 - 2) Certificate of Sufficiency by Clerk.
 - 3) Resolution to set a public hearing for February 6, 2007.
- 6) *Considered separately New Business Item # 2.*
Budget Ordinance Amendment #9 and Capital Project Ordinance Amendment.

End of Consent Agenda



REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items with a request from the Town Attorney to amend the agenda to include a Closed Session regarding a real estate matter and to receive legal advice regarding condemnation proceedings, and request from the Town Manager to consider a date for the Council's annual retreat.

Action: Motion by Council Member Jones and second by Council Member Jensen to set the regular meeting agenda with the amendments as requested. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Amy Overfield, Planner

Public Hearing # 01 – Rezoning Case #06RZ19

Review: Planning Board met December 11, 2006 and unanimously recommends approval; staff recommends approval. Public hearing and possible motion regarding Rezoning Case #06RZ19, Town of Apex, petitioner, requesting to rezone 0.07 acres from R 40-W to Medium Density Residential the property located at 7344 Green Level Church Road.

Amy Overfield, Planner oriented to the site of a meter vault owned by the Town of Apex and presented the staff report which is attached and incorporated as a part of the minutes for rezoning case #06RZ19. The rezone request is a result of an effort by the Town to ensure all Town-owned properties have Town of Apex zoning designations. The request for Medium Density Residential zoning classification is consistent with adjacent properties and the current zoning is R 40-W (Wake County Residential zoning classification). Staff answered questions regarding the request zoning designation and believe while this rezoning request does not match the 2025 Land Use Plan, which designates the area as Office & Institutional, that the Medium Density District is the most appropriate for this use and is appropriate in this area. Rowland noted utility projects are not subject to site plan process. Planning Board considered this rezoning request at their December 11, 2006 meeting and unanimously recommends approval; staff recommends approval of this rezoning.

Mayor Weatherly opened the public hearing at 7:08 p.m. and with no one addressing this request to rezone closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the rezoning request as recommended. Motion carried unanimously.

End of Public Hearing # 1

Presenter: Amy Overfield, Planner

Public Hearing # 02 – Rezoning Case #06RZ20

Review: Planning Board met December 11, 2006 and unanimously recommends approval; staff recommends approval. Public hearing and possible motion regarding Rezoning Case #06RZ20, Town of Apex, petitioner, requesting to rezone 0.439 acres from an unknown zoning designation to Low Density Residential the property located North of Old Smithfield Road, West of NC55 Bypass.

Amy Overfield, Planner oriented to the site of a water pollution control facility owned by the Town of Apex and presented the staff report which is attached and incorporated as a part of the minutes for rezoning case #06RZ20. The rezone is a result of an effort by the Town to ensure all Town-owned properties have Town of Apex zoning designations. The request is for Low Density Residential classification with the current zoning classification unknown. Staff answered questions regarding the zoning request designation and believe while this rezoning request does not match the 2025 Land Use Plan, which designates the area as a Landfill, the Low Density District classification is the most appropriate for this use and appropriate in this area (note: utility projects are not subject to site plan). Planning Board considered this rezoning request at their December 11, 2006 meeting and unanimously recommends approval; staff recommends approval of this rezoning.

Mayor Weatherly opened the public hearing at 7:10 p.m. and with no one addressing this request to rezone closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the rezoning request as recommended. Motion carried unanimously.



Presenter: Brendie Vega Mkhwanazi, Senior Planner

Public Hearing # 03 – Rezoning Case # 06RZ27

Review: Planning Board met December 11, 2006 and unanimously recommends approval; staff recommends approval. Public hearing and possible motion regarding Rezoning Case #06RZ27, Bernard & Linda Parker, petitioners, seeking to rezone 5.1 acres from Residential Agricultural to Rural Residential District the property located at 2132 Kelly Road.

Brendie Vega Mkhwanazi, Senior Planner oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes for rezoning case #06RZ27. Property owners are seeking to rezone this 5.1 acres from RA to RR which is a lower density than proposed by the 2025 Land Use Plan (currently there is one single-family home on the five acre parcel and under the current RA classification, the maximum density is one dwelling unit per five acres. Under the proposed density RR, the maximum density is one dwelling unit per acre). Planning Board considered this rezone at their December 11, 2006 meeting and unanimously recommends approval; staff recommends approval of this rezoning based on consistency with the 2025 Land Use Plan and compatibility of the surrounding land uses.

Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one addressing this request closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the rezoning request as recommended. Motion carried unanimously.

End of public hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

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

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

No one spoke during public forum.

NEW BUSINESS

Presenters: Police Chief Jack Lewis and Fire Chief Mark Haraway

New Business Item # 01 – Public Safety Command Post Vehicle

Possible motion to approve the purchase of a Public Safety Command Post Vehicle and a corresponding Budget Ordinance Amendment.

Police Chief Jack Lewis recalled recent events of the EQ fire incident, and noting the successful outcome due to collaborative training, a planned approach and protocol of assigned responsibilities, and having had cooperation of neighboring towns and cities. Raleigh shared equipment plus a search/rescue team which provided a "command post vehicle". Town's Communication Center was evacuated during the fire incident. Chief Lewis and Fire Chief Haraway view it critical for combined groups to work together and thus presents need for a public safety command post vehicle for any future events that may occur; Police/Fire would be the primary users of such vehicle. With service delivery to the citizens being the high priority, recommends Town have its own incident command vehicle vs. borrowing such a vehicle, which likely would probably not be an option with the continued growth of this area. In looking ahead public safety members have sought vendors that could meet the Town's needs for such a vehicle and have found the cost to be in the \$400,000 range; however, continued search has identified a refurbished vehicle fully outfitted that can be purchased for approximately \$160,800; both Chiefs believe this vehicle could deliver the level of service in an emergency situation that meets the needs and expectations of the citizens. Public Safety would then be equipped to either use the fire/police command center and or both building and vehicle.



Fire Chief Haraway recalled the onsite command center during the EQ incident and noted other events could happen within the town, and reiterated the vehicle used during this event may not be available in future events and stated other locations where this vehicle is currently being used, noting there are only two command units in the county both belonging to City of Raleigh. Note: Cary does not own a command post vehicle.

Council Member Schulze complimented staff on the way the incident was handled and pointed out that the command post vehicle had provided a center for the incident and had provided the right information needed and showed proactive planning. He noted the command vehicle was loaned from Raleigh and asked if we would loan a vehicle out should others ask. Chief Haraway responded the Raleigh vehicle was provided as part of the State Mutual Aid Agreement. Chief Lewis stated such vehicle would provide opportunity to be a good neighbor to help others, however could restrict its use if need be to protect our people, and would send our people with it should it be sent to help others. Note: there is no indoor storage proposed.

Council Member Gossage asked why there were no such command vehicles other than those owned by Raleigh. Chief Jack noted others have not yet had an experience as Apex has had and that this event was being recognized as the largest event in the country, with the largest successful evacuation on record and with no fatalities. Chief Haraway used the 911 event as an example where there was not a command center on site, and since with training under the Federal Government guidelines municipalities are looking for command vehicles where all involved can work as a team.

Council Member Sutton questioned the cost of the vehicle and insurance, seeing where some type events may need such, but being near to Raleigh and paying money to use theirs, felt taking a chance to get it again was reasonable, or could spend \$160,000 and insurance – its very useful but not without resources and help.

Council Member Schulze felt the vehicle allows preplanned information to be on the vehicle ahead of time of an event and ready to go when need be to make decisions quickly, and noting the chiefs had said they can't insure the use of the other vehicle at every event that may occur.

Council Member Jones commented on the value of a mobile vehicle asking the percentage of events that may require use of the mobile vehicle, and the cost to equip a mobile vehicle or any other command center; how much duplication of equipment would there be. He stated as far as information, it would be loaded on a CD and used on a laptop; he was giving due diligence to the requested cost of the vehicle. Chief Jack responded he would be remised if he didn't bring these public safety measures for the community to the Council for consideration, realizing how handicapped the town could be without these. He noted among the critical points of the town Chief Haraway had mentioned, Investment Boulevard was not one they had discussed, not knowing what will be and being closer to the scene would be best for service delivery. Among the events that could occur within the town were rail events, pipeline events, location of the butane manufacturing plant, substation events, and weather events.

Council Member Sutton recalled hurricane and ice storm events that occurred in Town and how the burden of clean up fell on Public Works to restore power and get roads open and operational and there was no mobile unit. He asked Tim Donnelly Director of Public Works if he operated from Public Works building. Donnelly recalled the events and had operated out of the Public Works building, however could see situations where such a vehicle would be useful, noting such devices could improve communications during an event, which could be helpful, further there's no heating or cooling when there's no electricity.

Council Member Jones addressed cost to equip such vehicle, with Chief Lewis thinking \$12,000 to \$15,000, as the vehicle comes with some services provided such as wiring, generators, and televisions. They would provide much as they did with the Raleigh vehicle setting for a mobile office. Chief Lewis could see such vehicle being used as an incident command post during downtown events, at water main breaks and during electrical outages. Council Member Jensen was bothered with the cost of \$160,000 just for Apex and suggested the possible approach of coordinating with surrounding Towns of Cary, Holly Springs and Fuquay to help spread costs and upkeep. He had rather see \$160,000 be placed towards a site for another fire station in the Walden Creek area helping spreading outward and getting more for our money. Mayor Weatherly called for a motion.

Action: Motion by Council Schulze to adopt the associated Budget Ordinance to allow for the purchase a public safety command post vehicle. Mayor Weatherly called for a second to the motion. There was no second to the motion.



Manager Radford stated \$120,000 is included in the Budget Ordinance Amendment that would help with the purchase and \$40,000 would be used from Police Funds. Council Member Jones commented on the suggestion made regarding local partners, noting a potential for grant money as well. Council Member Schulze asked if we pay Raleigh, could others pay Apex and maybe have an agreement with neighboring towns to help with insurance, etc. Council Member Sutton noted Apex was a high view area now, with Council Member Gossage agreeing.

Mayor Weatherly reminded that this vehicle in question is a one of a kind, refurbished and available for \$160,000. Chief Lewis stated this vehicle could be delivered within 60 days and to have another one rebuilt could be a nine to twelve month wait, and the price on this vehicle had been negotiated. He felt with joint ownership there could be conflict in where the vehicle would be located during storm events and challenging and prefers there not be joint ownership involved; grants could take up to two years to formalize and would stand against larger municipalities in requests.

Mayor Weatherly stated the motion had failed due to a lack of a second.

Council Member Schulze suggested this be looked at again with maybe some options being offered. Council Member Gossage did agree that if an opportunity for a need came in, it would be handy, however he was trying to weigh out the need, and that it could sit for 364 days a year and still more, hoped it would never be used, however would be the taxpayer's money involved.

Council Member Sutton felt participating in risk management that if an event occurs at least one of the vehicles would be available for our disposal and also get a hazmat team. Council Member Jensen asked what the town pays to Raleigh. Chief Haraway responded this past year had paid \$14,500 which guarantees the town one hazmat team and one vehicle. Council Member Gossage felt the odds for an event to occur at the same time with another seems remote.

Council Member Schulze offered he will be meeting with the Fire Advisory Board and could ask them to brainstorm ideas regarding cost sharing. Chief Lewis responded he was opposed to cost sharing however, may have to compromise. Manager Radford stated he would not bring this back to Council for consideration, however, would welcome any solution offered by Council Member Schulze.

End of New Business Item # 1

New Business Item #2 - Consent Agenda Item #6

Council Member Jensen asked Budget Ordinance Amendment #9 and Capital Project Ordinance Amendment be considered separately regarding the cost for the Regional Water Reclamation Facility site and that the cost had doubled, comparing the increase to old site 30 and site 14, there being a \$3 million difference. He wanted to know how the land was evaluated and why the original price of the land had doubled. It was explained Town of Cary was the lead agency on this project and had chosen one appraisal of \$15,295 an acre. It was noted in condemnation proceedings, you have a right to go to court to have value determined, and in this case a settlement was reached with the willing seller for the site. Mayor Weatherly asked if Cary had purchased the property, and Manager Radford responded Cary said, yes and on behalf of the partners. Mayor Weatherly stated the Town was obligated for the Town's share, with Manager Radford responding we are.

Public Works Director Tim Donnelly stated the numbers were reasonable based on value of property in the area and the value of land today. He explained it was Cary's choice to choose an appraisal on the conservative side, and looking at the price of land, this was not troublesome to him. Mayor Weatherly commented developers are anxious to develop this area, and noted the escalation of price that will come with this development. Council members Schulze and Jensen were surprised at the price with Donnelly stating everything is escalating, however, were still on budget based on \$10 million and hopes to stay within the budget, but will not know until all sites are purchased. He felt should a jury become involved in the decision matter, one would not be more sympathetic to Cary, but to the property owners. He noted an inflation factor has been built in to the costs, and noted currently the project is six months behind schedule.



Mayor Weatherly stated this had started out on the table with a number for capacity of sewer, with Donnelly expressing he was confident with cost projections and that he was getting accurate information. Comments were made by Council regarding questions, decisions and judgment, with Mayor Weatherly seeing even if the price was double, if a jury were involved it may be substantially more. Council Member Jones noted the process had been followed and had discussed this before.

Council Member Jensen asked where the delays lied in the process, with Donnelly responding the Environmental Impact Statement had not been approved by the agencies regarding site and other things, discharge, routes, and site evaluations.

Attorney Fordham offered Council opportunity to move into Closed Session to discuss condemnation strategy. Council Member Gossage offered a motion however withdrew the motion. Mayor Weatherly deferred action on this item until after the closed session. Action pending.

New Business Item #3 – Annual Council Retreat

Manager Radford offered the date of Friday, February 23, 2007 for the Council's annual retreat. It was the consensus of Council to approve this date as recommended.

End of New Business Item # 3

WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 8:15 p.m. to discuss a real estate matter and to receive legal advice regarding condemnation proceedings. Action: Motion by Council Member Schulze and second by Council Member Jones to move into Closed Session. Motion carried unanimously. Minutes of Closed Session are recorded separately. Action: Motion by Council Member Jones and second by Council Member Schulze to move back into Regular Session at 8:25 p.m. Motion carried unanimously.

With Council having moved back into Regular Session, Mayor Weatherly presented items for action:

1) Consent Agenda Item # 6 moved to New Business Item # 2 calling for a motion having deferred action until after closed session. Action: Motion by Council Member Schulze and second by Council Member Jones to approve Budget Ordinance Amendment No. 9 and the Capital Project Ordinance Amendment regarding the acquisition of the proposed Regional Water Reclamation Facility site in New Hill. Vote on the motion was 4 and 1 with Council Member Jensen voting no. Note: this action fulfills a contractual obligation. Motion carried.

2) Honor the request by Attorney Fordham for waiver as it related to representation by Dorothy L. Donaldson, Stam, Fordham and Danchi representing Billy G. and Shirley L. Roberts Estate Planning.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the request for waiver requested by the Town Attorney. 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 at 8:30 p.m.

Action: Motion by Council Member Gossage and second by Council Member Jones to adjourn. Motion carried unanimously.

The above minutes were approved on the 16th day of January 2007.

Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of Tuesday, January 16, 2007 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Apex Town Hall and Town Campus, located on 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, gave the Invocation and extended a welcome to those attending the meeting. Pledge of Allegiance was led by Scout Travis Johnston, Troop #208.

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 for approval. Council Member Jensen asked for a status report on the NC55 Project as it relates to Consent Agenda #4. Manager Radford reported this was the section on Olive Chapel Road at the Bell South building extending to the corner. Mayor Weatherly called for a motion for approval of the consent agenda.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the consent agenda. Motion carried unanimously.

- 1) Minutes of January 02, 2007 Council meeting.
- 2) Minutes of January 02, 2007 Council Closed Session (recorded separately).
- 3) Annexation Petition #410, C.H. Jewly Partnership, Junius Earl Maynard, Susan Castlebury Trustee/Agnes Castlebury Estate, petitioning to annex 25.681 acres into the Town's corporate limits and located south off US64 Hwy West.
 - 1) Resolution directing Clerk to Investigate Petition.
 - 2) Certificate of Sufficiency by Clerk.
 - 3) Resolution setting date of Public Hearing for February 20, 2007.
- 4) Budget Ordinance Amendment # 11 and (2) Capital Project Ordinance Amendments.
- 5) Subdivision Plan: Kelly Grove Subdivision, Piedmont Land Design, petitioner, seeking subdivision plan approval for 20 single family lots, located on the west side of Kelly Road, north of Apex Barbecue Road.
(Planning Board met January 8, 2007 and voted unanimously to approve this subdivision plan).
- 6) Ordinance to amend Section 20-150 prohibiting parking on the south side of Haywards Heath Lane. NO. 07-0116-01
- 7) 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. Manager Radford presented an item from Council Member Jensen for consideration regarding an alternate payment method for small businesses to pay their water/sewer impact fees over a five year period. Mayor Weatherly asked to add a discussion regarding a potential legislative agenda and particularly the public school system issues and any other items of concern to be submitted prior to the legislature going into session.

Action: Motion by Council Member Schulze and second by Council Member Jones to amend the agenda to include these items to be considered under new business. Motion carried unanimously. The regular meeting agenda was set as amended.

PUBLIC HEARINGS

Presenter: Mayor Weatherly

Public Hearing # 01 – Fiscal Year 2007-2008 Annual Budget

Mayor Weatherly noted it customary to hold a public hearing in advance of the preparation of the proposed annual budget to receive citizen input regarding formulation of Fiscal Year 2007-2008 Annual Budget. Mayor Weatherly opened the public hearing at 7:10 p.m. and with no one addressing the budget process, closed the public hearing. A public hearing will be held on the forthcoming draft agenda. No action was required.

End of Public Hearing #01

Presenter: Dianne Khin, Assistant Planning Director

Public Hearing # 02 – Rezone Case #06CU10

Petitioner has requested petition for Trackside North be withdrawn at this time; anticipate a new zoning request for this property in the near future.

Review: Council met December 5, 2006 and requested this item be sent back to the Planning Board for review and Council would consider this item on January 16, 2007.

Public hearing and possible motion regarding Conditional Use Rezoning #06CU10, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial to Planned Unit Development-Conditional Use located at US64 on the north, future Apex Peakway on the south, and CSX rail right-of-way to the east and west containing 93.25 acres.

Mayor Weatherly advised the petitioner has requested the zoning petition for Trackside North be withdrawn from consideration due to unresolved design issues as a result of the withdrawal of the Trackside South rezoning request. Letter from BBM Associates/Apex First Development is attached. Petitioner anticipates bringing a new zoning request for this property in the near future. No action by Council was required.

End of Public Hearing #02

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Public Hearing # 03 – UDO Amendments

Review: Planning Board met January 8, 2006 and unanimously recommends approval of the amendments.

Public hearing and possible motion regarding proposed amendments to various sections of the Unified Development Ordinance.



Public hearing # 03 continued

Senior Planner Mkhwanazi presented the staff report for consideration of UDO amendments pertaining to Section 8 to permit public utility lines and easements to be counted in RCA calculations when they meet the buffer requirements. Private utilities and easements will remain excluded from RCA calculations. The amendments were necessary due to the problems the town has faced in acquiring public utility easements. Staff report is attached and incorporated as a part of the minutes.

Council Member Jensen saw public utility line easements are typically mowed grass and if this was considered buffer, would we require an enhancement of the utility easement to truly make it a buffer. Mkhwanazi responded, currently there are no grass plantings allowed in utility easements; there is a provision for some very low plantings in the overhead utility easement area. Council Member Jones added, you may have to supplement the remainder or balance of the buffer outside the easement to get the opacity that is required, with Mkhwanazi responding not as it's currently proposed. Council Member Jones noted discussion concerning this during site plan review, even though it may not be a requirement. Council Member Jensen noted anything not required is not often met with Council Member Jones agreeing.

Mayor Weatherly opened the public hearing at 7:14 p.m. and with no one addressing the proposed UDO amendments, closed the public hearing and referred the matter to the Council.

Action: Motion by Council Member Sutton and second by Council Member Jones to approve the UDO amendments. Mayor Weatherly opened the floor for discussion on the motion to approve.

Council Member Jensen expressed concern the Town doesn't allow plantings over sewer lines for a good cause, but if counted in calculations felt there should be some enhancements to allow this to be called RCA; RCA means more than a mote area.

Council Member Jones didn't think there was a need for trees or shrubs to make a RCA as there are lots of RCA that are wetlands, but he read the easements could be counted in the RCA calculations when they meet the buffer requirements, but may not be the case. Mkhwanazi responded you could not count that buffer towards the total RCA.

Tim Donnelly, Director of Public Works, explained the Town has to acquire easements for expansion of the utility system, with the greater number being for power as poles are set parallel to the road, outside road right of way. He explained NCDOT does not like them placed in road right of way; if NCDOT expands the roadway then NCDOT would have to pay the cost of relocating vs. the taxpayers of Apex. If Town has to compensate people (example: if they owe Town a 100 foot buffer and Town gets a 20 or 30 foot wide easement then this pushes the 100 foot buffer further back onto their property and the fair compensation would probably be the full market value of the land they lost, since it was fully developable land), the theory is the powerline would go in the road buffer which also can be RCA but would not impact them so greatly, and so the Town would not have to pay as much money; purpose is not to generate less opacity as is often desired with the buffers, but to lower cost to the tax payers for utility extensions only required when a utility is required so the driver of the utility is either the Town or the configuration of the site. Water or sewer easements generally don't run parallel to roads, however force mains often run parallel to roads; waterlines typically are actually in Apex roads so if the developer develops waterlines they are in the road; can occasionally vary and cross a buffer, but generally do not run parallel and with the roads. You will loose some planting options; if it's an overhead powerline can put low bushes in but you can't put big trees and still have access for trucks to get in and can't be highly dense; if it is water or sewer lines, do need to maintain it to just grass over the top of it, not to say you can't have an occasional bush, as long as everyone understands that it could be destroyed if need to dig it up. The driver of this is not to circumvent beautification efforts, but lower cost of utilities and understand there could be slight damage to some beautification opacity efforts, but the beauty of utilities overcomes that.



Public hearing # 03 continued

Council Member Jensen asked the height of bushes allowed under power lines. Donnelly responded for most depends on the power line, 10 or 15 foot as long as you can get to the powerline; you have to be able to drive up to the pole, go up in the bucket to do the maintenance; you can have a few and generally have that from time to time.

Council Member Jensen asked if when trees are cut down for power lines, is there a policy to replant something like hollies along the edge to function as a buffer. Donnelly stated when negotiating easements, often property owners ask this (example: along Kelly Road near the pump station, there is a powerline on the west side of the road and has bushes underneath, planted at the property owner's request). Often are not wanted and if they do want them, low growing bushes 10 foot or lower are planted, generally case by case and generally all about the money; how much staff you have – if you make a policy where we are planting everything in the world, they are not staffed to do so, nor are there resources and money to do so; if they perceive the price of an easement will be less from a property owner because they would like bushes, and it economically makes good sense, then they absolutely will offer to do that.

Council Member Jensen added if this is passed and we do easements on new lines, Town should plant in as it makes sense, if we require developers to do this, we should lead the way to do this, and we are constructionist when we put in power lines. Donnelly noted often utility lines go in ahead of development, if it comes in after and if destroying in negotiations for easements, as he mentioned, may happen but not an absolute root policy.

Action on the motion and second to the motion carried unanimously.

End of public hearings

OLD BUSINESS

Presenter: Tim Donnelly, Director of Public Works

Old Business Item # 01 – Update Water Reclamation Facility

Council Member Jensen had requested Tim Donnelly present responses to the Council regarding site location issues for the Water Reclamation Facility.

Mayor Weatherly stated the Partnership has circulated a letter in response to NCDENR request for additional information involving the environmental impact statement for our wastewater facility and circulated among the Council.

Council Member Jensen has questions regarding the draft response to NCDENR from the Partnership. He asked:

- 1) Tommy Esqueda in his last presentation stated Partners would hold the larger group meeting with New Hill as a whole on two phases the one to gather information and the other to talk about what the Partnership intended to do. He read the suggestions and it stated Partners would go door to door or maybe hold small group meetings and maybe hold a general meeting or two, and thinks as he understood Esqueda, that should not be a maybe, but a "we will hold two large community meetings with the folks of New Hill". Donnelly responded they are currently going door to door with citizens in New Hill asking what they think about the plant and gathering data. As far as a meeting, there will be a public meeting with the Army Corp of Engineers that is required and will occur; as far as a second meeting, you may recall, they had a scheduled meeting, blocked out space with the Town Clerk and would be here and the Construction Grants and Loan Section said don't do it yet; they are definitely willing to have a meeting or if one is not required willing to not have one; he knows there will be the one on the 404-401 Certification and if Construction Grants and Loans are the EIS process requires another one will be glad to do it.



Public hearing # 03 continued

- 2) He recalled last year when Partnership looked at site comparisons of site 14 and site 30 the cost for site 30 overall ran up \$3 million; last cost evaluation of site 30 over site 14 is gone up to \$6 million total cost, even though the land cost for site 14 has doubled, since originally looked at. Donnelly stated there is lots of data out there that is old time, new time, and real time, however in this case the first numbers are capital costs, the second numbers are when you calculate 20 year present worth for the difference in the two sites. As far as thinking the price of the land doubled, it absolutely did not, as you recall he talked about that and the land was lower than a pro-forma estimates. All he's focused on is the land doubled over the initial amount deposited with the Clerk of Court; that amount was never in the calculations, not in the old numbers he's talking about; he doesn't know the cost of site 14 either, you now know 14 but didn't at the time the numbers were prepared; they have always used rule of thumb numbers and in the case of the original estimates, he asked Esqueda, the original estimate allocated \$50,000 an acre thinking it would be a 200 acre site, which he had forgotten but chose a generous number; they hoped not to pay it, but didn't want there to be any surprises and he's sure some sites were in consideration that might could have been that price when looking at the whole gamin of things; there was one site that was generally up much closer to US64 that he could imagine \$50,000 an acre; they tried not to be too far off. Council Member Jensen asked so he was saying they decided \$50,000 an acre no matter what the site was. Donnelly responded he did not say that, he said he remembered asking him what was the number they assigned for site 14 but he really doesn't know and doesn't recall all the numbers. Council Member Jensen asked if he didn't recall what site 30 was estimated at, with Donnelly responding he imagines it would be about the same – they are very close. Council Member Jensen noted one was not at a cross-road and was what he was looking at; down line one is commercial potential and the other is office and institutional at best for housing, closer to the nuclear plant which tends to make him think it would be cheaper. Mayor Weatherly added if it was an adversarial acquisition, who knows; they sky is the limit. With no further questions Mayor Weatherly stated no action was anticipated, but obviously the implication is that when the Partnership meets again next week, the draft response will be adopted and go forward as the official response of the Partnership and was our commitment that these communications on behalf of the Partnership will be Council's to review prior to their submission to the NCDENR or regulatory authorities and have done that. This concluded Old Business.

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.

Mayor Weatherly asked those wishing to address Council to come forward.

Harold Truelove, General Contractor and Caterer, addressed sign issues. Last year he had a Keith Henderson Show at the Jones Building and spent \$2,000 on signs that he understands now are illegal. He was called by the lady with the Town and told the signs were illegal and he was not aware of it, and was told if they were there Monday she would issue a citation for them. He read what she was saying because the show was on Saturday night and he would have them removed by Sunday morning and he did. Monday morning, he received a certified letter and thinks everyone got a copy, and that he had said he wouldn't remove it. He said he did not tell her that and that it leaves a "bad taste"; he thought he had read what she said, in as much if they were there Monday morning, she would issue the citation; he evidently didn't read what she read.



Public Forum continued

This year he was told for \$25.00 he could put a sign in front of the Jones Building where the show would be, but not being able to put a sign at SunTrust Bank and NC55 or somewhere on NC55, he can't keep pulling money out of his pocket when he can't advertise for it. If he can't work something out, he has no choice but to carry the show somewhere else and wanted to address this with Council to see if its possible for the sign ordinance to be changed or altered; he's not the only one in this predicament; he knows and understands civic organizations are allowed a given time to put up signs, but to put a sign in front of the building he's going to have it in and it located at the end of the street doesn't do him any good. He doesn't mind paying for the permit, a reasonable amount, but would like to have it to benefit him.

Mayor Weatherly responded he understood what he was saying, as well, Council is aware of the controversial nature sometimes of the temporary sign ordinance, but the response he would give him is, for there to be an ordinance, it must be applied equitably and consistently and assures it is. There are a number of folks in this situation that would want a temporary sign placed but the community has been at times flooded from housing developments and all – everyone has been questioned how the ordinance could be modified but he's convinced not knowing anyone more persistent than he on a number of occasions for local businesses, but the law says to have the ordinance, it has to be applied consistently and can't let him have an exception if they can't have another person in a similartherefore, they wouldn't have an ordinance. Truelove understood. Mayor Weatherly recalled when the subdivisions would flood every ordinance and frankly became not only a safety hazard at intersections but put a bad look on the appearance of the Town and the reason for the wisdom of the Council that they had to enact an ordinance that applied across the board consistently or the law say we can't have the ordinance. He told Truelove they had heard what he has said, and Council can asked the Town's Attorney for his advice on modification that would speak to any issue and promises they had heard what he said. Truelove added he was not only asking for himself, but for others that are in the same predicament as he's in. Mayor Weatherly continued and then they would be back where they had started, but understood clearly, all have tried at one time or another questioned how the ordinance could be loosened, but doesn't think they can find a way under the law without bringing down the entire ordinance.

End of Public Forum

NEW BUSINESS

Presenter: Brendie Vega Mkhwanazi, Senior Planner

New Business Item # 01 – Laurel Park II Subdivision Plan

Review: Planning Board met January 8, 2007 and voted unanimously to approve this subdivision plan; staff recommends approval provided applicant reduces the number of select graded lots to 30% or lower.

Subdivision Plan for Laurel Park II, Jerry Turner and Associates, Inc., petitioner, seeking subdivision plan approval, for proposed plan including 151 single family lots located on Laura Duncan Road, near the CSX line and Old Apex/North Salem Roads.

Mkhwanazi, Senior Planner, gave the staff report noting Laurel Park II had been originally brought for approval before Town Council as Ellington PUD and Laura Duncan PUD; located at Laura Duncan, Old Apex, and North Salem and CSX across from Bepak, location of new elementary school and Laurel Park I, in the Town of Cary. Staff report is attached and incorporated as a part of the minutes. Current Zone: Planned Unit Development Conditional Use; 2025 Land Use Plan: Medium Density - Office and Institutional. Property is currently in Town's ETJ. Planning Board met January 8 with vote 6 to 1 to approve the subdivision plan. Traffic Impact Analysis was reviewed at the time of the rezoning; original plan: 330 units with it being combined, has been reduced to 151 units; traffic while still being a concern is reduced nearly half the number of total trips. Proposed subdivision is 47.07 acres in size; 151 single family lots with a density of 3.21 dwelling units per acre; includes 4 retention ponds and a 30 foot wide buffer along Laura Duncan Road. RCA: 12.31 acres and meets 25% requirement or 11.61 acres. Parks and Recreation Commission recommends one acre of graded, seeded to lawn quality, open space to be maintained by the HOA and pay the full fee-in-lieu. Proposed access points: across from Laurel Park I and across from Bepak - the elementary school.



New Business #01 continued

Project will not be served by sewer until Williams Creek Pump Station is available and part of the conditional rezoning; it has no access to sewer without the Williams Creek Pump Station and will not be able to move forward with the project until that is done. Grading and Drainage Plan includes areas of select grading. Staff worked with applicant to provide some tree protection fencing on the lots, but a substantial amount of grading will still occur on the site; calculated 41% of the total lots would be select graded with 62 out of the 151 total lots being identified for select grading. Medium Density Residential is consistent with the 2025 Land Use Plan and the plan is consistent with the UDO. Applicant seeks Town Council approval with acceptance of select grading on the site. Council may approve select grading provided Section 8.1.5(D) standards are met, but they are not required to do so. Per Section 8.1.5 (C) *Mass Lot Grading is Discouraged*. Staff opinion is grading more than 30% of the lots is grading a large number of lots. Staff recommends approval of the proposed Laurel Park II Subdivision provided the applicant provides a reduction in the number of select graded lots to an equivalent of 30% or less of the total units, as it is presented now, it would be all infrastructure grading plus the lots highlighted in yellow.

Director of Planning Rowland visited the site today and took photos of the site as it currently exists; photos also show their development across the street. Basically, are trying to avoid is a complete clearing of the site. Council Member Jones asked Mkhwanazi to go back to the photo with the lots highlighted. Mkhwanazi stated this slide was provided by the applicant.

Council Member Schulze asked if the 3.21 dwelling units per acre was the average for the whole site asking the minimum lot size. Mkhwanazi stated yes and minimum lot size she believed is 7,000 and the applicant could address this.

Council Member Jensen addressed select grading or 41% of the lots asked if it is visual or stormwater, what is the concern. Mkhwanazi responded a combination of everything, with Rowland adding all of the above. He continued the developers of this property are the same folks that are doing Seagroves Farm and have real concerns and do not want a repeat of that; staff thought the 30% was reasonable in terms of the amount of property to be cleared and graded and another reason they recommend 30% limitation.

Council Member Schulze asked how the lot size in this development compares to the lot size across the street. Mkhwanazi stated she has not seen that plan and does not know. Council Member Schulze also recalled when this was addressed previously, there were issues with widening the road at Laura Duncan and the railroad track, asking if there were an update regarding this issue. Mkhwanazi responded staff is working with NCDOT to handle this; NCDOT will install a traffic light at Laura Duncan and Old Apex/North Salem with the Town's assistance; she spoke with the traffic engineer today and says they are working on it and reminded the proposal can not move forward until the Williams Creek Pump Station comes on, and believes it will occur within that time frame. Council Member Gossage asked if Laura Duncan would be widened to four lanes, with Mkhwanazi responding yes. Council Member Jensen asked who would pay for the stop light, with Mkhwanazi responding NCDOT with assistance of the Town of Apex. Council Member Gossage asked if Cary is paying part of this, with Mkhwanazi responding no. Council Member Jensen noted Cary has the development across the street, asking how they got out of this. Council Member Jones noted they got there first. Rowland pointed out this was the tree cover with the Bepak site from the slide.

Willie Hood, Jerry Turner and Associates, 905 Jones Franklin Road, Raleigh passed to the Council a photo of one of the slides that shows the grading plan – lots in yellow requested for select grading, as stated is 41%; 27 of these lots are in areas that are in pastures or are cleared; 19 of the lots are being graded for basements; in other words because of the street alignment they are going to do some pre-grading so they can build basements instead of coming back and regarding and re-excavating after the houses are under construction. They believe they can control the run-off better this way by pre-grading them; if they take out those lots they get back into the range staff is looking for. He could not speak completely to the site across the street; their firm did the zoning for that piece of property and Cary's requirements are much different in their PUD because of two factors: it was a school site involved which fulfills a large portion of public space requirement and so the actual neighborhood only required about 10% open space which was provided on the buffers. The project he was talking about requires and has provided 25% RCA over 12 acres of open space and can see where it is; he doesn't think comparing the two projects is fair because of the circumstances; two jurisdictions and can see the open space and tree preservation they are creating.



New Business #01 continued

Council Member Schulze responded then he could not speak to the average lot size across the street. Hood responded they did not prepare the final drawings and not sure what they are, but thinks from attending the public hearing, that they are similar in size. He can not say for sure; again they requested and got approved 278 units on this piece of property that's before them; traffic study was done with 330 units and they are proposing 151 units. He stated Russell Dalton was not here, but believes he would verify the developer of the project here before them is paying 2/3 of the cost of the traffic light.

Council Member Schulze asked if he were hearing him say, they were not willing to go to the 30% number. Hood responded what they would like to propose is that they do some additional storm run-off controls and asked Fred Rash to speak to that; they think by increasing the size of the storage and doing some other things, would like to work with staff through the construction drawing process and answer their needs. He thinks they were not ... remised in not explaining to staff why they wanted to do some of the lot clearing with regards to the basements and to some of the other issues.

Fred Rash, KCI Associates, 4601 Six Forks Road, Raleigh, wanted to address the question of lot grading and why they are proposing select graded lots where they were showing them and basically why there as many as they are proposing. When they do subdivision design, this is pretty standard practice in industry the trend is to try to grade the roads so it fits with the natural topography to the extent possible. When you do that, there is going to be areas in some cases where they lots don't fit with the roads and you have a situation that occurs that although the road is very favorable, and it fits with the topography, some of the lots are fairly steep and in order to make those lots more favorable to future homeowners, to give them more usable yard space, and driveways that are relatively flat, not too steep – you have seen situations, he's sure, where driveways are so steep people fall out of their cars practically to get in them, and that either one side of the road is high and the other side of the road is low; that in both cases is what they are trying to do – there are certain areas on the site that you can't just make the road work perfectly so that all the lots fit nice and clean and give a good usable yard space for the future homeowners. That's the intent behind it and can see there have been a lot of statements about there being a significant amount of grading, but there really isn't a lot of significant grading with respect to the aerial before them. A significant number of those lots that are shown as select graded are actually already cleared and open as designated by the key on the map. He asked to pull up the map.

Council Member Jensen clarified the only grade lots they intend to select grade are those in yellow; he sees the ones in B for basement and rest are the select grade. Rash responded this to be correct showing them on the map and showing those that are clear and open space as it is today; showing some of the lots designated with basement and when getting down to it, the number 30 or 31 of these lots are actually cleared open space as they are today. The impact of clearing when compared this aerial photo to the level photo for the site across the street, as Hood had mentioned was not a good comparison, but they are starting off in a situation where there are a lot of trees already not existing. To add further, they are going to be re-vegetating per the RCA requirements in the areas where the vegetation needs to be improved.

Rash didn't know if he had addressed all the questions related to grading and stormwater, but would be happy to address any further.

Council Member Jones asked if he would clarify the, sounded like he wouldn't say an offer but the discussion of doing some additional stormwater retention. Rash stated he believed Hood was referring to the possibility during the grading activities, one of the big concerns typically is the possibility of erosion control issues, sediment getting in the run-off and these storm water basins which, referring to the layout for this, these basins (pointing those out) during the construction time frame, sediment basins are typically required and they will be installed and the site is typical to all sites being developed. They can utilize these areas as sediment basins and these are much larger in area than would normally be required of a typical sediment basin. They would propose to construct these areas to near their full size during the initial stages of construction and let them function as sediment basins and monitor them and operate them as such and at the time they are getting ready to close out the sediment basins convert them over to the stormwater retention ponds that they are intended to be. That will most likely more than double the volume control that you would get with a typical sediment basin. There is one opportunity there to enhance the stormwater management from a sediment standpoint.



New Business #01 continued

Council Member Schulze asked if this was just during construction phase, with Rash responding this is correct and one of the biggest concerns that is going to happen with respect to sediment. Once the site is stabilized and you have active homes there sedimentation no longer becomes a concern.

Manager Radford asked Rash if KCI did the grading plan for Seagroves. Rash responded, no sir they did not. Manager Radford asked Rash if he were familiar with the situation that's out there. Rash responded actually he was not, he's heard about it, some rumbling, but doesn't know the specifics, to be honest with him. Manager Radford asked Rash if he were able to do this plan in this way that he would be able to keep from fowling our community lake. Rash responded, certainly, that would be the intent; no only do you have to install these, but as you all are probably are very much aware, that the "nephrites program which is under the phase 1 stormwater management program requires routine monitoring once a week within 24 hours after every significant rainfall event, so it's an obligation of the developer as well their contractors to make sure that they are not only functioning properly but they are mitigated in the event that something is not working properly, so he thinks the answer to that question would be yes. Rash stated they are the designers, not the contractor but they would be designed to function that way, but that is the intent.

Council Member Jensen clarified Rash was saying they would double the area from a volumetric standpoint, he would expect to better than double the volume of the retention pond, asking if this was correct, and could he work with staff on this. Rash responded they certainly could work with staff on that; he can't verify definitively that the volume is going to be doubled, but thinks that you would see a significant increase by using the full surface area of the pond from the initial stages of construction as opposed to just sizing the sediment basin based upon the drainage area that serves it. Council Member Jensen would like to see them double the area, sediment basin basically. Rash responded, you conceivably could more than double the area; he didn't know precisely whether or not you double it, but you could definitely more than double the area by using the initial volume of the pond which is significant compared to the volume that would be required in the sedimentation phase. Rash continued that typically a pond area – the pond is controlling all the storm water in a post development condition and the amount of run-off that goes to that area that you are required to design for in a sedimentation phase is a much smaller design – by that, yes you would probably more than double the area. Council Member Jensen was surprised quiet frankly that the rules are set up that way because the retention ponds the Town requires only require flow control which means obviously you guys peak it up as high as they can and pull it out as fast as they can to stable the peak that they are allowed and that's the last thing you want to do in a sedimentation situation; you want to hold the water for two or three days before you ever let it out. He asked Rash what size storm he thought he would be able to retain, he guessed was his question, 10 year storm, 20 year storm, 50 year storm. Rash responded the ponds are designed forwith Council Member Jensen interjecting 10 year storm flow control... with Rash continuing they are designed as a wet pond which is per the UDO designed to handle the first one inch of run-off and then they are designed to handle the one year 24 hour storm and the 10 year 24 hour storm to attenuate post development flows to out or below peak levels, he was correct in that... with Council Member Jensen interjecting it's not volume control, its just flow control.... with Rash responding it's still volume control; it is flow, it's rate, correct; but, that's per the UDO and the ponds will certainly meet every intent of the UDO which respect to flow control. Council Member Jensen responded yes, he's not worried about that, he was really worried about during the construction because his understanding is the same company did Seagroves that he's working for and if that's the case it scares him because Seagroves was an absolute disaster, no doubt about it, they heard from the community like crazy and doesn't want that to happen again and if we pass this, he wants to make sure "you folks" absolutely work with the Planning Department and Construction Management but he thinks there should be some sort of a bond or something to make sure that it doesn't flow out of there; some commitment, he guesses "we" can do it with our penalties.

Rowland stated he was not an expert in sedimentation and erosion control but he has heard Mr. Ross, Sedimentation and Erosion Control Officer talk about that our present regulations call for these ponds to do a 10 year storm and he thinks these folks ought to at least have some kind of miracle number to present, not just that they will do a better job or that type thing, he has heard him talk about perhaps a 25 year storm for the sedimentation and erosion control pond, so he thinks it would be better if they somehow tied it to a specific event and not just say, we will do a better job than we have done before. He thinks some kind of specific number should be guaranteed at this point, if you all are inclined to allow more than 30% grading.



New Business #01 continued

Rash responded to do this would require increasing the volume of the ponds larger than their intended to be in the posted omit condition which means you would be modifying, making a pond larger than is required per the UDO for the post development condition.

Craig Lang, represents Standard Pacific Homes, stating what Hood, Willie Turner and Associates had brought to their attention tonight and obviously what Fred Rash has also conveyed during his presentation shows number one and obviously what they had brought before the Town staff was that there was some needs to address specific lots to ensure that ultimately as they build homes that the homeowners, the residents of Apex when they live in Laurel Park can utilize the space their home will sit on, their lot that their home sits on. He continued, our intent is not to recreate something that has happened in the past, they recognize stormwater management and having a lot of denuded area can potentially open up areas that they can't control all the sedimentation; they intend to split this up probably into three individual phases which means they are not going to develop all 150 lots at one time which is something similar to what occurred at Seagroves Farms; they are going to develop it in stages. They recognize that staff in general and obviously the residents have concerns with regards to sedimentation and they are committed; obviously they have a different team on board; they have their director of land development in the audience and know the town has some concerns with regards to Seagroves and that's why they wanted to present this to the Council at site plan, they didn't wait until they went to construction plan to go through this; they wanted to insure that everyone is clear that there were specific lots, not their intent to go out there and mass grade this piece of property so he thinks they have done that and their goal here is to make this community better for the people that are going to live in it. Ultimately, moving dirt costs money; they are trying to insure that the homes and residents of Apex that live here can utilize those lots.

Manager Radford asked Lang what was his greatest objection to living with the 30% limit. Lang responded that was a great question. What they are trying to do as he had said, trying to insure that if you can get the material moved before the Apex infrastructure is in place, what you are doing is limiting the impact that you individually develop those lots, that you individually build homes if you have to adjust grades, you are going to have earth moving machines, you are going to have dirt being transported across curb and gutter, you are bringing larger machines into a community where if we address some of these concerns at the time of development, it's better managed as home are occupied and individual lots adjoining to them are being developed or built.

Council Member Jensen asked Lang if he seeded in these lots right away. Lang responded absolutely, they will all be stabilized immediately, but as he said, they are not doing all of them at one time, so they are going to divide this up and look where from a marketing standpoint it is best to initiate the first section of lots and then will as they absorb those lots and homes are built on those individual, they will start building on the next phase of the community and then finally build out with the last. Council Member Jones clarified that he has not specified that phase line, with Lang responding they have not right at this time; what they are trying to do at this point is look at from a development standpoint and how it's going to tie into future utilities, how it's best served to be developed and that would be presented during construction plan review by Apex staff.

Mayor Weatherly asked Rowland how we would normally enforce the phased-in like that if that is a significant issue. Rowland responded they would like to see it right now, something up here that says they are going to phase it and have it right now. Mayor Weatherly continued divide 151 by 1/3 is 50 so could there be some commitment that no more than 50 lots will be under construction, graded, at any given time until those 50 are stabilized, with Lang responding absolutely. Rowland added another thing to remember on this graph they are showing, they are showing yellow in graded lots, but you have to remember they have to clear the streets, water lines, and sewer lines, so you got to remember there is more grading on the site than shown in yellow.



New Business #01 continued

Council Member Jones added, which may complicate the commitment for only 50 at a time, Hood asked why they didn't say 40%, asking if Lang was ok with this. Lang responded he was ok with the 50 lots, with Mayor Weatherly stating the last would be 51. Council Member Jensen stated they were request 41% the way he read this, with Lang responding that's the overall community; they were saying they would develop to reduce the amount of the development ... with Mayor Weatherly interjecting that's different than the... he thinks they should be able to control sedimentation run-off doing 50 lots at a time in a reasonable manner with the ponds that he has proposed and all of those will go in first, with Lang responding absolutely, that's managed through the town staff. Council Member Jensen clarified that his engineer had just said that "you" would increase the size of the sedimentation ponds to basically double, with Lang responding that's correct.

Council Member Jensen continued he had asked about a 10 year storm or 25 year storm; a 10 year storm and he doesn't recall the numbers, something like 5 or 5.2 inches in 24 hours; a 25 year storm is 7 inches per 24 hours, so you are not talking about that much greater of a volume anyhow; he would think it wouldn't be too hard to commit to that, but if they double the size of the retaining area and volume, he assumed they would go one to one on volume and area, that's easy to do, because volume is cubic and area is a quadratic. You should be able to commit to double the volume or double the area, either one, if you are going to double the area, you are doubling the volume. Rash responded the ponds can handle a 25 year storm from the standpoint of volume if you close off the outlet so, if you make it work purely as a sedimentation device, don't have an outlet structure like it will in the final condition, and put a weir like a sedimentation basin will have, you would construct it initially as a sedimentation basin, it would have the same potential footprint as the final condition, but it wouldn't function as such; would still construct the outlet structure, but it would be blocked off, it wouldn't be a functioning outlet, and when you convert it to a final pond, you would remove all the final sediment, rework the sumps and make sure everything meets their intention of a wet bmp and once you are ready to get the erosion control sign off, you can open up the outlet structure and let it flow as a natural pond like it was intended to be. Council Member Jensen asked if this meets with staff. Rowland responded, he's not an expert but he guesses, with Council Member Jensen saying it meets to him what he thinks what he's suggesting is a lot better than Seagroves; flags went up when he found out the same company did Seagroves.

Mayor Weatherly stated we need to make clear that this is not the same grading contractor that was on Seagroves, that was entirely... even though Standard Pacific was the homebuilder, but they have employed a different grading contractor for this one than that one, so don't blame his sins for the discretions on Seagroves..... with Lang interjecting they have a new team member which is managing their day-to-day land development, so they have set in place new fail safes so they don't have another town meeting to discuss something relating to a community. He's been before "you" many times and his intent when they put this on the site plan was to address it now instead of ask for forgiveness later, and is why he's here today and that's why they are working with Turner and Associates in case, and to assure that's the past and they are just dealing with the present.

Mayor asked if there were further questions, and there being none, opened the floor for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve.

Mayor Weatherly asked if there were discussion on the motion. Council Member Jensen was satisfied if they are going to double the volume like they said, he thinks this thing will work otherwise he certainly would not be in favor of it. Council Member Jones thinks given the fact that a lot of the trees on this site are within the RCA, that's sure Mr. Ross is not going to let them get into; we want have the same situation that we have across Laura Duncan in our neighboring municipality that they saw the pictures of, and with the condition, if you will, not knowing if they want to call it that or not of phasing this in 50 lots at a time of grading, certainly will reduce the likelihood that we have another repeat of what went on in Seagroves. Council Member Jensen told David Rowland he might take some pictures of this as it goes along, save those and send them to Cary, how it should be done.



New Business #01 continued

Council Member Schulze asked if this wasn't the site where they discussed crawl spaces vs. slab on grade, with the Hood stating this was a zoning condition. Council Member Schulze had not seen it in the site plan. Council Member Jensen stated they had agreed that raised slab was ok, if he recalled and raised slab if done properly as they talked about it before, thermodynamically and is a better way to go than crawl space because your floor works as a heat sink and it keeps the thermals in the house better. You are better off if they insulate the sides of the slab with respect to the foundation, do it properly, you are much better off thermodynamically. Mayor Weatherly called for the vote on the motion. Motion carried unanimously.

End of New Business #01

Presenter: Lee Smiley, Director of Finance

New Business Item # 02 – FY06-07 Financial Summary

Lee Smiley, Director of Finance gave a review of the 2nd Quarter FY06-07 Financial Summary. Benchmark for 2nd Quarter financial performance is 50% for revenues and expenditures. Significant variances were noted. Council accepted the attached report as presented.

End of New Business #02

Presenter: David Rowland, Director of Planning

New Business Item # 03 – Utility Service and Annexation Agreement

Possible motion to amend the Apex/Cary Utility Service and Annexation Agreement relative to a parcel on Green Level West Road to be released from Apex's Jurisdiction and added to Cary's jurisdiction.

David Rowland, Director of Planning presented that staff is not recommending to do this, but shared the request, showing the Apex/Cary Annexation Agreement line with the subject property shown on the map in blue. Folks that own this property are asking to amend the line by bringing it around this property and including it into the Cary jurisdiction; primary concerns are that they could get Cary sewer to the property quicker; also included is a photo on this as well. Rebecca Prince has talked about moving the ETJ line and as it has to do with the Annexation Agreement line with Cary and not ETJ. Mayor Weatherly stated this has to do with their farm, with Rowland stating the bigger portion and showed it on the map; the road split the farm and the agreement line split the farm as well.

Rebecca Prince stated it's not just one parcel that's shown; she displayed a drawing of the area, showing Green Level Church Road and Green Level Road West, including the farm area; the individuals broken out are the children's, and the one piece that's shown belongs to her sister. She was asking to allow the entire area to go to Cary. She was asking this because the sewer line; sometime ago, Cary got the land for a sewer pumping station and now have secured easements all the way to Green Level Church Road and has split the farm again, not only has the road split the farm, but the sewer easements have split the farm and puts the area or section in an island and is surrounded by sewer. When Cary approached them to acquire the sewer easement, she questioned them if they would be able to use it, and they were immediately told, no that they could not use it because they were not in Cary's jurisdiction, she said ETJ. They have sewer that will be available to them in a matter of months, and have land that is very impervious, it's not conducive to septic systems, private septic systems. This would allow additional development on their property, and on her sister's property, on her brother's property, and the farm whereas now, they are in a holding pattern. When she spoke with Rowland, Apex has no plan to bring sewer to them and she can certainly understand why because to bring it to them, literally, they would have to cross Cary's sewer line, and they don't have a very big parcel, it's not a lot of land there, it's not a lot of incentive to bring it to them or for a developer to bring it because it's going to cost a lot because the area is mainly wetlands (pointing to it on the map). When the sewer line crossed the contractor that did it, moved very, very slowly because of the problems they encountered in the wetlands. She thinks it would be a huge expense to the Town of Apex or to a developer to bring sewer to this small of an area when they have to contend with wetlands.



New Business #03 continued

Prince continued the section of the farm on the north side of Green Level Road West is under contract, going to be a development in Cary Case #6-SV-019 Saxonbury, single units, not knowing how many, not having seen the final plan; it does not have the final approval but feels like that it will. She stated when it is approved, there is another sewer line which is shown in the broken line that will go to the Cary sewer to this section, and literally it puts them in a doughnut pointing to two places.

Prince stated they have always been associated with Apex; the farm has been in their family for generations; they have a sister that teaches at Apex Middle School, Apex High School Soft Ball Coach; a son that's a police officer in Apex; two sisters that work with Garland C. Norris Company in Apex; everything they have ever done they have been associated with Apex. With her heart, this is the last thing that she would like to ask, but with her head, she knows this is best for the family and following her to look after them. From a business standpoint and from common sense standpoint to ask to do this is hard but it makes the most sense.

Council Member Jones asked she clarify the area in question, that she would want them to consider. Prince showed the part that is in Cary, everything north of Green Level West Road. She pointed to the area, not knowing how it would be done by property lines, extremely difficult to do, it may have to be by the actual sewer line, from the sewer line back to Green Level Road West; she doesn't know how they would do it, that's something she's not familiar enough to say, it would be nice to have all the land so that they only have to deal with one town, not that they mind dealing with Apex, no objections with Apex.

Mayor Weatherly asked the Manager that at one time they had talked about negotiating an Agreement with Cary that in this interim period before the wastewater treatment plant is on that Cary would allow people in the Apex planning jurisdiction to tap onto their sewer and then when they have the consolidated plant, then those buildings would become ours; did we not get off the ground on that, or did he imagine it. Manager Radford responded he was somewhat correct; as a result of where the final pump station ended up being – had the pump station come further south, then they might would have been able to work out the arrangement like that, however, as a result of it winding up farther north, they were not able to do that. It was the difference of \$3 million; that's why it wound up where it is. Mayor Weatherly asked if he thought an agreement of that nature would be out of the question for those folks in that no-man's land. Manager Radford responded if he were serious about them resolving it in that way, they go to them and ask again. Mayor Weatherly didn't know why we didn't pursue that, with Manager Radford responding it was the money in this particular issue, and the answer, we didn't pursue it because it was a \$3 million contribution in a basin we weren't going to use at that time. The Mayor understood \$3 million from Apex to Cary to build the pump station where we are talking about.

Council Member Schulze asked that we were to pay Cary \$3 million so they would take care of our citizens. Manager Radford responded no, not exactly; in the initial design of the regional wastewater facility and the collection system, that pump station would have been way far south than west; as it turned out as a result of the contribution that they would want from us up front, then we obviously didn't make that contribution to allow us to get into it at \$6.00+ a gallon.

Mayor Weatherly stated he was talking about now that the pump station is sited and under construction, almost completed. Mayor Weatherly asked could they not negotiate status quo that those folks still remain in the Apex planning jurisdiction but allow to tap onto Cary system knowing we are in this transition phase anyway where they have their system and we have ours when it all becomes the partnership system those distinctions will be almost meaningless as far as being their ... did he understand, is it practical; is it practical in a short term asking were the folks interested in being able to plan for the development.



New Business #03 continued

Council Member Sutton asked if Cary would require annexation. Mayor Weatherly responded he was talking about they remain in Apex planning jurisdiction, but they would allow taps onto their lines since they have run a sewer line. Council Member Sutton asked if Cary would have an ordinance saying if you tap into their system, you annex, Apex has that.

Mayor Weatherly stated we would ask for an exception in their ordinance; may have to have an exception in their ordinance for those lands and those properties that are located within the Apex planning jurisdiction for this interim period will allow taps onto our sewer system and they very specifically could say on that pump station there, probably would be the only on that would be applicable to, asking if that were practical or not. Manager Radford responded it's practical to go and talk with them, he would also suggest he have that conversation with Mayor McAllister, with Mayor Weatherly adding this could speed things along he would imagine that we could do that. He asked the time frame from the folks for having to have this issue resolved. Prince responded if Cary approves which they think they will, this development, they would close the end of March; the sewer will come across their land soon. Mayor Weatherly added they could have the best of both worlds, stay in Apex and have sewer too with Prince agreeing that would be nice.

Mayor Weatherly asked if they would allow us to work on that for a short period of time without dragging, if it drags on, then ... asking the Manager, that he's not going to gum the works up, as he was obviously speaking spontaneously without much forethought, but as far as this particular deal, there will be some other properties in this area too... not sure he was talking about – that we would allow and could be as broad as that, the folks that reside or that have property located in the Apex planning jurisdiction per our agreement that would request a tap onto the Green Level Pump Station would be allowed to do so and then let the public works people work out the details. He asked Tim Donnelly, Director of Public Works if that would be something that... could he see any major road blocks before he even gives hope to this idea.

Donnelly responded this issue has come up before us and Cary has not been receptive; there's property at the intersection of Jenks Road and NC55 where similar requests were made, and it's always come down to "what's yours is yours and what's ours is ours." Mayor Weatherly wanted to see if we could get a new era on this. Council Member Jones recalled they did allow Cary's sewer through Apex jurisdiction and remember some of the discussion he's talked about allowing taps to the sewer or use of the sewer line and pump station, he just doesn't remember the details. Mayor Weatherly stated there will be others and if we start the precedent now on this deal, then the next person that has a development opportunity but needs sewer will ask for the same thing, with Council Member Schulze agreeing. Mayor Weatherly continued once we go down that road it would be hard to say yes to these folks and no to the next person but obviously would be a finite end because the land would run out, but don't want to go down that trail unless we know there are no more recourses, and he's speaking for himself not the Council.

Prince asked how the ETJ is determined. Mayor Weatherly asked her to understand they are talking about the annexation boundary and planning jurisdiction boundary between the two towns; we negotiated a bilateral negotiation between our town and Cary; ETJ is a whole different deal; you refer to ETJ and Rowland said you misspoke in the preparatory documentation, that she meant the annexation boundary; they will not annex across our boundary and we want annex across theirs; it's basically provides a planning jurisdiction for the two respective towns and is the line that we are talking about. Council Member Jones stated it was very similar to an ETJ but not technically. Mayor Weatherly continued ETJ is determined by the County Commissioners, were we partition them and they grant ETJ and there's some state guidelines to that, but up to the Board of County Commissioners to grant an ETJ. Prince stated ETJ signs are up in their community, with Mayor Weatherly responding this is two different issues and were trying to resolve our ETJ and puts that area in the Apex planning jurisdiction without making them a part of the town limits.



New Business #03 continued

Mayor Weatherly asked the Council if they would be comfortable with at least pursuing an agreement with Cary, knowing where we are going with a common ownership of a plant and that we ought to be able to make some agreement in the interim for this and could certainly make... he thinks Mayor McAllister would be thoughtful about it and whether he could get it through his bureaucracy or not, he didn't know. Prince advised that she knew Cary had purchased some of this land that is to the west of them, on Apex side, with Manager Radford noting it was part of the White Oak Greenway. Prince said anything that could be done would be appreciated.

Mayor Weatherly noted this was on the agenda for action asking Council to weigh in on this to see if we want to.... with Council Member Jones noted from a technical standpoint it was on our agenda as 2.23 acre parcel and obviously came in mind with consideration of more than that, with Prince noting probably about 25 acres, with Council Member Jones noting this 10 times as much and unless they were looking for something immediately ... eminent, he would rather they look at all the options if it were ok with them.

Council Member Jensen was looking at the properties looking down towards the pump station is right there; we certainly need to do something for everybody that will have the opportunity to feed into that supply. Prince understood, hearsay, that the Beckwith Farm is in Apex and that Toll Brothers would be building a pumping station on that side which would probably be pumping station they would be more involved with, but the problem is coming across the wetlands to get to them; not only the sewer line gets them, but the wetlands get them because the creek is going all the way across the property in the back. Council Member Jensen noted there were lots of wetlands out there that couldn't be developed. Prince continued even the property not in the wetlands can't be developed; she has two and one-half acres and can only put one house and it can have only three bed rooms because of the soil.

Mayor Weatherly new they would be meeting with the Cary officials within the next week and will ask if they could discuss this and will have everybody there that could probably speak to that and will get her an answer pretty quickly he would think, asking the Manager if this were ok and then whatever the answer will get back with these folks, give them a response and see where they go from here. Prince expressed appreciation for any assistance.

End of New Business #03

Presenter: David Rowland, Director of Planning

New Business Item # 04 – ETJ Extension

Rowland presented a request to amend the Apex ETJ Extension from Wake County by excluding Shearon Harris 5-mile buffer. After attending a Wake County Board of Commissioners meeting, unanimously voted to refer the ETJ request to their Planning Board; in the meantime, County staff has requested we exclude properties within our request that falls within the 5-mile buffer from the Shearon Harris Plant, and adopt a new resolution. Recommends Council adopt a Resolution amending the initial request for extension of the Town's ETJ (initial request was shown on the map and the 5-mile buffer). Wake County would like property lines be followed (area was shown to be excluded). Staff recommends approval of this request. Purpose of exclusion is an arbitrary line used by Wake County to be the safe zone, not allowing as much development (manage growth) in the area in relations to the Shearon Harris Plant. We can still annex the area and could still provide town utilities, whereby one would not have to go to the County for annexation requests. As far as ETJ requests, it's an effort to be consistent with both the Town's of Holly Springs and Apex.

Action: Motion by council Member Schulze and second by council member Gossage to approve the amended ETJ Plan by adopting a Resolution. Motion carried unanimously.

End of New Business #04



New Business #03 continued

Presenter: Council Member Jensen

New Business Item # 05 –Greenway Construction

Council Member Jensen requested to send a letter to Lord Corporation to allow for construction of a greenway on their property from Waterford East to Gregson (handout showing eastern most side of Waterford, follows line north up to Gregson on the Lord property). An initial letter was sent requesting a greenway in conjunction with Cary, as it's on Cary property. He believes the Manager of Lord property is negative and a response from President McNeel said, no we do not want to because they are concerned with impact on their future business decisions. He continued a second letter is proposed for signatures of Council Member Jensen, Council Member Sutton, and Manager Radford, outlining thoughts by Waterford Green folks, and other concerns of Lord Corporation; the only business inhibiting item is possible desire for Lord to expand to the west, which he stated was extremely unlikely; letter says what he believes can be done to mitigate any problems Lord Corporation has. Reason for the request: 1) would be working with Cary and may be asked to spend Town of Apex money on a piece of property that actually goes through Cary's land which would tie Waterford Green to Gregson Drive which is not something normally done; it would not be a large amount as this is an inner town effort and opportunities to get grants are quite high. If Council thinks we could possibly do something like this or have any consideration of it. 2) he would like to move forward and send the letter and if Council feels they can do this, would appreciate every member and the Mayor sign the letter in an effort to convince Lord Corporation it is something we are interested in; it's not a letter of commitment, but a letter of what we believe we can do and if we decide later we can't do it, so be it. The objective of the letter is to give Lord Corporation every opportunity to agree to let the greenway cross their property and if they say no, there's nothing else we can do; if they say yes and we don't want to move forward with the project we can stop. He noted a number of Waterford Green residents interested in pushing this greenway through and would be a nice connection to an industrial park which would allow people to live in Waterford Green and work in McGregor Industrial Park or to walk down to the McGregor Center; it ties together, not only Waterford Green, it ties Seagroves, it ties Surry Meadows off side roads that people can ride their bikes and kids can go down; you are not putting folks at risk on a major highway, and could find alternate ways to get to these places, a quality of life aspect; a small step to request if it can be done.

Questions followed: Cost to build would be \$60,000 to \$80,000 with our share around \$20,000 depending on grants and how Cary works. If we don't want to do it, we can say no; objective to find out if Lord will shake their heads yes; second effort. Mayor Weatherly felt the first letter was definitive to him, asking what would be in this for Lord Corporation, from a corporate perspective. Council Member Jensen responded not a lot and that's the problem; he stated when we let them rezone the Waterford East property, would have been the best time to have tried to do this; he mentioned it but it didn't get fully enough on it. He stated it's a corporate citizen and truly along the boundary, taking about 10 feet to construct it, and have offered a better fence for security reasons in the letter, jumped through the hoops and if they say no, then there's nothing we can do for Waterford Green to get this moving.

Mayor Weatherly stated it was doubly difficult in that their corporate mind set plus they are a business citizen of Cary and not Apex. Council Member Jensen responded we are working with Cary and did define this before. Council Member Jones asked if shouldn't this letter from the Town of Cary. Council Member Jensen thinks Cary said we would do the lead work on this, asking did they not, their look is it benefits Apex more than benefit to Cary; it does benefit Cary and McGregor Industrial Park; maybe not specifically Lord but there's a lot of other companies that they could say we have a subdivision, two or three that you can live in and walk to work, asking how often you get to do that; it benefits those guys and hopes Cary will understand this. He has talked with Cary staff and not the Town Council.



New Business #03 continued

Council Member Schulze wanted to propose to Lord Corporation that in the event their business needs to expand at some date, down the road, they can add the land back, with Council Member Jensen responding that is what they had said in the letter and would move it if mutually agreed too. He said this is one thing Council will have to look at because that money may be on the Town at that time if it's moved; it's a catch 22 that we have to say to get the grants that we would shoulder the moving down line if moved; if we put in the grant application, we are asking for money and if Lord decides it goes out, we will have hard time getting grant. He thinks we are playing probabilities and the likelihood of Lord purchasing the property is slim – being as they sold the other property not long ago and don't have any intention of moving that way; he thinks its all in Cary's jurisdiction; they annexed part of it, not knowing if they annexed all of it; he's looked at the greenway maps and shows we still have a part there, but not sure we do.

Mayor Weatherly stated, he's talking about getting an easement and couldn't use public money for construction of a facility or greenway on private land, asking the Town Attorney what would be the restrictions as described. Council Member Jensen stated Cary would get the easement from the Lord Corporation is the way he looks at it. Mayor Weatherly added they would have to either give it up or condemn it, with Council Member Jensen responding Lord Corporation would have to give it up to Cary subject to this could be moved if Lord decides to move to the west; it's a hooker there, it's a real problem – if we don't send this letter to find out where Lord sits, then we don't know if we have to cross other bridges or manage that.

Council Member Jones thoughts were since they went fishing and they didn't bite, maybe we do get Cary to cast the bait this time. He supports what they are trying to do. Council Member Jensen asked if they would talk to Cary and maybe Apex and Cary Town Councils send letters concurrently send the same letter. Council Member Jones said that was his opinion. Council Member Jensen was willing to give this a try; it's a nice thing for Waterford Green and certainly with desire for the Seagroves property that didn't fully develop for them; he'd love to see them be able to do this and we help them out.

Council Member Sutton asked if this was just a letter to see if Lord Corporation has any inclination to cooperate, if they would be receptive to the idea; there's a lot of steps after that; it would be good for the people in Waterford Green; he doesn't see a problem with a letter; get the Mayor to sign it. Council Member Jensen agreed. Council Member Jones didn't see a problem with it, but noted the Manager had signed one to them last September, that they gave a pretty definitive "no" to in September. Council Member Jensen agreed they had given a definitive no and he agrees and pretty well knows how Lord Corporation works over there and knows John Gardner is the individual that does the property management and if we can get around him... with Council Member Sutton noted it was turned down once and doesn't know if they will do it again, with Council Member Jensen agreeing they did, but thinks they have tried to address everything in this letter that they might possibly have objections too and the people in Waterford Green are still pushing for it; there's a substantial group that is interested. He noted there's actually a trail along there and pops over to American Airlines parking lot down there but this tries to formalize it.

Mayor Weatherly added the thing that concerns him about this, is that we are making references to things Cary is committed, that we are committing for Cary, such as the litter issue, and their partner on the greenway, asking if we have anything formal that we can speak for Cary in this way. Council Member Jensen felt this was a good point. This bothers the Mayor and is news to him, and doesn't think we should speak to Cary in any respect. Council Member Jensen agreed maybe this is too much speaking for Cary, but thought we had talked with Cary about this aspect too, and Waterford Green folks actually said they would maintain it. Mayor Weatherly added you could say it's something like, if this is an issue about the litter, that commitments would have to be made from the Cary staff to take care of it before we could consummate it, to soften it a bit so it's clear we are not committing Cary to do anything that they haven't formally committed to do.



New Business #03 continued

Council Member Jensen continued if we run it through the Cary Town Council then we could leave it more or less as it is he would expect. Mayor Weatherly agreed if we do that first. Council Member Jensen asked the Manager what to do, wait a couple of weeks, Manager Radford responded we give it enough time to float it through Cary channels and see if we can get their Council endorsement. Council Member Jensen wanted to work with him on that.

End of New Business #03

Presenter: Council Member Gossage

New Business Item # 06 – Home Improvements Holiday

Council Member Gossage introduced an Ordinance establishing a "Home Improvement Holiday" declaring April 2, 2007 to June 29, 2007 as this holiday, with the idea coming from Anaheim, California with the idea to basically waive all permit fees for residents who want to remodel or renovate their home for a limited period of time. The city is about the size of Raleigh; by a factor of 10; boost to the local economy was measured by \$28 million; impact was to businesses large and small, Home Depot, Lowes Home Improvement, Guy C. Lee would be impacted here as well as a small business man who is a plumber, or electrician, interior/exterior painter, banks who issue home improvement loans would see a positive impact. Costs / Revenue should numbers stay the same as one year ago would be about \$21,000 which is about 3% or 4% of Construction Managements recovery, budget. His thinking was for the business side as well as the homeowners; homeowners – folks who own a house that 50 or so years old and would like to renovate it, someone new to town that historic or needs upfit, and give them a break. Another a newer home with an unfinished basement or bonus room, bath/bedroom upstairs, and see from the fees it would save them several hundred dollars; granted their project may cost several thousand dollars, but upon being questioned and thinking, he was reminded of the long lines for the sales tax holidays when state grants sales tax holidays of 7%; seeing people in line with stacks of clothes, computers, etc. – the little bump that pushes them over the edge, instead of moving out of the community into a community with a larger home; they could finish off their home and save a few hundred dollars to do it. He thinks this is a way to show our appreciation for residents who are committed to living in Apex.

Mayor Weatherly asked Manager Radford to respond to this, with Manager Radford having no qualms with this, that it may instill some folks to come out and do some work the previously or otherwise might not have done. We are not sure what the impact on Apex will be as demographics are somewhat different; one main goal was to reduce blighted areas within their community; this may have that affect, but at the same time we don't have the percentage possibly of blighted areas that a large urban area might have. We believe we will not have to hire additional staff in order to accommodate this need and have run the numbers; about \$21,000 and will give this a try for one year, mark it against what was done in the past year and see what kind of impact it actually has. Council Member Jones clarified it was for a 3 month period – one time, not one year; asking how it would be promoted. Manager Radford responded one time in one year, and asked Council Member Gossage to elaborate on this.

Council Member Gossage was going to ask him in addition to some in-house promotion, banners, signs and whatnot using the utilities mailers, the quarterly magazine sent out by the Town and our website. Manager Radford said it would be on the website, monthly utility bills during both cycles of each month during this period. Council Member Gossage added that he certainly would talk to the media.

Council Member Sutton asked Kent Jackson, Director of Construction Management, why charge the fees, with Jackson responding to offset the cost of doing business, a user fee. Council Member Sutton continued if you don't charge the fees, does this in cost of doing business mean doing the inspections. Jackson responded he was talking about the operating costs to cover the salaries and benefits, operating expenses for folks in his department; a portion about 75% of the cost. Council Member Sutton asked if we don't charge the inspection fees, does it mean they will not be inspected. Jackson responded no, it does not; they will still do the inspection.



New Business #03 continued

Council Member Gossage stated all that is being waived is the fee, not the obligation to get the permit. Mayor Weatherly clarified, we will still do the inspection, make sure there's quality work being done, consumer is protected; we are going to give a holiday on the fee; waive the fee for a period of time to encourage more people to do renovation or upfit, expansion of current residences, not businesses, just private owned residences. He thinks its pretty straight forward. Council Member Sutton wanted to establish the fact of why the town charges the fees and what we did for the fees and that we are still going to do it, without the fees, with Jackson agreeing this is right.

Mayor Weatherly asked what an average residence would for example putting a deck on their house, or finish a bonus room. Jackson responded about \$250 for small, up to maybe \$900 for major renovations; some quite large and complex depending on the number of trades involved. Jackson ran a rough calculation, seems County values residential heated space at about \$101 per square foot; now when someone does the renovation, they take the additional heated space and apply the 2000 values – current values used – next year a review; examples were discussed: if you look at this, and offset the 22000 you would need to generate \$5.5 million added value, looking at it on an annual value. Mayor Weatherly stated this depends on demand not having tried this before, have no way of knowing what the demand would be in a relative new community like Apex would probably be different than a community that has predominantly older residences; obviously the majority of our homes are built in the last 15 years.

Council Member Schulze asked if the manager or corporate offices of Home Depot or Lowes Home Improvement asking if they had seen this program elsewhere and have a plan in place to help us out with this. Council Member Gossage stated they are familiar with this program and worked with the city of Anaheim and he would anticipate they would be happy to work with us as well. Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the Home Improvement Holiday Resolution/Ordinance. Motion carried unanimously.

End of New Business #03

Mayor Weatherly took a pause in the meeting to introduce Vice Chair of the Wake County Board of Commissioners, Paul Coble, who arrived unannounced. Noted the following: Apex has a great downtown; the ETJ Expansion map; Manager Radford the best manager in the state if not the country based upon recent comments, also County is willing to help the Town in anyway they can. Mayor Weatherly expressed appreciation on behalf of school parents for help recently given by the County.

Presenter: Council Member Bill Jensen

Add on: New Business Item # 07

Council Member Jensen stated small businesses are under-capitalized and tend to go down in the first year or to; impact fees charged by the Town to be paid in one lump sum eats into the capitalization, and thinks it's not fair to the small business owners who give it a try and fails two years later. Suggests to charge impact fees over a six month period through monthly water/sewer billing and if they fold, they've paid; town would charge 6% interest on this money and there's no cost to the town to run the program, other than set-up with the computers. Minor impact is if the small business does fold, the next person would have to pick up with their impact fees. Council Member Jones stated we'd have to find a way to do this. Council Member Jensen thinks we should be able to do this; if a building functions as example: toy shop, and someone comes in with a hair salon, we would up the impact fees to accommodate that; he doesn't think there's a problem to collect impact fees from the next person. Council Member Jones used a restaurant as an example that does fold after two years you only collected 40% of the fees then sell it to another restaurant, which happens, with Council Member Jensen interjecting the fees have to be continued on.



Council Member Jones asked how you would do this in a transfer of ownership for a lease of property, with Mayor Weatherly adding and definition of small business; he understands the proposal, but wouldn't be applicable just to a business, it would have to be small... with Council Member Jensen interjecting he was suggesting it can go into the Finance Committee to discuss this. Mayor Weatherly asked if there were a motion to expedite this as the Town Attorney has not had the benefit of looking at this at all. Mayor Weatherly referred this to the Finance Committee for review and ask the Town Attorney to provide guidance on this. Council Member Jones asked to include the Finance Director as well.

End of Add on: New Business Item # 07

Presenter: Mayor Keith H. Weatherly

Add on: New Business Item # 08

Mayor Keith H. Weatherly stated the County had recently put together a legislative agenda asking Council if they would like to put together a legislative agenda asking our representatives of the N.C. General Assembly, that he had specifically two, and a third one to add. He would like Apex to be in a leadership position, having to do with he thinks a much needed change in the way Wake County School System, particularly the Board of Education is currently does business.

The items with Council being up to speed with these:

1) Change in manner in which the Wake County Board of Education is elected. Mayor Weatherly expanded on this item that each Wake County citizen can only vote for one member of the nine member board, quite different than Board of Commissioners - seven members all elected at-large even though they have to represent a district, reside in a district, but each tax payer and citizen of Wake County obviously has a say in the election of each one of these Board of Commissioners, but not the case in the Board of Education, and doesn't know how specific they would want to be with the agenda, recommending a change in the manner in which the Wake County Board of Education are elected to consider at-large election and also the election be in November rather than October of each year, another way to lessen impact of the citizens on the school board elections, obviously turn-out is less and we want more participation rather than less.

2) ask legislatures to officially on behalf of Apex with adoption of this legislative agenda eliminate the cap on Charter Schools; currently there is a state wide cap and that's 100 and the cap is reached, which obviously as he understands many opportunities for Charter Schools not only in Wake County but certainly Wake County could benefit and the growth and capacity issues being talked about daily would not eliminate by next year, but certainly in the very near future, because he believes there is a demand for Charter Schools and opportunities for that maybe in Apex, but will not be allowed to investigate those opportunities until the North Carolina General Assembly allows us. He asked Commissioner Coble if both those items are on the County's Legislative Agenda. Coble responded they are. Mayor Weatherly continued then Apex by adoption of this hopefully will get other municipalities to adopt similar legislative agendas, which makes a very strong force when going to our local delegation.

Commissioner Coble stated there were three items on their legislative agenda that ties to education, asking 1) the Board of Election be elected at-large, 2) cap on Charter Schools be removed, and 3) encourage the cap on classroom size in Wake County be raised; only an increase of one student per classroom to make a huge capacity change County wide; sitting in the southern part of the county he would suggest, and the County has not done this, however, purely his thought, Apex might also consider asking the legislature to consider dealing with I-540 in a way that doesn't require tolls and suggests using the dollars that were formally going to be used for the TTA fixed rail system to go towards supplementing the building of the I-540 would be strong coming from this body to the legislature. He continued the first three are on their agenda and suggests it would be helpful if Apex would do the same thing.



Add on: New Business Item # 08

Mayor Weatherly added hopefully strength in numbers.... With Council Member Sutton asking Commissioner Coble if he knew the representation on the school board is dictated by the courts being districts rather than at-large, with Commissioner Coble responding legislature. Council Member Jensen asked if it were easier to get a mix of districts and at-large to get this through, with Mayor Weatherly responding it could be not knowing how specific Council wanted to be with this, start off with an at-large membership on the board. He noted Representative Skip Stam was working on a bill, but not sure direction, suggesting making it similar to the way the Board of Commissioners is elected now; he doesn't think anybody disagrees that's been a fair and equitable way to elect county-wide and school board county-wide; he wouldn't bicker about having a reasonable discussion about whether it should be some at-large and some districts; he would leave this up to the wisdom of the people trying to get a bill through the legislature; could be some negotiation if it gets as far as committees, any change would be a change for the better as far as he's concerned. Commissioner Coble knew Senator Stevens introduced a bill in the last legislative session to do exactly what had been suggested, and he would agree any change would be welcome; gave City of Raleigh as an example getting 50%, with the County get a voice in everybody, but have to represent a particular district and thinks that would be helpful if Apex would lend their voice to those topics. Mayor Weatherly stated he had requests from ... talking about this, thought we had taken action on it...from the Chamber of Commerce both Wake Forest and Knightdale about giving a copy of what we had passed in a resolution about these issues and he hasn't responded yet, with call being received over the weekend, he was going to tell them what the proposal would be; if we take this as our legislative agenda, then we could go forth and hopefully get other towns to sign on to the similar legislative agenda if it's Council's wisdom, and could be other things.

Mayor Weatherly knows the Attorney has been working with Representative Stam on an issue that would be important to us that should be put on the legislative agenda, wish list, way we deal with Department of Transportation, asking the Manager to weigh in on this. Manager Radford stated in previous procurement law, we were given the ability to acquire property in the same way the NCDOT does; that law is set to sunset and would like to ask that we be enabled to continue to the same procurement process that the NCDOT follows. Mayor Weatherly stated on our behalf on an informal basis knowing that would be the policy direction we would want to go, to continue that and it be an inclusion as a part of our legislative agenda which would be formally asking our whole delegation to pass this on behalf of Apex. Manager Radford asked to add to it the same formulary to acquire electric easements as well.

Mayor Weatherly stated we have three members of the N.C. House that actually represents pieces of Apex and then of course one State Senator, but would approach them with this agenda. He continued this is not all inclusive, his things that he wanted to get in or get our direction on before the Legislature came into session which is January 24, 2007; he understands the school system folks are thinking about having some lobbying rallies and at that point if these bills get in by then, that would be one thing Apex people could bring around, it's on the Town's legislative agenda to ask for these things; they are not asking as private citizens, also lobbying on our behalf too if Council thinks they are reasonable things to ask for.

Council Member Gossage agrees with the I-540 with the others also, as well as Council Member Schulze. Mayor Weatherly stated when they meet in February, we could amend the legislative agenda at that time; Council will not meet again until they have gone into session.

Council Member Sutton asked these suggestions be placed in writing; that Council would meet on February 6.



Add on: New Business Item # 08

Mayor Weatherly expressed he could state them:

- 1) Eliminate cap on Charter Schools
- 2) Change in manner in which the Wake County Board of Education is elected
- 3) Encourage the cap on classroom size in Wake County be raised

Council Member Gossage said its not said enough that the crisis in the Wake County schools that this shift of students from one school to another is in large part due to an artificial cap on Charter Schools, arbitrary due to a class size reduction that's mandated by the General Assembly and by the Governor, so the County Commissioners and the School Board are trying to find millions of dollars and shifting thousands of students for no good reason.

Council Member Sutton said from reading in the paper, he only knows from the paper, as his kids went to public school; they don't have a good record overall. Council Member Schulze felt free market takes care of that. Council Member Sutton thinks by educational standards and testing, they have had problems. Mayor Weatherly said they would jerk the charter real fast, that's the difference in public school and charter school; if you have a public school that's failing there's no way to jerk the charter so to speak. Council Member Sutton thinks that's the reason there's a cap on them. Council Member Gossage and Schulze stated the word was eliminate. Mayor Weatherly thinks it would require the same legislative push to do one or the other, however are highly regulated. Council Member Sutton thinks there has to be some control over them. Mayor Weatherly stated they are highly regulated, they don't have the capital cost of building; tax money is not used to build charter schools but are under the direction of the public school system. Council Member Schulze noted a large demand for charter schools. Mayor Weatherly asked Council Member Sutton if he thought they were private schools, they are not; noted Franklin Academy built with private money; SAS private school Cary Academy; charter schools are built with private money and very much with certified teachers and curriculum and all the rest, and students request to go there; they have just pulled down the one that was in the jail for folks – a charter school, but a non-performing one, so they jerked the charter. Council Member Schulze stated if parents don't like the schools, they do not have to send their kids there; they can go back to public schools. Mayor Weatherly noted it's voluntary and free enterprise response ... with Council Member Jensen interjecting it is good, but agrees with Council Member Sutton that the performance unfortunately hasn't been good; on the other hand he thinks you need to look at the students lots of times that end up attending charter schools and groups that form charter schools; home schools go both ways, there are high performing kids out of home schooling and there are real losers coming out of home schooling.

Mayor Weatherly stated as long as we are facing a capacity issue and there is a response to that that's not involving tax money for the county commissioners, they don't have to struggle with coming up with all these big bucks and we don't have to pass bond referendums that increases our taxes, that's a good thing.

Council Member Jensen asked if we raise the limit on the number of kids in a school how do "we" force the school board to adhere to this and raise the number of kids in a classroom; that's his concern. Mayor Weatherly responded they will say their hands are tied because class size ... lets take this argument away from them and say class size can be increased by one or two children per class; we want have a capacity problem in Wake County anymore, with Council Member Jensen agreeing; three kids per class is a good increase. Mayor Weatherly continued you could ask any mother of the children who are mandatory year round; they will say put their child in a trailer, and keep them away from mandatory year-round, so there are more ways to increase capacity that we have currently. Council Member Jensen said a lot of teachers like mobile classrooms because there's no halls with business up and down; there's an advantage.



Add on: New Business Item # 08

Mayor Weatherly said they were talking about a legislative agenda that he thinks strength in numbers; we've set the pace on education and school issues and can say Apex has done this and thinks the majority of towns in Wake County will follow suite. Council Member Gossage stated there's not a thing talked about that he doesn't agree with. Council Member Jensen added three Apex schools were converted to year round which if you look is a closed system that puts Apex including Lufkin – four out of five schools are year-round; in a given geographical area, it would be good to say you can't have a greater than 40% or 50% year round schools or if you are going to convert to year rounds schools, you have to give the appearance the option of a standard school within x number of miles – let's quit this business of clumping these year round schools on top of us. Mayor Weatherly agreed, but doesn't think this is something the legislature could deal with. Council Member Jensen stated his son goes year round school, but his neighbors don't like it. Mayor Weatherly stated we are talking the difference between mandatory and the key aspect to this.

Action: Motion by Council Member Schulze Mayor Weatherly interjected this is the legislative agenda, is our wish list with members of the General Assembly to say the Town of Apex through it's elected body wishes them to pass legislation having to do with these items in the upcoming session of the General Assembly and they would be: with Council Member Schulze continuing, to

1. Change manner in which Wake County Board of Education is elected to have at-large representation of some sort
2. Eliminate the cap on Charter schools
3. Increase class size by one student

Council Member Sutton opposed this asking if it helps the kids to have more in the class room, with Council Member Schulze thinking more could fit into the schools, and better to do this than to bus them around the county, and to have them year round where they are not as productive. Council Member Sutton stated this is all about year round schools, with Mayor Weatherly saying it's about capacity, but certainly is a part of it; how to help the schools deal with capacity issues. Mayor Weatherly stated a billion dollar bond issue was passed because the schools system is unable to deal with increased capacity to construct more schools and have three things on this list. Council Member Sutton stated he had heard his side but not the other side, with Mayor Weatherly responding he could vote against them; Council Member Sutton felt there should have been more time vs. adding them on at this meeting. Mayor Weatherly responded this has been in the papers for the past three years.

Council Member Sutton voiced he was against those proposed and wanted to vote against them stating the reason for not having representation at large is due to the large minority populations such as in Raleigh and would be out voted every time, no minority on the school board and why you don't have this, and why he asked Commissioner Coble if it were not dictated by the courts... with Commissioner Coble saying by legislature, but if that were the case, the County Commissioners wouldn't be elected they way it is. Council Member Sutton still felt this was determined by the Courts. Council Member Gossage added you wouldn't see minorities on the Wake County Board of Commissioners either.



Add on: New Business Item # 08

Council Member Sutton felt they are cutting this out, and the reason this came into being; cap on charter schools, he doesn't know enough about the charter vs. private, not an educator in that respect; lastly to put more kids in the class room, he knows this is dysfunctional; he knows there's an ulterior motive to get more kids in the class room to cut out busing, cut out year round schools and if that's the agenda, that's fine, but he would never vote to increase the number of kids in a class room; this doesn't make sense to him.

Mayor Weatherly responded they were talking about one or two kids per class, asking he talk to the mothers in his neighborhood, a lot in his neighborhood will be forced to go to mandatory year round. Council Member Sutton felt this was a narrow agenda; we are in the school board stuff now and had a discussion among themselves privately, who was for and who was against the school bond issue and were split on that he thinks, some against and some for and the same with the community we represent; that school bond issue passed in this community, if we had that on this deal here, would probably voted it down some of them. He doesn't think he had given them adequate time to think about it and hear the other side; he's not for any of the things proposed. He continued what was said about right of ways, made sense, town business, but felt the other was getting into the education business and he doesn't think its our charter to do, but doing it, but doesn't think we are elected to do that; he doesn't think there's anything wrong in taking a stand but he will be against those three things.

Council Member Schulze restated his motion to put the following items on the legislative agenda:

1. Change manner in which Wake County Board of School Board members are elected to have at-large representation
2. Eliminate the cap on Charter schools
3. Increase class size
4. Allow TTA money to be used for the I-540 Southern Wake Expressway so that we can eliminate the tolls
5. Item the Manager and Town Attorney are considering related to the sunset of the law that will allow the Town of Apex to continue to purchase property in the same mechanism as the North Carolina Department of Transportation does and to add ability to procure electric right of ways in the same manner.

Council Member Gossage wanted to second the motion. His only concern is under class size reduction that it be reasonable, with Mayor Weatherly suggesting not to exceed two, with Council Member Gossage agreeing not to exceed two. Commissioner Gossage clarified on County Commissioners agenda added actually one seat and if you understand the legislation, it was cut back to 21 kids under State law board of education is like 21 kids and asking it only go up in certain grades only by 1 child; we are not talking about increasing large sizes 25, 26, or 27 kids, we are talking about legislature is already dictated it be smaller, simply saying giving one more kid in every class room in third, fourth grade, you get enough capacity to make a difference. Council Member Gossage understood, sometimes it's not communicated with Mayor Weatherly interjecting you could say one or two per class either one.



Add on: New Business Item # 08

Council Member Schulze amended his motion to say increase the class size by one student. Council Member Gossage made the second to the amendment. Council Member Sutton said he wished something like this could have been on the published agenda; it's been sprung on him and published people could come and make comments; maybe he could enlighten himself on charter schools that he's not up to speed on. Council Member Gossage agreed, but that Council did not have another meeting before Legislature goes into session; otherwise he absolutely agrees with him. Council Member Sutton stated February 6 was not that far off; they don't do much the first week anyway. Mayor Weatherly hopes some of the bills will be introduced the first week. Council Member again stated he wished it had been placed on a published agenda so he could have done some homework, with Mayor Weatherly agreeing and apologizing.

Council Member Jensen suggested the five items be broken down one at a time then taking everything at once, because he has trouble with changing the manner to solely at-large, he had rather see three or four districts and the other at-large. Mayor Weatherly stated there's a motion and a second. Council Member Gossage was ok, saying they had talked about flexibility as far as whether at large or ... Mayor Weatherly suggested the manner in which at least some members of the Wake County Board of Education are elected at large; he's not sure what the bill will be. Council Member Jones added they were floating philosophy not the details about this with Mayor Weatherly not wanting to direct how the bill.... with Council Member Gossage interjecting, that doesn't always get through. Council Member Jones understood, and added they could sit and debate whether its' 2, 3 or 1 at-large, we are sending the message that we think there should be some consideration of at-large election representation.

Council Member Schulze amended his motion to item # 1 to say: change the election for the Wake County Board of Education to have some at-large representation. Council Member Gossage made the second.

Council Member Jensen wanted them voted on one at a time single at a time. He continued the TTA money he was not a keen person on mass transit, at the same time, its something we need to look at; Council has even discussed trackside and high density to accommodate rapid transit; he personally thinks we should have better regional planning and we wouldn't need these big freeways, and other, but are focused on little planning like we do in our towns.

Mayor Weatherly asked if it were ok to vote on these one at a time. Council Member Schulze and Council Member Gossage were fine with this, allowing the motions and the seconds to be withdrawn.

Council Member Schulze began by making the following motions on each item as follows:

1. Change the manner in which Wake County Board of Education is elected to have at-large representation of some sort. Second by Council Member Jones. Vote on the motion was 4 in favor and 1 against, with Council Member Sutton voting in the no. Motion carried.
2. Eliminate the cap on Charter schools. Second by Council Member Gossage. Vote on the motion was 4 in favor and 1 against, with Council Member Sutton voting no. Motion carried.
3. Increase the class size by one student. Second by Council Member Jensen. Vote on the motion was 4 in favor and 1 against, with Council Member Sutton voting no. Motion carried.



Add on: New Business Item # 08

4. Allow TTA rail money to be used for the I-540 Western Wake Freeway to eliminate the tolls. Council Member Jones was willing to make the second, asking if we were limiting ourselves by just saying TTA money be used for I-540; there may be some other money. Council Member Schulze stated, no, but it frees up TTA specific money. Council Member Jones felt we look for other ways to pay for I-540 rather than tolls, including looking at TTA money; there's no other magic pot of gold, but lets not just focus on the TTA money. Mayor Weatherly stated basically we are saying look for all other alternatives rather than a tolling road including TTA money. Council Member Schulze thought there was some type restriction that you couldn't use TTA money for that and thought that was what they were trying to eliminate. Council Member Jensen can support finding others ways but doesn't want to include TTA money in this. Mayor Weatherly stated it's already gone right now as far as an option to spend the money they've already got, not knowing exactly what the tally is, they already have that planning for the transit land and are not going to get the federal money, so the project is dead and doesn't know what they are going to do with this money and is what the County Commissioner Coble has said, or at least, there's some body of concern that they go ahead and we direct... ask that the legislature direct that money to finish our stretch of the road, if they can't use the money anyway; we need to help them....with Council Member Jensen saying he would go with it. Council Member Jones added that he had rather pay \$3 for a train if it ever happens than the RTP on the I-540.

Council Member Schulze made the motion to request the State to look for additional sources of revenue to fund the I-540 Western Wake Expressway in order to eliminate tolling of the road, with the possibility of using TTA Rail money. Second by Council Member Jones Vote on the motion was unanimous. Motion carried.

Council Member Schulze made the motion to:

5. Ask the State to reinstate the law that's currently being sunset to allow the Town of Apex to continue to purchase property in the same mechanism as the North Carolina Department of Transportation and additionally, having the Town Attorney to state this portion of the motion, to add electric utilities to our local authority for condemnation pursuant to NCDOT procedures, with Council Member Schulze restating the Attorney's language... to add utility condemnation to our local authority pursuant to NCDOT procedures. Second by Council Member Gossage. Vote on the motion was unanimous. Motion carried.

Mayor Weatherly stated this was not considered an all inclusive legislative agenda, but something to talk to the representatives about as they begin their session and if there are things to add... with Council Member Jensen interjecting he wanted to add to it. Mayor Weatherly stated they could amend the letter, assuming a letter would be developed to be sent to all members that represent Apex in our legislative delegation, a draft, and then send to the three house members and the one senator, and see what they can do for us. Mayor Weatherly stated it was standard, thinking Cary has a legislative agenda, Wake County Commissioners, and Raleigh has a very ambitious legislative agenda. Apex hasn't done one the last couple of times, he guesses we had one or two things, but not in a formal way did we ratify that into an agenda. Mayor Weatherly stated this concludes the regular agenda.



WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

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

- 1) land swap for Apex Fire Station #4
- 2) land acquisition
- 3) land acquisition to obtain clear title to WHOPS pump station land
- 4) receive legal advice on legal status of E.Q. site

Action: Motion made by Council Member Schulze and second by Council Member Jones to move into Closed Session at 9:50 p.m. Motion carried unanimously. Closed Session minutes are recorded separately. Motion made by Council Member Jones and second by Council Member Gossage to move back into regular session at 10:38 p.m. Motion carried.

With Council having moved back into regular session the following action was taken:

Action: Motion by Council Member Gossage and second by Council Member Jones to authorize the Town Manager and Town Attorney to negotiate and finalize a land exchange proposal for .81 acres for 1.22 acres on NC55 south of US1 and near the future Jesse Drive intersection for the future fire station site. 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 at 10:40 p.m. **Action:** Motion by Council Member Gossage and second by Council Member Schulze to adjourn. Motion carried.

The minutes of the January 16, 2007 meeting of the Apex Town Council were approved on the 6th day of February, 2007.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the Tuesday, February 06, 2007 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order
Council Member Jones to lead the Invocation.
Mayor Weatherly extended a welcome to those in attendance.
Pledge of Allegiance and Presentation of Colors by Scout Troop #316, Scout Master David Paul.

PRESENTATION

A presentation was given by Damien Graham, Government Affairs Manager for Triangle Transit Authority. TTA provides regional transit and planning services. Challenges facing the greater Triangle area are due to growth and congestion; total miles traveled under congested conditions will more than double from 2002 to 2030 (residential could grow from 6 million to 15 million households). Transportation is the No. 2 expense after housing. TTA is working to find a regional transit solution, with a draft plan schedule to be completed in fall 2007. Questions and comments: numbers of riders, available seats, express routes, cost to ride, light rails to access the airport, and cash on hand.

End of Presentation

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 for approval. Council Member Sutton asked to consider Items #7, #8, and #9 separately (New Business). Manager Radford asked to give an update regarding the intersection of Kelly Road and US64 (Old Business).

Action: Motion by Council Member Schulze and second by Council Member Jones to amend the consent agenda to include the items as requested. Motion carried.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda as amended. Motion carried.

- 1) Minutes of January 16, 2007 Council meeting.
- 2) Minutes of January 16, 2007 Council Closed Session (recorded separately).
- 3) Minutes of January 22, 2007 Personnel Committee meeting.
- 4) Ordinance Rezoning #06RZ19, Town of Apex, petitioner, rezoned from R40-W to Medium Density Residential (water meter vault) 0.07 acres located at 7344 Green Level Church Road.
- 5) Ordinance Rezoning #06RZ20, Town of Apex, petitioner, rezoned from an unknown zoning designation to low Density Residential, (water pollution control facility) 0.439 acres located north of Old Smithfield Road in Feltonville Community and west of NC55 Bypass.
- 6) Ordinance: Rezoning #06RZ27, Bernard & Linda Parker, petitioners, rezoned from Residential Agricultural to Rural Residential District 5.1 acres located at 2132 Kelly Road.



Items #7, #8, and #9 considered under New Business

- 7) Budget Ordinance Amendment #12 and Capital Project Ordinance Amendment for emergency repairs to the James Street Outfall.
- 8) Budget Ordinance Amendment #13 and Capital Project Ordinance Amendment for regional sewer collection system improvements.
- 9) Budget Ordinance Amendment #14 to increase Electric Fund Capital Outlay account.
- 10) Approve Contract with Joyce and Company to perform audit for fiscal year ending June 30, 2007.
- 11) Membership Requirements and Benefits Handbook Apex Fire Department.
- 12) Preliminary Engineering Agreement with CSX Transportation for Apex Peakway construction between Laura Duncan Road and North Salem Street.
- 13) Encroachment Agreement with Colonial Pipeline Company for Apex Peakway construction between Olive Chapel Road and South Salem Street.
- 14) Recommendations from Personnel Committee to revise Article VII, Section 23 of Personnel Policy to allow employees to donate shared leave to an employee who needs to be out of work to care for an immediate family member covered under FMLA and convert a limited service position in Electric division to full-time Metering Specialist position at Salary Grade 18.

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 regular meeting agenda was set with amendments to add consent items to Old Business and New Business.

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case #06CZ21

Review: Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval.

Public hearing and possible motion regarding Rezoning Case #06CZ21, ARCADIS, petitioner, seeking to rezone from Office & Institutional Conditional Use to Neighborhood Business to Neighborhood Business District Conditional Zoning, 11.592 acres located at Haddon Hall Drive extension and Zeno Road.

Presenter: Dianne Khin, Assistant Planning Director, gave the location of the property and presented the staff report which is attached and incorporated as a part of the minutes. Property is subject to conditions proposed by the applicant. Additional conditions that apply and uses permitted in the B1 district are stated in the report. There will be a 30 foot undisturbed buffer along Zeno Road with supplemental plantings to bring it up to a Type-A buffer. The Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval with the conditions proposed.

Mayor Weatherly opened the public hearing and asked those speaking in favor of the rezoning to come forward: Eric Braun representing ARCADIS stated the existing fence will remain during construction; repair/upgrade to the fence will be completed within 60 days of the issuance of a building permit; a neighborhood meeting was held to address concerns which are listed on Exhibit A.

Council Member Gossage asked Braun to define "masonry" stated in condition II (c) and asked to consider a change *may be constructed, to will be constructed*. Braun described masonry as block/stone, and was not willing to agree to make the change due to neighbor's concerns; the way this is worded would allow more flexibility in the alternative fencing and he would like to retain this ability; neighbors want a solid wood fence; preference has not been determined; fence design will be presented to surrounding property owners for concurrence prior to installation; fence may be altered. Council Member Jensen would like to see the buffer planted as soon as possible or before first certificate of occupancy for residential homes located behind the commercial development. Khin commented on the Type-A buffer and the additional buffer to be planted with Phase I. Braun expressed concern with the landscape being planted first but offered to do the best possible.

**Rezoning Case #06CZ21 continued**

Mayor Weatherly asked those speaking in opposition to the rezoning to come forward:

Sandy Culpepper lives next door; her children play outside; she would like some type protection, asking what kind of buffer is planned. Khin stated no fence is proposed along here. Council Member Jensen would like to look at temporary fencing at site plan review.

Don Gersch, 1419 Zeno Road asked how construction traffic would be handled; there is one lane open on Zeno Road for traffic; volumes of cars travel this road; hospital construction traffic is there as well. Braun had not previously heard this concern; he does not disagree with the traffic and the lane issues; condition II (g) will apply with this rezoning and carried from the previous zoning: Construction parking on Zeno Road and Haddon Hall Drive is prohibited; appropriate signage will be provided by the developer. Mayor Weatherly asked what staff could do to help mitigate this problem. Manager Radford responded with the condition in place, staff will regulate the parking.

Mayor Weatherly closed the public hearing.

Manager Radford asked the status of Zeno Road paving and if there was a solution for the right of way issues in regards to the Bolch property. Khin responded the site plan triggers the paving of Zeno Road and with this development and the Wake Med development, there will be two unpaved parcels remaining; no one has signed a waiver to pave across the property in question. Braun stated Mr. Bolch was not happy about the road issue and had raised the question of annexation, and if not, wanted his guarantee of the paving. Braun stated they would pave the section required to be paved. Manager Radford asked how he would resolve the issue if Bolch had not signed to agree to pave by site plan. Braun understood, but has not looked at the legal aspects of this but will pave what they have to pave under the code requirements; he could not force paving unless access is given. Manager Radford would like this issue resolved, with Braun responding, he would work on this.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve rezoning case #06CZ21. Motion carried unanimously.

End of Public Hearing # 01 #06CZ21

Public Hearing # 02 – Rezoning Case #06CZ22

Review: Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval.

Public hearing and possible motion regarding Rezoning Case #06CZ22, David Berkovitz, LRC Development Company, LLC, petitioner seeking to amend the 2025 Land Use Plan and seeking to rezone property from Wake County-High Density to Planned Commercial-Conditional Zoning, 3.607 acres located at 6821 Old Jenks Road.

Presenter: Brendie Vega Mkhwanazi, Senior Planner gave the location of the property and presented the staff report which is attached and incorporated as a part of the minutes. Current zoning: Wake County - High Density Requested zoning: Planned Commercial Conditional Zoning. Restrictions and conditions and additional conditions proposed by the applicant are listed on page 2 of the staff report. Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval based on compatibility of the surrounding land uses for both the rezoning and the Land Use Plan Amendment. Change in zoning would be consistent with Cary's designation for property to the north: Neighborhood Activity Center.

Mayor Weatherly opened the public hearing and asked those speaking in favor of the rezoning to come forward:

Chris Seamster, McKim & Creed representing the petitioner, stated they have worked with the surrounding neighbors; NCDOT will allow a shared right-in and right-out drive access on NC55 for this property and the property to the south with a cross access between the two parcels and with an access onto Jenks Road. The two properties are working together on not only access, but utilities and stormwater, etc.

**Rezoning Case #06CZ22 continued**

David Berkovitz, LRC Development Company, addressed the question of Council Member Schulze regarding the building façade: the primary building will be a clay brick product with accents, some split face at the base approximately two foot high and some limestone.

Council Member Jensen addressed stormwater management, knowing this met local and state regulations for stormwater management but would like for them to commit to a 25 year storm event. Seamster responded they were in the process of working with the neighbors, and on calculations to see what pond size would fit the site, and was unwilling to commit to his request. Mkhwanazi noted this was a site plan issue. Berkovitz added there were restraints from the stream they must stay away from it, and would work with the engineering department, but unsure what could be done on site. Seamster expanded on the constraints of the site, buffers and streams however, will meet the code requirements and are willing to do what they could to exceed those. Mayor Weatherly stated they have complied with the current ordinance and they know what the requirements are, and they are willing to do what the code requires.

Mayor Weatherly asked those speaking in opposition to the rezoning to come forward. No one spoke in opposition. Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Jones to approve the change to the 2025 Land Use Plan and to approve the rezoning as it was consistent with development of commercial at major intersections and not residential. Council Member Schulze made the second to the motion. Council Member Jensen agreed to the change from high density to commercial, but disappointed they can't commit to the 25 year storm event. Council Member Jones understood and respected they could not make a commitment in that they were working with the property to the south. Vote on the motion was four in favor and one opposed, with Council Member Jensen casting the opposing vote. Motion carried.

End of Public Hearing # 2 Rezoning Case #06CZ22

Public Hearing # 03 – Rezoning Case # 06CZ24

Review: Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval.

Public hearing and possible motion regarding Rezoning Case #06CZ24, Glenda Toppe, Jerry Turner & Associates, petitioner, seeking to amend the 2025 Land Use Plan and rezone from Wake County-High Density Residential to Planned Commercial-Conditional Zoning, 4.64 acres located at 1716 W. Williams Street and south of Jenks Road.

Presenter: Brendie Vega Mkhwanazi, Senior Planner gave the location of the property and presented the staff report which is attached and incorporated as a part of the minutes. Restrictions and conditions and additional conditions proposed by the applicant are listed on page 2 of the staff report. Request is for a Land Use Plan amendment and request to rezone from Wake County High Density to Planned Commercial Conditional Zoning. Planning Board met January 29, 2007 in special meeting and voted unanimously to approve the conditional zoning; staff recommends approval of the rezoning and Land Use Plan amendment based on compatibility of the surrounding land uses.

Mayor Weatherly opened the public hearing and asked those speaking in favor of the rezoning to come forward: Glenda Toppe, Jerry Turner & Associates, reported they have worked with the property owners to the north to address the NC55 access and cross access onto Jenks Road; will work with the developers on stormwater concerns, however, not far enough along to commit, and will take this into consideration at site plan; a neighborhood meeting was held, with adjacent property owners from Jenks Road and residential to the north attending regarding the uses of the property; no one came to the meeting from the apartments nor from Haddon Hall, but were notified.

**Rezoning Case #06CZ22 continued**

Council Member Jensen asked if they were willing to commit to a 25 year storm event. Toppe responded that she understood his concerns, but it was too early to commit as they were working with the folks to the north and would be going forward with this at site plan review.

Mayor Weatherly asked those speaking in opposition to the rezoning to come forward. No one spoke in opposition. Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Sutton to approve the change to the 2025 Land Use Plan and to approve the rezoning. Council Member Gossage made the second to the motion. Vote on the motion was four in favor and one opposed, with Council Member Jensen casting the opposing vote. Motion carried.

End of Public Hearing # 3 Rezoning Case #06CZ24

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Public Hearing # 04 – Unified Development Ordinance Amendments

Review: Planning Board met January 29, 2007 in special meeting and voted unanimously to request Council appoint a study group to look at single-family residential grading and conserving more topography; staff recommends approval of the UDO amendments. Public hearing and possible motion regarding amendments to Sections 7.2.5 and 8.1.5 of the Unified Development Ordinance regarding subdivision grading.

Presenter: David Rowland, Director of Planning, gave background information of grading practices stating Mike Deaton and Rocky Ross, Environmental Programs, were present. Town Council had asked staff to look at grading practices, more specifically mass grading. The presentation is attached and incorporated as a part of the minutes, and addresses the problems associated with mass grading, why developers mass grade, do all developers mass grade, and a possible solution. Examples of mass subdivision grading and drain and erosion problems: Seagroves Farm, Sutton Place, Hollands Crossing. Cameron Park, Woodridge, and Shepherds Vineyard are examples of select grading following the natural topography of the overall site. Staff recommends the following: Allow a certain percentage of the lots to be graded upfront and the other lots would be cleared on a lot-by-lot basis. Staff believes this is a good compromise between mass grading on the one hand and no grading on the other. It would provide the developer some flexibility with the problem lots and at the same time, keep natural cover on the remaining lots until houses are ready to be constructed.

Presenter: Brendie Vega Mkhwanazi, Senior Planner presented the staff report which is attached and incorporated as a part of the minutes. Proposed amendment to the UDO regarding subdivision grading: new Section 7.2.5 Single Family Residential Grading and Topography Conservation, defines purpose and intent, applicability, mass lot grading prohibited, select grading, and exceptions with Section 8.1.5 Reserved. Planning Board met January 29, 2007 in special meeting and voted unanimously to request Council appoint a study group from a cross-section of Apex interests to look at single-family residential grading and conserving more topography; Planning Board concerns are listed on agenda item action request form. Staff recommends approval of the amendments and seeks direction thinking the amendments provide a good compromise between mass grading on the one hand, and no grading on the other.

Mayor Weatherly opened the public hearing and asked those wanting to address the proposed amendments to come forward:

Jim Sylvant, 1108 Olive Chapel Road, explained the woods around his property were removed for Carriage Downs and L'Hermitage and submitted photos showing the impact of excessive run-off into his pond and to the surrounding streams. He commended the Town for studying the impacts of grading, keeping in mind the end results. He has verbal commitment from the developer to assist in the clean-up to his pond.



UDO Amendments continued

Sean Dolle, Jones, Cnossen, and Dolle Engineering, addressed grading and requested to do so by the Manager. He stated town's policy is a benefit to Apex, maximizing tree preservation and minimizing sedimentation run-off, while achieving good creative development. Proposed amendment could place limitations on Traditional Neighborhood Development and Planned Unit Development, and should not discourage creative developments. Intent is good, the idea is good, tree preservation is good, however should be careful as to what limitations are placed on development. Rough grading of lots in the preliminary phase could be difficult to accomplish; can't grade the lots until roads and sewer system are in place and would be difficult to change designs. He addressed maximum grade changes, maximum height of stockpile areas and debris (should temporary stockpile on site). He expanded on an example of farmland where there may be no vegetation on site, and offered solutions: 1) limit mass grade in certain zone designations 2) develop incentives to reduce acreage fees such as landscape standards sod vs. seed, RCA be located within distance of every home vs. one on a corner site; 3) closer monitor erosion control measures. Summary: Revisions of the UDO constantly change the document, from an engineering standpoint the proposed amendment is a good idea, and concluded that Council assures high quality development, however all has this responsibility. Council Member Schulze asked he address stormwater run-off in that developers are responsible for damages. Dolle responded this is a broad area, having to look at each case individually, and are asked to go above and beyond in each case and they are asked to sign a form for responsibility of damages. Council Member Schulze asked about the recovery in the Sylvant case, with Attorney Fordham advising developers have the responsibility for damages down stream in private party action to recover; it's already in place in the N.C. common law to do so. Different procedures follow due process often resulting in penalties. Dolle added that when sediment enters streams and ponds, agencies are notified and get involved; if a developer disturbs off-site, has a moral obligation to reconcile the situation.

Debra Lanuti, 1003 W. Saint Julian Place, Vintage Grove, commended Council for looking at damages to due grading and erosion, and an obligation of Council to make restrictions tougher. She asked citizens be involved in assuring appropriate responsible development.

Alan Manase, BBM Associates, and resident of Apex, was asked to give his input by the Manager. He thinks the intent is good, there needs to be some change, and a drastic step to take with potential problems. He noted the push for high density quality development; this ordinance would preclude this type development. Smaller lot sizes at this density, grading lot by lot, no developer would undertake. Way to attack is to save trees in larger masses, density guide in land use plan as where to apply the ordinance; cost of development would go up, with more expense to develop the lots would be passed down to homeowners. Larger lot prices would exclude some from living in this town. He offered his service to a study committee.

Tom McKay, developer of Scotts Mill stated the subdivision was not fully grade, but was around the Town Square. This is about building a better community, and asked not to over react due to some failures; prohibit scares him; portions of Scotts Mill was mass cleared to lay streets and roads. He stated Jones, Cnossen and Dolle have worked with the lay of land and the topography was not drastically altered; noted soils do not perk well in the Olive Chapel Road and Kelly Road area and roads do not hold up well. He addressed yard maintenance as a big issue, soil conditions have a lot to do with this; he's not a fan of mass clear grading. If Scotts Mill were built today, would be different, and would be hard to do the Green/TND without mass grading. Felt a study group is important. He keeps in touch with NC State Urban Forestry, and it's often better to clear cut and create and put back a better quality of forest than trying to preserve trees. A way to tie this into density makes sense for a better feel and quality of life; there should be a positive tool to limit run-off and make those responsible to put priority on the final product, coordinating utilities and still planting trees.



UDO Amendments continued

Erika Layco, Surry Meadows appreciates looking into the UDO subdivision grading; some do proper and right and makes things better and some do not follow rules, and protect folks evidenced by the Seagroves Farm development. She would ask the Committee be formed with some that do not have monetary interest, but in what it feels and looks like.

Suzanne Harris, Home Builders Association asked Council to honor the request for a study group, appreciating both sides, and consider a representative from the Home Builders Association and city groups. Current changes to the ordinance would prevent some development in Apex.

Robin Oke is a victim of run-off caused at the Motorola Tower site calling attention to drainage and stormwater issues, asking for protection of adjacent properties and asked citizens be involved in the process.

Mayor Weatherly closed the public hearing and opened the floor for a motion.

Action: Council Member Sutton stated this was a complex issue and would ask to refer this to the internal Planning Committee comprised of Council Member Schulze and Council Member Jones that they could call on staff to help formulate a recommendation and bring it back to Council for consideration. Second by Council Member Schulze, who was in agreement with this, being concerned with stormwater run-off and offered that the Planning Committee could see if a study group is warranted.

Council Member Jensen expressed sediment ponds need to be much larger or they fail and need immediate attention. Council Member Jones agrees, but thinks this may be site specific. He stated Deaton and Ross could bring to the Planning Committee information where they could look at this issue specifically. Ross commented they are looking into doubling the size for sediment traps and going to the basic standard riser. Deaton commented they are looking at two design criteria here: increase to a 25 year storm event and double volume capacity. Council Member Jones was willing to look at all of this at the same time. Council Member Gossage asked Planning Committee go one step further into consideration of creating a study group. Council Member Schulze further wanted to consider including citizens as well. Council Member Jensen would like to see equal representation. Motion carried unanimously.

End of Public Hearing #04

Presenter: David Rowland, Director of Planning

Public Hearing # 05 – Annexation Petition #408

Annexation Petition #408, Darin L. Fridley and Elizabeth M. Fridley, owners/petitioners, petitioning to annex 4.089 acres (1.99 acres plus 2.09 acres of public right of way) into the Town's corporate limits and located on Lufkin Road (SR1444).

Presenter: David Rowland, Director of Planning, oriented to the location of the property and stated the property extends into the public right of way of the road, and this would allow for water to be connected to the site.

Mayor Weatherly opened the public hearing and asked those speaking in favor of the rezoning to come forward. Sean Dolle, Jones, Cnossen, and Dolle Engineering, came in support of the annexation request.

Mayor Weatherly asked those who wanted to speak in opposition to come forward. With no one speaking in opposition, Mayor Weatherly closed the public hearing and opened the floor for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to adopt an ordinance to extend the corporate limits by approving annexation petition # 408. Motion carried unanimously.

End of Public Hearing # 05



UDO Amendments continued

Presenter: David Rowland, Director of Planning

Public Hearing # 06 – Annexation Petition #409

Annexation Petition #409, Ruth W. Holleman, owner/petitioner, petitioning to annex 17.816 acres into the Town's corporate limits and located on Evans Road (SR1147).

Presenter: David Rowland, Director of Planning, oriented to the location of the property and stated the request would allow for future water and sewer to develop a subdivision. Manager Radford commented that depending on when the site plan is presented would determine if there is capacity for the proposed subdivision or not.

Mayor Weatherly opened the public hearing and asked those speaking in favor of the rezoning to come forward: Sean Dolle, Jones, Clossen, and Dolle Engineering, came in support of the annexation request.

Mayor Weatherly asked those who wanted to speak in opposition to come forward. With no one speaking in opposition, Mayor Weatherly closed the public hearing and opened the floor for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to adopt an ordinance to extend the corporate limits by approving annexation petition # 408. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Old Business # 01 –Proposed Sidewalk Layout

Review and discussion of proposed sidewalk layout for Rainesview Drive and Samara Street in Surrey Meadows.

Presenter: Kent Jackson, Director of Construction Management, stated Council asked staff to develop a project to add sidewalks along Rainesview Drive and Samara Street in Surrey Meadows. Adam Stephenson, Senior Engineer, presented the attached sidewalk layout recommended by staff and noted the advantages of this layout as stated on the agenda item action request sheet and at an estimated cost of \$70,000. Surrey Meadows Home Owners Association agrees with this recommendation. Mayor Weatherly asked if the sidewalk project was a positive and no aggravation to folks. Stephenson stated people that were directly affected were at the meeting and the vast majority agreed with the project layout.

President of the Surrey Meadows HOA spoke in favor of the project needed because of increased traffic and safety. Of the 143 residents, 83 are in favor, with some split vote, a benefit to the subdivision, with the majority wanting sidewalks; all residents had been given an opportunity to address this project. He stated the HOA Board had signed in favor of the staff's proposal for the project.

Mayor Weatherly asked if there were a motion to endorse staff's proposal for the sidewalks.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the engineering staff's recommendation for the sidewalk layout. Motion carried unanimously.

End of Old Business # 01



Old Business # 02 – Add On

Manager Radford asked to give an update regarding the intersection of Kelly Road and US64. NCDOT has reviewed the safety and operational performance of this intersection and are not willing to fund any part of the costs for a temporary signal at this intersection; temporary signal will be in place until the square loops are built out as part of the I-540 project. Temporary signal would allow traffic to go north bound onto US64 from Kelly Road, and would stop east bound traffic on US64; the west bound traffic would be allowed to continue movement and not be stopped. Town's estimated cost of the signal is \$125,000. No additional alterations to the intersection are recommended by NCDOT due to the schedule of the Western Wake Parkway; accidents noted were property damage only with no fatalities. NCDOT correspondence of February 7, 2007 regarding this intersection is attached.

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.

Mayor Weatherly asked those who wished to address the Council to come forward.

Heather O'Sullivan Canney, 311 Olive Street, noted the downtown has many streets without sidewalks and asked when allocating funds consider Chatham Street, Mason Street, Moore Street, and Hughes Street. Manager Radford advised \$200,000 are earmarked in the budget for S. Hughes Street with bid this spring.

Deborah Lanuti stated good mass transit was instrumental to the community. She further noted Council had approved 1000 acres for development and no schools planned for these folks. Manager Radford stated there is no approved site plan for this proposed development. Lanuti wanted council to look at power lines under ground vs. overhead as it impacts real estate values, and as a responsible part of growth, require sound conservation measures, better building codes, environmentally friendly buildings, and minimize water/sewer usage and impacts to those systems; she shared disappointment in the Seagroves Development.

End of Public Forum

NEW BUSINESS

Mayor Weatherly turned to Council Member Sutton for questions concerning the consent agenda items below.

Consent Agenda Item No. 7

Budget Ordinance Amendment No. 12 and Capital Project Ordinance Amendment for emergency repairs to the James Street Outfall.

Council Member Sutton noted problems such as this one of \$850,000 was normally discussed at the annual retreat, rather than budgeting for emergency situations. Tim Donnelly, Director of Public Works explained lots of money has been put into this pump station to keep it running, however deterioration of the pipes calls for emergency repairs prior to catastrophic failure. This pump station is one schedule for abandonment with the regional facility coming online in 2011. Staff recommends the repair at the location that goes under the railroad. Surface exposure has revealed the problem.

Mayor Weatherly called for a motion. **Action:** Motion by Council Member Sutton and second by Council Member Schulze to adopt Budget Ordinance Amendment No. 12 and Capital Project Ordinance Amendment for the emergency repairs to the James Street Outfall. Motion carried unanimously.

**Consent Agenda Item No. 8**

Budget Ordinance Amendment No. 13 and Capital Project Ordinance Amendment for regional sewer collection system improvements. Council Member Sutton asked Donnelly to explain the request for the \$2.5 million project. Donnelly explained the \$2.5 million budget is to initiate design, surveying, easement acquisition, environmental studies and other work required to support the regional sewer collection system improvements to be made by the Town.

Mayor Weatherly called for a motion. **Action:** Motion by Council Member Sutton and second by Council Member Jones to adopt Budget Ordinance Amendment No. 13 and Capital Project Ordinance Amendment for the regional sewer collection system improvements. Motion carried unanimously.

Consent Agenda Item No. 9

Budget Ordinance Amendment No. 14 to increase Electric Fund Capital Outlay account. Council Member Sutton asked Donnelly to explain the request for increase in the electric fund for an addition \$500,000. Donnelly asked Mike Couch Electric Superintendent to explain. Couch stated the additional \$500,000 was an increase to Capital Outlay for electric system expansion and upgrades due to a significant increase in materials and slated for a specific number of projects and associated land costs for easements. This year's revenues are ahead of estimates and these expected excess revenues are being budgeted to offset the increased capital outlays.

Mayor Weatherly called for a motion. **Action:** Motion by Council Member Sutton and second by Council Member Schulze to adopt Budget Ordinance Amendment No. 14 to increase the Electric Fund Capital Outlay Account. Motion carried unanimously.

End of Consent Agenda Items #07, #08, and #09

New Business Item # 1 – Appointment Planning Board

Mayor Weatherly asked Council's consideration for the appointment of Sheryl Bynum to the Apex Planning Board for a three-year term to expire December 31, 2009. **Action:** Motion by Council Member Jones and second by Council Member Gossage to approve the recommendation. Motion carried unanimously.

End of New Business Item #1

Presenter: Manager Bruce Radford

New Business Item # 2 – Addition to Legislative Agenda

Manager Radford presented for consideration an additional item for the Legislative Agenda. Proposed legislation is being offered after the Clerk had researched other towns having received such legislation: City of Raleigh, Town of Lake Waccamaw and Cabarrus County; proposed legislation would allow Town to adopt ordinances providing that in lieu of publishing in the local newspaper, could publish notices of public hearing by electronic means onto the town's internet site; proposal would not supersede any state law that requires notice by mail or posting of signs and shall not alter the publication schedule for public notice. Benefit is a cost savings to the town in legal advertising fees; planning budget annually of \$8,000. Should the Town be granted this legislation, Town Attorney would draft an ordinance for Council's approval to implement the proposed local bill amending the Town's Charter and Code of Ordinances, and sections of the Unified Development Ordinance where applicable. Proposed legislation is attached.

Mayor Weatherly called for a motion: add Electronic Notice of Hearings to proposed Legislative Agenda. **Action:** Motion by Council Member Gossage and second by Council Member Jones to approve the addition of the Electronic Notice of Hearings to the proposed legislative agenda. Motion carried unanimously.

End of New Business



WORK SESSION

Work Session Item #01 – Electric System Improvement Plan

Tim Donnelly, Director of Public Works presented the electric program has been successful and in order for the Town’s electric system to grow and support the Town’s continued growth with the lowest possible rates, additional capital investment is required.

Ed Thomas, PE, Utility Electrical Consultants, presented the electric system improvement plan for the Town of Apex, to look at the past 10 years of Apex electrical load growth, assess where the Town is now, plan for the future, and evaluate costs; gave a review of construction history, and reported on the challenges of upkeep to the system. POD 2 is located on Laura Duncan Road, with a need for POD 3 location to the west. Projected annual growth rate is 4%; expanded on revenue projections and projected growth rate; reviewed basic service expectations in relation to voltage, reliability, and observations. Summary: load growth continues to show no signs of slowing; water/sewer facilities expand opportunities for growth; delay in electric improvements would compromise reliability. Reviewed criteria for a substation site selection, giving pros and cons of 115kv vs. 230kv, with an estimated cost of approximately \$6 million; estimated cost of debt service \$550,000 per year based on a 15-year lease purchase calculation. Asked for a decision to pursue new POD 3; authorization allows Town to begin discussion with PEC and needed to proceed with acquisition of site and station design. It was consensus of Council to authorize the Town Manager to make notification of the Town’s proposed construction of a POD 3 with Progress Energy.

End of Worksession

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss park land acquisition. **Action:** Motion by Council Member Gossage and second by Council Member Jensen to move into Closed Session at 10:45 p.m. for the reason stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Jones and second by Council Member Gossage to move back into Regular Session at 11:05 p.m. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jones to adjourn at 11:06 p.m. Motion carried unanimously.

The above minutes were approved on the 20th day of February, 2007.

Georgia A. Swanzel
Town Clerk

Ken D. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes for the Tuesday, February 20, 2007 meeting held at 7:00 p.m. in the Council Chamber's on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bryan Gossage
Bill Jensen
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.

PRESENTATION

Mayor Weatherly recognized retiring Board of Adjustment Members Dennis Doty and Lonnie Hedrick for having served three consecutive three-year terms through December 2006.

Maureen White, Western Wake Crisis Ministry presented a video, "Volunteers Make a World of Difference". WWCM has helped families for the past twenty-five years. Mayor Weatherly presented her with a check for the "Neighbors Helping Neighbors Program," where neighbors and utility customers contribute money to a fund to help the needy pay utilities costs.

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 for approval, with no amendments:

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the Consent Agenda as presented. Motion carried unanimously.

- 1) Minutes of February 6, 2007 Council meeting.
- 2) Minutes of February 6, 2007 Council Closed Session (recorded separately).
- 3) Minutes of January 31, 2007 Finance Committee meeting.
- 4) Annexation Petition # 411 N&I Properties, LLC. ; 2.988 acres located on Investment Boulevard;
 - 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk;
 - 3) Resolution Setting Date of Public Hearing for March 20, 2007.
- 5) Budget Ordinance Amendment to purchase land for future expansion of Public Works facilities.
- 6) Resolution asking for \$250,000 from NCDOT for the Lufkin Road realignment project. NO. 07-0220-02
- 7) Street closing for 2007 Peak Fest Saturday, May 5 and Wednesday, 4 Th. of July celebration.
- 8) Wake County Tax Report for Town of Apex.
- 9) Ordinance to Amend Section 20-68 Apex Town Code Relating to Stop Intersections. No. 07-0220-03

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. Council Member Sutton asked to add Closed Session to discuss pending litigation and acquisition of property. **Action:** Motion by Council Member Sutton and second by Council Member Schulze to add closed session. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 01 – Apex Transportation Plan

Review: Planning Board reviewed proposed amendments February 12, 2007 and recommended approval by unanimous vote. Public Hearing and possible motion for approval of Apex Transportation Plan amendments.

Presenters:

Candace Davis, Transportation Planner; Russell Dalton, Transportation Engineer; David Rowland, Director of Planning. Davis stated the Thoroughfare and Collector Street Plan was last updated March 21, 2006. As a result of several proposed development projects and future Capital Area Metropolitan Planning Organization plans, both Planning and Construction Management Departments request the following updates to the plan.

1. Energy Drive Extension through Fowler Industrial Park to connect with future Apex Peakway, and designated as a major collector
 - o Eliminate a portion of Schieffelin Road.
2. Friendship Road Interchange
 - o Move Winding Way interchange back to Friendship Road
 - o No plans to realign Woods Creek or upgrade Winding Way
 - o Upgrade Friendship Road to 4-lane divided from 2-lane w/turn bays between Old US1 Highway and Holly Springs New Hill Road.
3. N. Salem Street
 - o Upgrade to a 3-lane section between the Apex Peakway and US-64 as needed.
4. Smith Road Connector
 - o Extend the future collector to Smith Road rather than using a substandard private road alignment.

Planning Board reviewed the Transportation Plan Update February 12, 2007 and recommended approval by unanimous vote. Staff recommends approval. Maps outlining each of the proposed updates and a copy of the staff report are attached and incorporated as a part of the minutes.

Council Member Jensen did not think elimination of Schieffelin was good connectivity; Dalton responded the Peakway was the major route and this design would overcome related geometric problems. Council Member Jones clarified ...as needed 3-lane section on North Salem Street; Dalton stated it would be designated 3-lanes with development doing the widening, recognizing historic impacts and need of a center turn lane as development occurs. Mayor Weatherly referred to North Salem Street as a unique gateway into Town and the preservation efforts along this corridor; Dalton stated minimum widening would be done for existing trees. Council Member Gossage commented on the downgrade of this corridor five/six years ago to a minor thoroughfare; Dalton stated it is a major thoroughfare to US64; turn lanes are needed to be installed for multiple residential drives; staff would like to see a continuous left turn lane, however, there may be no development to do so as the Plan does not require a schedule for implementation nor does it set aside funding for improvements. Council Member Jones commented on preservation of the small town feel, with the historic trees and residences making the character of the street and wanting to hold on to that feel. Mayor Weatherly hoped there was enough square footage for the center turn-lanes without disturbing the character; Dalton responded there was more than enough square footage for the widening and not needing additional area for this transition. Rowland stated this was a compromise to start 3-lanes at the Peakway and go north, with a 2-lane section from the Peakway south into Town.



Public Hearing # 01 –
Apex Transportation Plan

Mayor Weatherly opened the public hearing at 7:30 p.m. and with no one addressing the plan update closed the public hearing. Council Member Gossage was unclear as to what staff was wanting, and uncertain about the North Salem street upgrade as to how practical this was. Mayor Weatherly understood there was ample right-of-way without disturbing the properties along North Salem Street. Dalton assured there was no need for additional right-of-way and this plan would also include sidewalks. Rowland stated reality is North Salem Street from the Peakway north needs 3-lanes due to the current and projected traffic needs, and starting with 3-lanes at intersections. Dalton added this would depend on where development is proposed, and the plan would give clear direction when approving site plans. Mayor Weatherly added they would get to comment on this and also get another look at any widening at site plan approval and stated this is a Plan for future development. Council Gossage asked where other than intersections does staff see 3-lanes as being beneficial. Council Jones responded there are only a couple of intersections, but numerous drives with some remaining hard to get into; he noted the importance of the preservation of the historic properties and homes. Mayor Weatherly stated the flow of traffic was impeded and stacks up along North Salem Street, and when making left turns blocks traffic. Council Gossage added this also remains true to Hunter Street and almost practical to go to Hunter Street; Dalton stated this had been considered, but may be faced with more challenges in doing so; further with the Peakway traffic will shift heading north, however there would still be a lot of traffic from Hunter Street to the Peakway. With no further comments regarding the amendments, Mayor Weatherly called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Jones to approve the Transportation Plan Amendments as recommended. Motion carried unanimously.

End of Public Hearing # 01

Public Hearing # 02 – Metropolitan Transportation Improvement Program

Review: Staff recommends approval of the project priority list.

Public hearing regarding Apex's project list for FY2009-2015 Metropolitan Transportation Improvement Program (MTIP) as requested by the Capital Area Metropolitan Planning Organization (CAMPO); possible motion to approve project priority list.

Presenters: Candace Davis, Transportation Planner; Russell Dalton, Transportation Engineer; David Rowland, Director of Planning. Davis presented the general information stated below, presented the Project List, and the staff report which is attached and incorporated as a part of the minutes: In order to assist CAMPO with its project priority rankings for FY 2009-2015 MTIP which allows CAMPO to use Federal and State transportation funds for transportation projects, member jurisdictions have been asked to submit project priority list recommendations; recommendations will then be endorsed by the Technical Coordinating Committee (TCC) and Transportation Advisory Committee (TAC). Each municipality can submit up to five individual project requests. Each municipality can submit an unlimited number of joint project requests. Town of Apex Project List for FY 2009-2015 MTIP and the staff report are attached and incorporated as a part of the minutes. Staff asked Council to approve the FY 2009-2015 MTIP Project Priority list. Maps outlining each of the proposed updates are attached.

General information:

- Each municipality can submit up to five individual project requests and an unlimited number of joint project requests.
- Regardless of how a municipality ranks a project, CAMPO re-ranks all projects within the MTIP according to a cost-benefit matrix.
- A municipality should only submit projects that are likely to be ranked highly.
- Jointly requesting a project when it crosses jurisdictions will help the overall ranking.
- The Western Wake Freeway has been viewed as the most important project for this area. Therefore, it has been more difficult for other projects in this area to be ranked highly in the MTIP. The planned re-designation as the "Western Wake Parkway" toll facility may help elevate some local area projects in the ranking.



Public Hearing # 02 continued -
FY2009-2015 Metropolitan Transportation Improvement Program

TOWN OF APEX PROJECT LIST FOR FY 2009-2015 MTIP

Projects currently on the FY 2007-2013 STIP; (unfunded); will continue to support

CAMPO Ranking	TIP Number	MTIP ID	Project Category	Project Description
2	R-2635	Apex 1	Joint (Multi)/Roadway	1-540 Western Wake Parkway
24	U-2901	Apex 4	Individual/Roadway	NC55 widening from US1 to US64

Projects previously on FY2007-2013 MTIP; will continue to support

CAMPO Ranking	TIP Number	MTIP ID	Project Category	Project Description
32	--	Apex 2	Joint (Cary)/Roadway	Center Street/Ten Ten Road widening from Apex Peakway to Kildaire Farm Rd
35	--	Apex 5	Individual/Roadway	Green Level Church Rd/Kelly Rd widening from Green Level West Rd to Old US 1
55	--	Apex 7	Individual/Roadway	Davis Drive widening from US 64 to Farm Pond Road

New projects proposed as joint request

CAMPO Ranking	TIP Number	MTIP ID	Project Category	Project Description
Not yet ranked	--	Apex 6*	Joint (Cary)/Roadway	US 64 upgrade to expressway US 1 to 1-540
Not yet ranked	--	Apex 9* *	Joint (Cary)/Bicycle/Pedestrian	White Oak Creek Greenway Trail

Projects previously on FY2007-2013 MTIP; will be withdrawn

CAMPO Ranking	TIP Number	MTIP ID	Project Category	Project Description
46	--	Apex 3	Joint (Holly Springs)	Sunset Lake Road realignment/widening from NC 55 to Brackenridge Lane
47	--	Apex 8	Joint (Cary)/Roadway	Old Raleigh Road widening from Apex Peakway to US 64

* Originally: Apex 6 was the local ID for a new interchange on US 1 between NC 55 and 1-540 previously listed on the FY 2006-2012 MTIP. It was not carried forward for the FY 2007-2013 MTIP. We do not plan to resubmit it due to the low ranking, lack of NCDOT support, and anticipation of private development support of that project. The new project listed above replaces that project. **New project ID.

Mayor Weatherly recalled the history of the NC55 Widening Project having been one of the top five every year on the project list, and asked why it doesn't move up, thinking it deserves attention due to the traffic bottleneck from the north and the south; he thinks it loses ground each year on the priority list. He noted from Holly Springs to Apex was now 4-laned and from Apex to Durham was now 4-laned; other local officials from the neighboring towns have addressed this problem with him.



Public Hearing # 02 continued -

FY2009-2015 Metropolitan Transportation Improvement Program

Dalton responded the I-540 is on the State Transportation Program and having competed for funds, hopes it will be back on track. Rowland asked Council to allow staff to investigate the affects on the downtown as he understood a great portion of the railroad tracks have to be reworked and would disrupt a good portion of the town, and may have to take down buildings to make this happen. Dalton stated the Transportation Plan shows NC55 as 3-lanes. Mayor Weatherly felt strongly that CAMPO was hearing and getting the wrong message and impression that Apex did not want this and not so; this has always been listed as a priority, and the argument for the Toll hasn't improved everyone else's priorities.

Council Member Jensen felt Apex should ask Holly Springs and perhaps Fuquay to join in on the request. Mayor Weatherly felt this priority should be multi-jurisdictional and he should talk with someone about this.

Council Member Gossage addressed Apex 7: Davis Drive widening project asking if improvements were considered at Davis Drive and Salem Street intersection; Dalton stated the maps do not show all the detail however does address rework of the curve. Council Member Gossage addressed Apex 5: Davis noted the volume of traffic on this major thoroughfare, and local traffic would use this roadway to get to US64 and I-540.

Council Member Jones addressed Apex 7: felt it would make a difference if this were a joint project with Cary as well as the median divide at Davis Drive. Rowland responded staff could ask them if they were willing to do so. Davis noted CAMPO seemed to look favorably on joint projects. Council Member Jones also thinks Apex 2: SR1010/Center Street should remain high on the priority list. It was questionable whether because of the priority of Apex 1: I-540 one would think they were in agreement with the toll.

Mayor Weatherly opened the public hearing at 8:00 p.m. first giving history of the I-540 project, with timing being uncertain, and with the Federal Hwy Administration not being ready to commit, but would make a decision by summer; TAC made up of local mayors will have to approve the project, and to him, looks like the votes are there to do so. He noted the two stretches, both potential tolls, and 12 miles of the Western Wake Parkway portion. Ann Mullin, Abbington, felt the whole project should be tolled or wait. Mayor Weatherly responded there were statutory issues that once a road is completed, it can't be retroactively tolled. He felt this was a forced issue, in that they are talking 2030 build out with traditional funds, vs 2012 as toll project, and could take it or leave it; he noted this was a political issue and a decision has to be made now. Mullin felt if the project were all tolled, it would then go away after payoff and should ask for clarification. Council Member Jones noted maintenance during the 30 year period, and after that NCDOT would be responsible, however, this was discussion and not clarification.

With no one addressing this issue further, Mayor Weatherly closed the public hearing at 8:07 p.m. Mayor Weatherly asked for clarification regarding the priorities that Apex could submit 5 projects, and any number of joint projects; noted the state has the final say on this. Dalton identified the key projects and bases for each and considering construction costs and rankings. Davis stated other projects could be considered, however must submit the priorities project list by March 30. Mayor Weatherly asked for further comment on the priority list.

Council Member Schulze was satisfied with the priority list. Rowland will gather information on the impact on the downtown concerning the railroad bridge and NC55 widening; he noted it was not a simple project and understood it could take out buildings, as any change could go one-mile in both directions. Council Member Jones felt this project should remain a high priority on the list or might send the wrong message. Council Member Gossage expressed he was fine with the priority list.

With no further comments Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the FY2009-2015 MTIP Project Priority list as described by staff. Motion carried unanimously.

End of Public Hearing # 2



Public Hearing # 03 – White Oak Stream Restoration and Greenway Project

Review: Staff recommends approval of potential open space opportunities so grant funding is a possibility for future purchaser of these projects.

Public hearing regarding identification of potential open space preservation opportunities within the White Oak Stream Restoration and Greenway Project area; possible motion to approve recommended areas.

Presenter: Candace Davis Transportation Planner; John Brown Director of Parks & Recreation; David Rowland Director of Planning

Davis presented the staff report which is attached and incorporated as a part of the minutes; maps outlining the proposed project are attached.

White Oak Stream Restoration and Greenway Project

In 2005, the Town of Cary was awarded \$282,700 from the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA) for the purpose of developing a plan that would recommend areas for potential open space preservation for the area between Green Level and Wimberly roads, recommend the restoration of 1.5 miles of White Oak Creek and provide the planning for a major greenway connection to the American Tobacco Trail. On June 21, 2005, the Apex Town Council authorized staff to work with the Town of Cary on this project. The Towns of Apex and Cary partnered on this effort since the focus of the study was on the final 1.5 miles of the White Oak Creek stream corridor which is located entirely within Apex's jurisdiction.

Apex staff has been working with staff from Cary and two consultant teams, the Baker Corporation of Cary and HadenStanziale of Wilmington, NC, to develop the stream restoration and greenway plan for the past several months in fulfillment of requirements for the USDA grant. Design alternatives for the greenway alignment and stream restoration were developed and presented during public meetings held in Apex and Cary. Based on data collected and public comment, final recommendations and alternatives were developed for the grant report. The proposed greenway alignment has been approved by the Apex Parks, Recreation, and Cultural Resources Advisory Commission.

Potential Open Space Preservation Opportunities

To finalize the White Oak Stream Restoration and Greenway Project report, the Town of Apex must identify potential areas of open space within the 750 acre study area. This identification of potential open space would not change the 2025 Land Use Plan or make the property any less marketable for development. Instead, the identification would enable a potential purchaser such as Wake County or Triangle Land Conservancy to apply for future grant funding based on the land being identified as a potential open space opportunity. These parcels include areas that buffer the American Tobacco Trail as well as flood hazards, stream buffers, and US Army Corps of Engineer property designations. Please see the attached maps for more details.

Staff recommends Council approve the potential open space opportunities so grant funding is a possibility for a future purchaser of these properties. Rowland clarified the LUP shows lowest density closer to Jordan Lake and medium density farther away from Jordan Lake. Town of Cary staff member stated two joint public meetings on the open space were held to receive comments; attendee opinion was they preferred to keep what is there now with no additional development. Comments on the stream restoration: was if it needs restoration, if not, don't mess with it; most did not want a greenway crossing their property.

John Brown stated the current policy for build out of greenways is that greenways are built out as development occurs on the property and will remain so unless changed; majority of this green way is being built out with the Beckwith property.



Public Hearing # 03 –
White Oak Stream Restoration and Greenway Project continued

Mayor Weatherly opened the public hearing at 8:30 p.m.

A man from the audience spoke in support of additional greenway trails and especially if connected to Cary's systems.

Council Member Jones confirmed during public meetings the property owners were made aware of during discussions the open space opportunities; it was noted the properties could be sold to developers or could receive County monies for grant funding. Rowland added he understood if this is on the plan and if we should apply for grants, being a part of the plan helps. Mayor Weatherly noted a good portion of this land is in the 100 year flood plain and would not be developed anyway; there was some discussion regarding voluntary commitments for open space on the agricultural lands.

Council Member Jones addressed creek restoration. Staff stated Baker Corporation engineering firm has walked the stream and reports the stream is in good shape, except an area on Green Level West Road which would need restoration which involves moving the stream to bring the flood plain back up to standard.

With no further comments, Mayor Weatherly called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Jensen to approve the open space opportunities so grant funding is possible for future purchasers of these properties. Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 04 – Small Town Character Overlay District

Review: Planning Board met February 12, 2007 and unanimously recommended approval of the proposed amendments; staff recommends approval.

Public hearing and possible motion regarding proposed amendment to the Small Town Character Overlay District Map.

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Staff report and map are attached and incorporated as a part of the minutes. The Small Town Character Overlay District Map (STCOD) identifies architectural qualities that define the downtown character and proposes design standards to maintain that character. Several projects do not meet the UDO requirements. Staff recommends two areas be removed from the STCOD:

1. Laura Duncan/ Apex Peakway/ Railroad ROW

This area contains Old Mill Village PUD and additional properties that were underway when the STC Overlay District was adopted. Staff feels that development in this area will develop in a way that will complement the STC and creates a transition zone from STC to the new development that has occurred to the east.

2. James Street/Schieffelin Rd/ Apex Peakway/ Perry Farms

The area south of James Street does not currently have the same character as the core STC area. This area should also become a transitional area where the Small Town character is complemented by the development and then transitions into the areas where more development and redevelopment is likely to occur.

Staff requests approval of the amendments to the Small Town Character Overlay District Map; Planning Board met February 12, 2007 and unanimously recommended approval.

Mayor Weatherly opened the public hearing at 8:37 p.m. and with no one addressing this item, closed the public hearing and called for a motion. Clarification was given regarding the James Street area to the south and how it weighed into this amendment; staff follows the roadways or property lines, and how it's developed per the UDO with RCA and Buffer.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the amendments as requested. Motion carried unanimously.

End of Public Hearing # 04



Public Hearings continued

Public Hearing # 05 – Unified Development Ordinance Amendment

Review: Planning Board met February 12, 2007 and unanimously recommended approval of the proposed amendments; staff recommends approval.

Public hearing and possible motion regarding amendment to Sections 7.2.1(A) and new Sub-Section 7.2.1(3) to the Unified Development Ordinance.

Presenter: Brendie Vega Mkhwanazi, Senior Planner and David Rowland Director of Planning
Staff report and map are attached and incorporated as a part of the minutes.

Ordinance to Amend Various Sections of the Town Of Apex Unified Development Ordinance Amendments shown in bold and underlined type are added text and those shown in bold and strikethrough text are deleted text.

1. The following amendments to Section 7.2.1 (A) "Interconnectivity," new subsection 7.2.1 (A)(3) added to prohibit the installation of gates on public or private roads in all residential districts.

7.2.1 (A)(3) Gates on Public or Private Roads

The use of gates, manned or unmanned, shall be prohibited from all residential districts in order to maintain interconnectivity. Staff recommends approval of the UDO amendments. Planning Board met February 12, 2007 and unanimously recommends approval.

Mayor Weatherly opened the public hearing at 8:45 p.m. and with no one addressing this item, closed the public hearing.

Council Member Sutton understands and agrees with public roads noting this base on interconnectivity asked why private roads. Council Member Schulze agreed with not wanting gates on public roads. Council Member Jones commented it had been in the past to discourage private roads. Example given of private roads: Golders Green. Rowland explained this had been addressed by the fire and emergency folks and particularly being able to get in quickly in and out for emergencies and felt strongly there should be no private gates, and reason for the amendment.

Council Member Sutton noted the LeHermitage Community having two connections and if they wanted to gate it, should be their choice; they own it and will maintain it. Council Member Jensen added they have the right to gate private property. Manager Radford stated Council had related they do not want private streets. Council saw this as a separate issue. Mayor Weatherly commented on added liability and acceptance if roads were gated; commented private roads could be taken out and put back if need be, thinking perhaps the fire chief may want to weigh in on this item. Council Member Jones commented on gates, their use, and arguments to allow their use. Mayor Weatherly called for a motion.

Action: Motion by Council Member Schulze to amend the Ordinance 7.2.1(A)(3) however, striking... or Private Roads. Second by Council Member Sutton. Attorney Fordham advised the UDO presently prohibits private roads. Motion carried unanimously.

End of Public Hearing # 05



Public Hearings continued

Public Hearing # 06 – Annexation Petition #410

Annexation Petition #410, C.H. Jewly Partnership, Junius Earl Maynard, Susan Castlebury, owners/petitioners, petitioning to annex 25.681 acres into the Town's corporate limits and located south off US64 Hwy West.

Presenter: David Rowland, Director of Planning

Rowland oriented Council to the location of the property for the proposed "Orchards"; property includes future right of way of Blackburn Road out to US64. Mayor Weatherly opened the public hearing at 8:47 p.m. and with no one addressing this annexation, closed the hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the annexation by adopting the ordinance to extend the corporate limits by the petitioned acreage. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Old Business Item # 1- Kelly Road/US64

Presenter: Kent Jackson, Director of Construction Management

Update concerning signalization of Kelly Road (south) at US64 and possible motion to request preparation of single design plans; NCDOT responded to Town's request for improvements at the intersection of US64 and Kelly Road south. They still support the Department's position that includes a temporary traffic signal for the directional crossover and retaining the median island and geometric as it exists today. Due to funding constraints and temporary nature of this project, NCDOT will not be able to participate in the funding for the temporary signal. If Town chooses to fund the signal, NCDOT will complete the signal design at no cost to the Town, but Town will be responsible for all construction costs. NCDOT does not recommend additional changes to this intersection (i.e. new/longer turn lanes) due to the accelerated schedule of the Western Wake Parkway. Jackson had not discussed the specifics of the reason not to allow changes to the intersection; Council Member Schulze would like to know the reason behind their decision. NCDOT noted crashes had occurred, and had observed the majority have been property damage only collisions. The letter from NCDOT outlining terms and conditions is attached. Manager Radford addressed financing with NCDOT designing the signal, with Town paying approximately \$75,000 for this temporary signal for state maintained roads; a continued problem; if they did not commit to the project, they would be reluctant to get the signal. Signal activity was discussed; location of the signal, square looks and the bridge that will go in.

Action: Motion by Council Member Gossage and second by Council Member Jensen to accept the offer from NCDOT for the design plan of the signal and go out for bids up to \$75,000. 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.

Ann Mullin, Abbingtion felt the Kelly Road/US64 intersection deserved more attention and needed a full signal. Manager Radford responded a letter had been sent, however no response. Steve Harvey, an engineer understood lanes, and was not increasing the capital of the box; it doesn't make sense to him.

End of Public Forum

**NEW BUSINESS****New Business Item # 1 – Subdivision Plan Village at Green Level Crossings**

Review: Planning Board met February 12, 2007 and unanimously recommended approval; staff recommends approval with a reduction in the number of lots identified for select grading.

Subdivision Plan for Village at Green Level Crossings; ETD for Toll Brothers, petitioner, seeking approval for proposed subdivisions that includes 140 single family lots, located on the south side of Roberts Road and just west of the proposed I-540 corridor.

Presenter: Brendie Vega Mkhwanazi, Senior Planner

The staff report and revised grading plan for the Village at Green level Crossings are attached and incorporated as a part of the minutes. The proposed plan includes 140 single family lots with an overall density of 2.82 dwelling units per acre, and 23.47 acres of RCA, six storm water management ponds and a 30 foot wide buffer along Roberts Road. Based on applicant's revision to the grading plan reducing the percentage of select graded lots to 26% of the overall lots, staff recommends approval. Planning Board met February 12, 2007 and unanimously recommended approval. Council Members addressed the buffer requirements and the stormwater requirements, sedimentation ponds and reduction in grading plan.

Travis Morehead, ETd, stated applicant is willing to increase the storm water management from 10 year storm event to 25 year storm event; has reduced the overall grading to 26%; plan complies with all the requirements of the UDO and LUP; there is planned open space for the south, one amenity, and a tot-lot, with the ability for folks to use the Toll Brothers Beckwith Subdivision amenities; addressed the landscape and noted this a quality development with high-end housing. John Brown Director of Parks and Recreation stated the master plan does not call for parkland. Parks and Recreation Commission recommends applicant provide a seeded to lawn quality area, open space to be maintained by the HOA and pay full fee-in-lieu for the 140 units. There was no further discussion.

Action: Motion by Council Member Sutton and second by Council Member Jensen to approve the subdivision plan with the select graded lots to 26% of the overall lots, and acceptance of the 25 year storm event and used during construction. Motion carried unanimously.

End of New Business #1

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

New Business Item # 2 - Connectivity of Greenways and Public Parks

Discussion and possible motion regarding establishment of a policy for allowing connections to public greenways and public parks.

Brown stated the Town Council had requested the Parks, Recreation, and Cultural Resources Advisory Commission make recommendations regarding policy/guidelines for requests to connect to public parks and greenways. This request primarily arose from a request from a Cary neighborhood, Picardy Pointe, to re-install a bridge and build a trail across TOA property at Apex Community Park. The PRCR Advisory Commission discussed this at their November 2006 and January 2007 meetings and subsequently unanimously recommends the following guidelines for considering requests for connection to public parks and greenways.

i) Town of Apex public park property and greenway trails may be accessed only via Town approved points of access such as approved driveways, sidewalks, entrance trails, etc. The following access points are approved for the Apex Community Park: 1) Main Entrance located on Laura Duncan Road, 2) Secondary Main Entrance located on Lake Pine Drive, and 3) greenway trail access located behind Summit Lakes Apartments. The Director of Parks, Recreation and Cultural Resources shall designate the access points for all other Town Parks and Greenways. Access will not be permitted from private property without the approval to the Town Council.



New Business #2 continued

ii) Any approved access point must be constructed to Town standards for driveways, sidewalks, trails, or access points. Groups wishing access in addition to that provided by the Town shall apply to the Town Council in writing for approval of such access, and such access if approved shall be at the expense of the person(s) requesting the access unless otherwise approved by the Apex Town Council.

iii) Where a connection to the Town's public greenway system / public park property is requested by an adjacent municipality, a connection will be considered only when the requested link is shown on the adjacent municipality's approved public greenway plan as well as the Town of Apex's approved public greenway plan. Such connection must a) promote regional interconnectivity, b) be designated as a public greenway and c) be located within a designated public greenway easement to ensure usability by the general public.

After brief comments related to the master plan designation with other municipalities, regional connectivity, extension of sidewalks up Lake Pine, and having addressing issues with Picardy residents Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the established policy for allowing connections to public greenways and public parks. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session items discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss pending litigation and acquisition of property. **Action:** Motion by Council Member Gossage and second by Council Member Sutton to move into closed session at 9:25 p.m. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Jones and second by Council Member Schulze to move into Regular Session at 9:46 p.m. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Sutton and second by Council Member Jensen to adjourn at 9:47 p.m. Motion carried unanimously.

The minutes of February 20, 2007 were approved on the ^{6th} day of March 2007.

Georgia A. Orangelis
Town Clerk

Kimberly Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes and General Account of The Town Council's 2007 Annual Retreat

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

Date: Thursday, February 22, 2007
Time: 6:30 p.m. to 9:00 p.m.
Location: McGregor Country Club,
Cary, North Carolina

Date: Friday, February 23, 2007
Time: 8:00 a.m. to 5:00 p.m.
Location: Apex Town Hall and Town Campus,
Training Center 3A, 73 Hunter Street.

Manager Radford and Mayor Weatherly extended a welcome and to Council and staff attending the Thursday evening meeting held at McGregor Country Club. All Council Members and staff were present; special guest Steve Straus. Mayor Weatherly presided over the meeting. Following dinner Mayor Weatherly called on Manager Radford who presented the 2007 Annual Retreat Agenda and noted this an opportunity for long range planning. Dianne Khin, Assistant Planning Director, Kent Jackson, Director of Construction Management, and Lee Smiley, Director of Finance presented population and growth forecast, building and construction forecast, and financial review and impact/expectations of the proposed ETJ expansion. Staff answered questions regarding future planning and development. 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 Facility 3A and began with a recap of Thursday evening and review of the 2007 Retreat Agenda by Town Manager Radford; discussion accompanied each presentation; questions and concerns were addressed throughout the presentations.

Chief Mark Haraway reported on the proposed Public Safety Center – NC55 South - Station # 4, future plans for additional stations, staffing, and importance of meeting ISO requirements and related impact on insurance ratings.

Police Chief Jack Lewis gave an overview of Police Department highlighting activities and programs, focused on service demands and building renovation project. Stewart Cooper Newell presented design plan, project timeline projections and cost estimates. Renovation calls for relocation of the department into leased space beginning this fall until construction is complete 12 to 15 months.

Council Member Initiatives: Opportunity for Council to bring forth items for examination or research.

- State Roads and maintenance issues; solution and available resources; suggestion: Finance Committee review advantages/disadvantages for town to take over and maintain certain state roads; suggestions: Laura Duncan, Salem Street, Center Street, Old Raleigh Road, and Chatham Street.
- Ratio of commercial vs. residential development; suggestion: work with other towns to bring subset of RTP concept to Apex (more business less commute time) ex. Trinity Development brings proper mix and opportunity for higher class development; initiatives and associated costs for state certification of sites (communication to developers); focus on critical needs and continue to do so without impact to tax rate; sewer restraints on future development; desire for more high-end development (offices and housing) attracting more residents and less transit; ex. Toll Brothers project: BelleCasa, Apex Barbecue Road; address density – more estate lots (use of Land Use Plan as a guide); area plan open house will be held in the fall).
- Incentives and concept of an economic development plan (current support by Apex Chamber); marketing opportunities; resources for economic development (in-house vs. out of house)

Critical Resource Issues: Manager Radford and staff explored service level standards, staffing to meet service levels; revenue trends; revenue requirements for service levels, setting revenue goals. John Cannon, Street Department expressed need for additional staffing and finances, focusing on critical needs and associated issues. Tim Donnelly Director of Public Works commented on strain of the department to continue level of services being provided. Lee Smiley Director of Finance commented on economics scale and strain on the current tax rate over long-term and associated problems; property tax and service cost comparisons revealed slip in level of services; tax rate based on 4.1% growth rate. Chief Jack Lewis Police Department commented: certain levels of service were being stretched; stress and pressure on workers; asked for assistance in defining resources and priorities; recognized risks associated with public safety and property damage. Kent Jackson Construction Management addressed accessibility and challenges associated with day to day operations; noted acute need for engineering staff. Dianne Khin Assistant Planning Director focused on town's proposed ETJ expansion and expectation levels associated with the expansion, having seen an increase in walk-in traffic. John Brown, Parks and Recreation Director focused on staff comparisons; outsource/contract, maintenance of parks and greenways, cultural arts center; growth among the department; impact fees and fair market value (town was last municipality to receive impact fee legislation); recreation space follows master plan and UDO; land costs and needs; benefit of fee in lieu (pros and cons); HOA amenities lessen strain on public parks (partial credit for RCA). Chief Mark Haraway focused on Fire Department necessities, identified needs focusing on ISO, FDA, and Department of Labor with compliance having missed the mark on these standards; volunteer programs, comparisons and statistics, and response time. Eleanor Green, HR Director focused on the classification study and the consultant's take on the information she was hearing from staff regarding this issue. Manager Radford stated his belief and accuracy related to problems and issues shared by staff; is looking at reasonable comparisons with other towns in staffing, service levels and associated costs seeking a solution. Mayor Weatherly commented on the current tax base, expectation levels of service, lack of revenues vs. spending.

Facilitated Session: Service Level Standards and Allocating Resources: Steve Straus noted some municipalities are doing this type analysis:

Clarifying the Situation

- What is the expenditure per capita? Focus on the operating costs.
- What is the revenue per capita?
- How have we expanded categories of services? What is the cost of these services?
- Proportions of budget on Personnel? Capital? Benefits?
- Number of Employees per capita?
- Charge versus cost of fee-based services? Including impact fee.
- Clarify actual cost of fee-based services (i.e. account for impact fee)
- Benchmark with comparable municipal & private entities.
- Overtime hours; Accrued Comp time.
- Analyze change in tax per household over the last 16 years adjusted for inflation.

Chart analysis: Expenditures and revenue per capita; maintenance and operational expenses; expanding category of services and costs; proportion of budget for personnel, capital and benefits; number of employees per 1000 capita and response times; charges for fee based services (impact fees).

Comments evolved around the following: County re-evaluation; increase in service costs; current level of revenues and potential impacts with our without a tax increase. Mayor Weatherly feels strongly to maintain the current tax rate; desires to see the analysis and the benefits of having the lowest tax rate in the county (revenues, spending, inflation, current growth based on the economic environment).

Process Ideas (2nd meeting in March); Manager Radford will come back with a product.

1. Get cost estimate on obtaining performance management consultants to study and present back
2. Obtain advice on how ad valorem tax rate affects economic development.
3. Staff research and report on those clarifying issues it can analyze

Tim Donnelly Director of Public Works gave a review of the public works priorities:

Current projects:

- o Closed on Butler property for expansion of the Public Works and Utilities Building, noting need for space, staff and equipment: \$4 million.
- o Williams Creek Regional Pump Station Project : \$3.2 million (related critical issues)
- o New Hill Water Line: \$2.9 million
- o Third Point of Delivery: \$6 million

Bond projects:

- o Regional water reclamation facility (Cary will recommend Apex provide power and annex site); (proposed New Hill water distribution system and collection system and method of payment); most cost effective site for tax payers having met all requirements: delays in the project schedule negatively impact the Town: \$72 million (construction costs growing at 7% inflation rate); intent is to comply with the Interbasin transfer. Council Member Sutton felt it would best work to town's advantage to get the permit and move on. Staff is discouraging any projects not already on the books due to sewer; plant should be on line 2011.
- o Regional sewer Collection System Improvements (plan to redirect western portions of the town's collection system to the future regional water reclamation facility).

John Brown, Director of Parks and Recreation, gave a review of the facilities and green way priorities, looking at inside and outside needs of the town; gave status of significant projects; looking at future park land site noting cost of land.

Kent Jackson Director of Construction Management addressed transportation priorities giving status of significant projects regarding major intersections; sidewalk construction; Parkway construction; street, utility and parking lot construction. Projects to be funded by the 2005, 2008 2010 bond issue were noted; cost estimates were projected; some projects are not affordable; unfunded transportation needs were reported. Discussion followed regarding: town owning and maintaining NCDOT streets, town spending funds on others roads; NCDOT's role in street rehab.

Eleanor Green, HR Director presented the proposed request for future personnel, with some positions related to the ETJ expansion. Reported there will be a 2% reduction in health insurance costs saving \$23,100 annually and attributes this in part to the town's active wellness program.

TOWN OF APEX, NORTH CAROLINA

Minutes of Town Council Meeting for Tuesday, March 6, 2007, held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street. Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor:
Keith H. Weatherly



Web site: www.apexnc.org

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

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

PROCLAMATION

Mayor Weatherly proclaimed National Safe Place Week, March 11 – 17, 2007 in the Town of Apex, and presented a Proclamation to Karen Bonnewell, of *Haven House*, Raleigh.

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 for approval. Council Member Sutton asked for clarification of Item # 3.

Action: Motion by Council Member Gossage and second by Council Member Jones to consider this item separately with the New Business section of the agenda. Motion carried unanimously.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda as amended. Motion carried unanimously.

- 1) Minutes of February 20, 2007 Council meeting.
- 2) Minutes of February 20, 2007 Council Closed Session meeting (recorded separately).
- 3) Amend Town of Apex Code of Ordinances: Sec. 20-100. Speed Limits Subsection (6) deletion of Salem Street in Town's speed limit ordinance since the road is owned by NCDOT: Ordinance No. 07-0306-04 (considered as New Business Item # 01).
- 4) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ21 Jim Bell of ARCADIS, petitioner; changing the zoning classification of the lands described from Office & Institutional and Neighborhood Business District to Neighborhood Business Conditional Zoning District, 11.592 acres, located at Haddon Hall Drive and Zeno Road.
- 5) Findings of Fact, Conclusions of Law and Ordinance Rezoning Case #06CZ22, LRC Development Company, LLC, petitioner; amend the 2025 Land Use Plan and changing the zoning classification of lands described from Wake County Designation to Planned Commercial-Conditional Zoning, 4.797 acres, located at 6821 Old Jenks Road.
- 6) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ24 Glenda Toppe, Jerry Turner & Associates, petitioner; amend the 2025 Land Use Plan and changing the zoning classification of lands described from Wake County Designation to Planned Commercial Conditional Zoning District, 4.77963 acres and 0.88157 acres of right of way located at 1716 W. Williams Street.



REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items.

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case #07CZ02 – Kelly's North Carolina Leasing LLC

Review: Planning Board met February 12, 2007 and unanimously recommended denial for this rezoning based on non-compatibility with adjoining properties, and difficulty of meeting UDO buffer requirements to neighboring RA property;

Staff recommends approval based on the 2025 Land Use Plan and adjacent O&I uses.

Public hearing and possible motion regarding Rezoning Case #07CZ02 of .50 acres located at 1302 N. Salem Street.

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Mkhwanazi stated the applicant had requested a continuation of this hearing for one month, and has asked Elam Todd D'Ambrosi to assist with this rezone. Mayor Weatherly asked for a motion to continue this item to April 3, 2007 Town Council meeting.

Action: Motion by Council Member Gossage and second by Council Member Jensen to continue this hearing to April 3, 2007 as requested by the applicant. Motion carried unanimously.

Public hearing continued to April 3, 2007

Public Hearing # 02 – Rezoning Case #07CZ03 – Salem Village PUD

Review: Planning Board met February 12, 2007 and unanimously recommended approval with conditions stated by staff and agreed to by the applicant; staff recommends approval of the 2025 LUP amendment and conditional zoning with conditions.

Public Hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Zoning Case #07CZ03, Winslow Properties, petitioner; amending the 2025 Land Use Plan from Mixed Use: Commercial, Office & Institutional, and High Density Residential to Mixed Use: Medium and High Density Residential; Office & Institutional; Medium Density Residential, and to rezone from Residential Agricultural and Medium Density to Planned Unit Development-Conditional Zoning (PUD-CZ) property located at South Salem Street at future Apex Peakway, containing 313.8 acres.

Presenter: Dianne Khin, Assistant Planning Director

Khin presented the staff report which is attached and incorporated as a part of the minutes, and giving the background information regarding this request. The proposed development is consistent with the I-540/South Salem Street Small Area Plan; Parks, Recreation and Cultural Resources Commission made recommendations at their January 31, 2007 meeting with their conditions listed on page 2 of the staff report; the applicant has agreed to build the greenways. Planning Board unanimously recommends approval of the 2025 Land Use Plan amendment and conditional zoning with the conditions stated by staff at their public hearing. Staff recommends approval with conditions listed on page 2 and 3 of the staff report.



Public Hearings continued

Council Member Jensen asked possibility of relocation of the Peakway more eastward by Whitehall Manor so as not to impact residents so much. Staff reported there are no changes to realign and any realignment may cause more impact to Salem Street; not so much alignment but with elevation; not to preclude grade separation.

Council Member Jensen noted opportunity to obtain more park land; UDO sets aside certain amount and in this case 35 acres, and are offering public dedication of 10 -12 acres; recreation park in the Apex Barbecue Road area was discussed. Staff reported this is part of the I-540 Plan; PR&CR Commission conditions - developer will get credit for their final land acreage dedicated for the park and use the pro-rated fee-in-lieu to develop the park. Council Member Jones noted the purchase of the nature park, and the parks master plan does not show a park in this location. Council Member Jensen noted the process has merit, but are giving up an adequate amount of land for a nicer park.

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

Jason Bertoncino, Withers and Ravenel, Inc., represented the applicant and addressed the following: sewer will not be a specific phase, but all that will occur at this time will be along Tingen Road (Town can not commit to full sewer allocation until the regional water reclamation facility is on line; condition to approve the initial 340 unit phase); will construct a park between Salem Village and Apex Elementary; roads/construction: will work with staff on road improvements. Council Member Jensen asked if they were willing to commit to a 25-year storm design as Sutton Place and some others have done. Mayor Weatherly stated the scope of this project is different. Bertoncino was not willing to commit to a 25 year storm design at this time, noting the property lies in a large flood plain.

No one spoke in opposition and Mayor Weatherly closed the hearing at 7:30 p.m.

Council Member Schulze asked if a traffic impact analysis was done (TIA); he wanted to see it. Russell Dalton, Transportation Engineer gave a review of the road improvements that would be phased in; (TIA indicates average daily trips generated by the development, and indicates the trip distribution allocation on all roads and intersections within the study area approved by the town; any road improvements which will be required to prevent the traffic generated by the proposed development from causing any intersection or road segment to fall average Level-of-Service D, to ensure safe movement of vehicles within the study area). Khin reported, staff usually does not include the TIA analysis in the packet, but do try to do an executive summary, but was not included in the packet. Council Member Gossage commented on the trips per day; trips per day are well under capacity and will serve exclusively this project. Council Member Jones commented on the access point on Tingen/ Peakway and not being able to connect to Salem due to the railroad tracks; Manager Radford commented on the fact that no public access was allowed; staff does not anticipate an at-grade crossing. Council Member Gossage addressed the potential of a signal at NC55/Peakway. Dalton responded no road improvements will be done on NC55; Peakway construction is not tied to a traffic signal and not included in this development; based on traffic, he could not recommend a signal at this location, noting the long side street delays stated a signal was not warranted. The Peakway will be built for two-lanes with future expansion to four-lane.



Public Hearings continued

Action: Council Member Jones noted the proposed analysis shows the overall impact of the traffic, and would be much less traffic generated overall, recommending the approval of the rezone and land use plan amendment. Council Member Gossage would like to see the petitioner contribute to a light at the NC55/Peakway. Mayor Weatherly responded staff is not recommending a signal, asking if this would come back at site plan. Attorney Fordham responded this was not specific to a site plan, and overall now is the time to consider it. Council Member Sutton thought Kimley-Horn normally addressed the traffic issues and perhaps could brief at the next meeting. Mayor Weatherly asked if there were a second to the motion, with no second to the motion, the motion failed. Mayor Weatherly asked if there were another motion to be made.

Action: Motion by Council Member Schulze to continue this hearing to the March 20, 2007 meeting to allow Council time to review the Traffic Impact Analysis. Second to the motion was made by Council Member Sutton. Motion carried unanimously. Petitioner was willing to return on March 20, 2007. Council Member Schulze stated as a part of the record he would like to see the Traffic Impact Analysis included with the agenda packets.

Public hearing continued to March 20, 2007

Public Hearing # 03 – Rezoning Case #07CZ23 – Peakway @55 PUD and 2025 Land Use Plan Amendment

Review: Planning Board met February 12, 2007 and unanimously recommended approval; Staff recommends approval based on compatibility of the surrounding land uses.

Public hearing and possible motion regarding Rezoning Case #06CZ23 and 2025 Land Use Plan amendment of 112.48 acres located in the general area of the Apex Peakway and NC55-Peakway @55 PUD.

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Mkhwanazi presented the staff report which is attached and incorporated as a part of the minutes giving the background information. Planning Board unanimously recommended approval for this project at their February 12, 2007 meeting. Staff recommends approval based on compatibility of the surrounding land uses.

Mayor Weatherly opened the public hearing at 7:40 p.m. Clyde Holt, Attorney, Smith Moore Law Firm, Raleigh, spoke on behalf of the property owners, Kite Realty and Trim-pro and stated facts that the development would be served by the Peakway. Peakway construction and roadway improvements along Williams Street, and ramps at the interchange will be explained by Russell Dalton, Transportation Engineer; level of service will not deteriorate by additional trips from the development; mixed use residential, retail, employment allows folks to lessen overall trips enabling them to walk to retail and work, and is an advantage to this side of town; fees in the amount of \$900,000 will be paid to Apex to make improvements to alleviate other traffic problems; quality residential units are proposed with internal access off Hughes/Peakway, some industrial opportunities are included and will be addressed later; includes multi-family with reduced density from the original design; retail building elevations were shown; promotes a quality neighborhood adding \$131.7 million to Apex tax base; hotel offers \$1,990,000 in permit connection fees; impact fees include transportation, water/sewer and permitting and connection fees; provides for a sewer sleeve.

**Public Hearings continued**

Consultants from Kite Realty and Kimley-Horn and Trim-pro were present anticipated for the long term of the project; applicant is able to commit to a 25- year storm design on the south side of the site; applicant is not able to commit to a 25- year storm design on the north side of the site at this time. Staff supports the multi-family project with reduction in density; high quality residential; economic impact supports this; no specific site plan will be introduced however assures quality of construction and value; will look at the addition of commercial portion of the development at site plan review. Trim-pro Mark Bowles, Managing Director and Rob Coleman who is also an Apex resident are excited about the mixed use walking community, noting higher rentals, and confident about the project. Architectural materials and construction details are a part of the application.

Jeanne Hack, 101 S. Hughes Street, has 100 years of heritage in Apex and resident of her home on the site, spoke in favor, stating she loved Apex and would not support anything that was not a great asset for Apex.

Marcia Maynard Lund, property owner and native to Apex, has 150 years of heritage in Apex, expressed faith in this company, loves Apex and sees this project as a help to the community.

Veronica Rockwell, Terric Summit Lane, stated she was a resident for 21 years and sees growth as necessary and expected; concerns were discussed with Kite Realty with some unresolved issues: additional dwellings and shops will add to traffic problems, especially with Wal-mart (reserves comments until site plan); trucks utilize Apex Peakway and could add to accidents (shared an incident she had); Perry Road is used by commercial traffic; noted enhancements and improvements to roadways are necessary; noted NC55/US64 road improvements were made to handle additional traffic and the same should apply at NC55/US1; even with a signal drivers would take the shortest route possible; TIA didn't capture all data i.e. Perry Road/NC55; spoke with NCDOT noted issues should be addressed with Hughes Street, Perry Road and James Street ; noted 250 rental properties and 165 sale properties; asked to keep maximum building heights; noted impacts to schools and disagrees there will be limited impacts; application introduces industrial and asked not to allow any industrial uses within the residential area; should not rely on future I-540 for development purposes until it happens, not knowing if it would be a toll or not; consider and address issues of the people to include transportation circulation; encouraged council to visit and see the traffic issues and bus issues; asked they make decisions that would best benefit the homeowners.

Kurt Wurst, 713 Matney Lane, resident since 1995 addressed concerns: increased traffic issues, construction traffic use Perry Road, there are bus stops, and with no sidewalks child safety is a concern and speeders are a concern. Beth Wurst, 713 Matney Lane, addressed concerns with increase in dump truck traffic using S. Hughes Street, with this proposal there will be addition to the same thing; light, noise and traffic is a disruption to Rex Rehab residents as well as community residents; there is a bus stop on S. Hughes where children cross the street to get to the stop and shares concern for their safety; noted S. Hughes was not capable of holding any additional traffic.

Lady (no name given) moved to Apex, due to less traffic, less crime and the attraction of the appearance on Salem Street; the number of additional families and traffic in this area would create problems that will include overcrowding of schools.

James Handy, 811 Toulon Way, stated the proposal would increase traffic, challenges to the schools system; town continues to grow without consideration of the impacts; asked the development be a 2010 initiative to lessen impacts on the environment.



Public Hearings continued

Holt noted a stream on site and south of the Peakway; noted 2 acre parcel slated for industrial development on the western side next to the Industrial Park. He never said there would be no school children, only with attached dwellings would be less per family. He can't put up no truck signs – TIA says the Peakway will lessen this concern; will commit during construction to limit trucks to the Peakway with no trucks on Hughes Street and Perry Road. Khin reported 2.73 persons per unit across the board.

Mayor Weatherly closed the public hearing at 8:40 p.m.

Council Member Schulze was opposed multi-family. Mkhwanazi stated staff discouraged the initial number of units and that number has been reduced; staff recommends approval with the reduction in density, and would serve as a buffer between Tech-Flex and with limited light industrial uses. Council Member Gossage asked the zoning of the adjacent properties: RA (area of Rex Rehab O&I); he recalled several years ago in the Beaver Creek development, a buffer for residential townhome units from O&I and commercial; he would like to see O&I against the Peakway. Khin explained there were existing neighbors, with townhomes across the street, and some mixed use, and would like this to be similar (will be seen at site plan review); noted there will be residential development across from residential and this doesn't apply. Council Member Sutton would like to see four-lanes roads as are into Beaver Creek due to the impact of the traffic, and with the large amount of transportation fees should get the four-lanes built out from the start and also should restrict truck traffic from Hughes Street and Perry Road; he noted it desirable to eliminate multi-family, but market wise was not possible; commercial to US1 is feasible, however, can't eliminate all the traffic; to him this looks similar to the other development. Council Member Gossage confirmed the traffic patterns proposed. Council Member Jones stated Holt had stated they would build out all four-lanes of the Peakway from the start and would restrict trucks to the Peakway. Russell Dalton expanded on the NC55 traffic and noted the first phase will include the Peakway construction; staff confirmed they can proceed with site development while the Peakway is under construction. Rowland noted this a quality development, and asked if there could be a condition that Trim-pro be the developer of the project; he understood their excellent work, but could he guarantee long term. Holt could not make a guarantee, but could make guarantee to a similar style and quality, at least to what was stated in the study – the intent of Trim-pro, but as far as a condition, could not. Attorney Fordham advised they have a right to know what's in the application, but could not be tied to a particular person as long as they meet the details of the plans that are approved and what is done in the future, and was not offered as a condition; Apex has not made this a condition in the past. Khin noted there is no consideration made for this under the UDO. Council Member Sutton stated Holt had made a pitch on how good this group was and he got the impression they would be there long-term. Council Member Jones added they should look at the uses and based on this, would be practical if it were tied to it and related to rezoning issues. Council Member Gossage addressed the opportunity for an on-ramp on US1 direct from the site; staff responded not this site; were looking at the interchange about 1000 foot west of this site that would benefit this site.

Action: Motion made by Council Member Gossage to approve the site plan reflecting O&I to the front of the Peakway and the residential toward the rear as a safety feature from sending traffic into the neighborhood, and with all conditions as recommended. Attorney Fordham advised the applicant would have to consent to this. Staff's opinion was they were doing like uses across from each other: O&I across from O&I and Residential across from Residential with a street separation and along the Peakway townhomes; the soccer area is zoned Residential Agricultural with the Land Use Plan calling for O&I. Council Member Gossage withdrew the motion.



Public Hearings continued

Council Member Schulze was not sold on the transportation issues, addressing sidewalks along S. Hughes Street and wanted sidewalks there; he asked if he had the right to deny this based on the TIA. Attorney Fordham asked Khin if the UDO requires sidewalks off-site on Hughes Street, with Khin responding no, they are not required to do off-site improvements, with the site plan calling for what's required in the UDO. Attorney Fordham stated they were required to development under the requirements of the UDO and at the site plan stage what is required by the TIA. Manager Radford stated sidewalks will be built out for this project; there are some existing sidewalks along Hughes Street.

Action: Motion by Council Member Jones to approve; this meets the requirements to rezone and to amend the Land Use Plan, and recognizing it's less erroneous than some things and recognizing the traffic issues can be managed, and that Hughes Street needing sidewalks is a shortcoming. Second to the motion was made by Council Member Gossage. Council Member Gossage would like to see at site plan, residential near the rear portion of the development with O&I near the Peakway. Council Member Jensen had rather see more office for a better balance for mixed use; he doesn't like apartments, and had rather see townhomes – a better balance with more office and less residential. Mayor Weatherly expressed concern with the amount of apartments, but noted their high standard not currently met in Apex, with current ratio of approximately 73% /24%, and this was to be a quality development good for Apex. Council Member Schulze wanted to make a point with the challenges of the traffic, to deal with this issue now rather than at site plan where he may be told no; he didn't want to make a decision with partial information. Mkhwanazi stated the applicant had included in and committed to the roadway improvements as a part of the rezone, with Dalton stating they had gone above and beyond the requirements. Council Member Sutton wanted to assure the applicant did his homework on the site plan, and noted what was said, and that the Peakway would take traffic from Perry Road and supports this.

Vote on the motion was four in favor and one in opposition with Council Member Schulze voting no. Motion carried.

End of public hearing # 03

Public Hearing # 04 – Rezoning Case #07CZ26 – Jessie Commons PUD

Review: Planning Board met February 12, 2007 and unanimously recommended approval with conditions agreed to by applicant; staff recommends approval with conditions.

Public Hearing regarding 2025 Land Use Plan Amendment and Conditional Zoning #07CZ26, ALA Commercial LLC, petitioner; amending the 2025 Land Use Plan from Mixed Use: Commercial, O&I, and High Density Residential to Mixed Use: Commercial, O&I, and Industrial; and to rezone from PC-CU, LI, and RA to Planned Unit Development-Conditional Zoning and Light Industrial-Conditional Zoning (PUD-CZ and LI-CZ) located at E. Williams Street at future Jessie Drive, containing 64.25 acres; possible motion regarding same.

Presenter: Dianne Khin, Assistant Planning Director

Khin presented the staff report which is attached and incorporated as a part of the minutes giving the background information. Planning Board considered this 2025 Land Use Plan amendment and conditional zoning at their February 12, 2007 meeting and unanimously recommends approval with the conditions agreed upon by the applicant in the attached letter dated February 12, 2007. Staff recommends approval with the conditions outlined and agreed to by the applicant.



Public Hearings continued

Mayor Weatherly opened the public hearing at 9:30 p.m.

Jason Bertoncino, Withers and Ravenel, Inc. addressed the traffic movement and four-lanes of Jessie Drive; applicant will construct a full thru lane on NC55; proposes the town standard for a 10 year storm event design not willing to commit to a 25 year storm design at this time.

No one spoke in opposition. Mayor Weatherly closed the public hearing. Khin noted the site shows a temporary fire station. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve the rezone and Land Use Plan Amendment with the conditions agreed to by the applicant. Motion carried unanimously.

End of Public hearing # 04

Public Hearing # 05 – Unified Development Ordinance Amendment

Review: Planning Board met February 12, 2007 and unanimously recommended approval; staff recommends approval.

Public hearing and possible motion to amend the UDO with regard to permissible uses in the PUD zoning district. The proposed amendment would add the following uses: Parking garage, commercial; Ambulatory Healthcare Facility with Emergency Department; Hospital; Communication Tower, commercial; Communication tower, constructed stealth; Entertainment, outdoor; Dispatching office; Building supplies, retail; Retail sales, bulky goods; Repair services, limited; Vehicle Inspection Center.

Presenter: Brendie Vega Mkhwanazi, Senior Planner

Mkhwanazi presented the staff report which is attached and incorporated as a part of the minutes presenting an Ordinance to amend various sections of the Town of Apex Unified Development Ordinance adding text to the PUD Zone District under the Use Table in Section 4 and designated as permitted. Planning Board unanimously recommended approval for this project at their February 12, 2007 meeting. Staff recommends approval of the UDO amendments. Communications towers were discussed and noted if not allowed it would be difficult for folks to get cell service; proposed Trinity PUD had alerted staff to the need for the added text. Mayor Weatherly felt there was a need to be restrictive with the towers, being considered with a special use permit for both the commercial and constructed stealth communication towers. It was noted there is a noise ordinance that would regulate the outdoor entertainment, also the requirement of safety fence and screen to protect residents.

Mayor Weatherly opened the public hearing at 9:35 p.m. and with no one addressing the amendments to the UDO, closed the public hearing and asked if there were a motion.

Action: Motion by Council Member Schulze and second by Council Member Sutton to approve the amendments to the UDO with communications towers in both cases the commercial and constructed stealth towers be considered under the special user permit only. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Old Business Item # 01 – Lease Office Space Apex Police Department

Possible motion to approve leasing office space for a temporary Police Department relocation and an addendum to the Police Building project contract with Stewart Cooper Newell.

Presenter: Marty Mitchell, Facility and Fleet Services and Police Chief Jack Lewis

Staff examined alternatives to leasing modular buildings vs. existing fixed office space in downtown; alternatives had similar costs with fixed office space slightly better cost and less disruption to downtown parking.



Old Business continued

Chief Lewis recommended leasing office space for a temporary Police Department relocation while the police building was renovated to begin around September 1 for an estimated 12 to 16 months; this would maintain the PD in the proximity of where they are in the downtown and allow for communications to continue. (Old Rodney's Building and the Dance Studio).

Chief Lewis recommended an addendum to the project agreement with SCN, having negotiated a revised fee for design services for the PD renovation project; the revised structure would call for an 8% standard commission on all construction costs up to \$4 million and 7% for all costs over; savings depends on final construction costs; projected savings \$16,000 to \$23,000.

Staff relocation cost analysis is attached as well as the addendum to the Agreement with Stewart-Cooper-Newell Architects. Discussion followed regarding the total estimated cost for completion of the project, reducing the general fund balance by approximate \$6.6 million and noting a 5% contingency placed on the project.

Mayor Weatherly called for a motion on the two recommendations:

Action: Motion by Council Member Sutton and second by Council Member Gossage to approve the recommendation for leased office space while the PD was under renovation. Motion carried unanimously.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve the addendum to the Agreement with Stewart-Cooper-Newell Architects. 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

Item # 3 from the consent agenda for clarification:

New Business Item # 01 – Amend Code of Ordinances Sec. 20-100

Council Member Sutton asked clarification regarding the amendment to the Town of Apex Code of Ordinances: Sec. 20-100. Speed Limits Subsection (6) deletion of Salem Street in Town's speed limit ordinance since the road is owned by NCDOT. Ordinance #07-0306-04. Russell Dalton, Transportation Engineer explained this was a clean-up of the Town Code as NCDOT controls the speed limit on Salem Street and any change to the speed limit would be upon request to NCDOT.

Action: Motion by council Member Sutton and second by Council Member Gossage to approve the amendment as stated. Motion carried unanimously.

End of New Business #01



WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 10:00 p.m. to discuss condemnation actions in relation to: 1) the Salem Street Peakway Project, and 2) the Beckwith Farms Subdivision Sewer Easements.

Action: Motion by Council Member Jones and second by Council Member Gossage to move into closed session for the reasons stated. Motion carried unanimously. Closed session minutes are recorded separately. Motion by Council Member Jensen and second by Council Member Schulze to move back into Regular Session at 10:17 p.m. Motion carried unanimously.

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

Action: Motion by Council Member Sutton and second by Council Member Jensen to adopt a Resolution authorizing eminent domain proceedings related to the Northwestern Peakway segment for the improvement of the Apex street system. Motion carried unanimously.

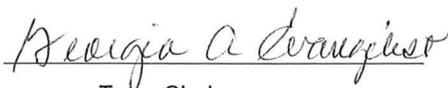
Action: Motion by Council Member Sutton and second by Council Member Jones to adopt a Resolution authorizing condemnation for the Beckwith Farms Sewer Easements as shown on Exhibit A. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Town Council, a motion was made by Council Member Jensen and second by Council Member Schulze to adjourn at 10:18 p.m. Motion carried unanimously.

The above minutes for the March 6, 2007 meeting of the Apex Town Council was submitted by the Town Clerk and approved by the Apex Town Council on the 20 day of March 2007.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, March 20, 2007 held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the meeting. Council Members Jensen, Gossage, and Sutton were present. Council Member Jones arrived at 7:15 p.m. Council Member Schulze was absent.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order and gave the Invocation. Pledge of Allegiance was led by Scout Troop 226. 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 for approval. Attorney Fordham asked Consent Agenda items #7 (due to a lease hold interest; may want to comment in respect to rezoning of property) and #8 (house keeping matter) be considered separately. Mayor Weatherly asked for a motion to move both items to be considered with Old Business items A1 and A2.

Action: Motion by Council Member Sutton and second by Council Member Gossage to consider both items with Old Business. Motion carried with three Council Members voting.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda as amended. Motion carried with three Council Members voting.

- 1) Minutes of March 6, 2007 Council meeting.
- 2) Minutes of March 6, 2007 Council Closed Session (recorded separately).
- 3) Minutes and General Account of the February 23, 2007 Council Retreat.
- 4) Minutes of the February 27, 2007 Planning Committee meeting.
- 5) Minutes of the March 12, 2007 Personnel Committee meeting.
- 6) Annexation Petition #412, Trinity Apex Investments, LLC, owners/petitioners (list attached), petitioning to annex 694.841 acres including 12.271 acres of public right of way, into the Town's corporate limits and located between US Hwy #1, Old Holly Springs-Apex Road (east and west) and the future I-540 (Western Wake Expressway); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a public hearing for April 17, 2007.



Consent agenda items # 7 and # 8 were considered under Old Business.

- 7) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ23 Kite Realty Group, petitioner; changing the zoning classification of the lands described located at South Hughes Street and Apex Peakway, west of NC55. (A1)
- 8) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ26, ALA Commercial, LLC, petitioner; changing the zoning classification of the lands described located at E. Williams Street (NC55) north of Bobbitt Road. (A2)
- 9) Adopted a Budget Ordinance Amendment No. 16 that transfers \$215,000 from General Fund to complete the upfit of the building purchased to serve as Fire Station #4; adopted two Capital Projects Ordinance Amendments for Fire Station #04 and Apex Peakway section where money is being transferred from the Powell Bill account and additional revenues recognized to provide funding for the construction of the Peakway from Olive Chapel Road to South Salem Street.
- 10) Transferred Lot 290, containing Plots E, F, G and H in Apex Town Cemetery from Marvo Lee Holland (Decedent) to Mr. Julian C. Stephenson, Sr. and Dianne H. Stephenson, 7801 Whimbrel Lane, Fuquay Varina, NC.
- 11) Transferred Lot 42, containing Plots G and H in Apex Town Cemetery from Betsy L. Adams of 113 Johns Circle, Lot 12, Garner, NC, to Bob McIver, Apex Funeral Directors, 550 W. Williams Street, Apex, NC.
- 12) Award Contract for Williams Creek Sewer Improvements to lowest single prime bidder to J.F. Wilkerson Contracting Co. for a total project cost of \$2,532,000.00 and adoption of associated Budget Ordinance Amendment No. 17 and Capital Project Ordinance Amendment (Bid tabulations are attached).
- 13) Approved a Cooperative Bid Agreement with Electricities allowing to bid utility materials, supplies, and equipment on behalf of the NC municipalities for their electric utility needs; current agreement expires 06/30/07.

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 asked to add to closed session: potential lands swap at the intersection of Old Raleigh Road and the Apex Peakway. Attorney Fordham asked to add to closed session: a condemnation matter. Manager Radford asked to add to new business: an agreement for access pipeline crossing agreement with CSX.

Action: Motion by Council Member Gossage and second by Council Member Sutton to add these items to the regular meeting agenda. Motion carried with three Council Members voting. The meeting agenda was set with the amendments.

NOTE: *Council Member Jones arrived at 7:15 p.m.*

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case #06CU11

NOTE: *Those speaking during this hearing must give sworn testimony*

Review: Planning Board met 03/12/07 and unanimously recommends approval with conditions.

Public hearing and possible motion regarding Rezoning Case (Amendment) #06CU11 Old Mill Village (OMV) – BBM Associates, petitioner, seeking to rezone from PUD-CU to PUD-CU district, containing 35.1 acres located south of Old Raleigh Road, west of Apex and north of Center Street.

Town Clerk administered oaths to those testifying during this hearing.

Presenter: June Cowles, Planner

Cowles oriented to the location of the property and gave background information regarding the amendment and presented the staff report which is attached and incorporated as a part of the minutes.



Public Hearing # 01 – Rezoning Case #06CU11

Highlights of the report: OMV-PUD were approved September 7, 2004 and amended in 2005. Lots 4 and 4 are under construction (townhomes). Permitted uses for Lot 1, Lot 3, Lot 6, and Lot 7 are defined. Applicant requests design controls for single family be added to the PUD Plan or Lot 3. Lots 1 and 3 are slated for office/retail/proposed residential; buffer requirements are listed for these lots as well as Lots 5 and Lot 7. Architectural standards are noted, applicant has provided a detailed phasing plan; RCA is 19.5% or 6.24 acres; plan amendment includes 7.02 acres of RCA or 20% and consistent with the UDO. Approved plan data, RCA, Parks and Recreation recommends fee-in-lieu based on density estimates, Access and Circulation conditions are defined. Staff analysis: permitted uses are consistent with PUD zone district; Flea market - Lot 6 requires a Special Use Permit under PUD zone district as stated in the OMV-PUD Plan.

Single family design controls: staff is concerned with small lot development with two garages that dominate the appearance of the proposed residential units. OMV townhomes are designed with rear alley two car garage; to be consistent staff recommends condition be added regarding garage location: garages be placed behind main structure, either detached or attached at rear wall of house. Buffers are consistent with UDO with exception of Lot 3 which includes office and retail – staff recommends Lot 3A buffer amendment include condition: buffer width and type shall be 20 foot wide Type A if retail and/or office use is located adjacent to large lot single family use; Lot 5a buffer amendment adjacent to Peakway, thoroughfare, be consistent with Lot 3 and Lot 4 Apex Peakway buffer or 20 foot width – one half of the width required by Section 8.2 is 15 feet width. PUD zone amendment is consistent with the 2025 LUP classification and identifies the proposed site for mixed use of high density residential, commercial, and office and institutional, except for Lot 7 (abandoned Durham Southern Railway does not have a LUP classification).

Staff recommendations: Approve Old Mill Village PUD amendment with the following conditions:

1. Lot 6 Flea market (Special Use Permit)
2. Garages be placed behind main structure, either detached or attached at rear wall of house
3. Buffer width and type be 20 foot wide Type A if retail and/or office use located adjacent to large lot single family use
4. Apex Peakway buffer be 20 feet wide.

Planning Board met March 12 and unanimously recommended approval with conditions stated.

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

Alan Manase, BBM Associates, represented petitioner/property owner Apex First Development and stating the following: are in agreement with all conditions except rear loaded garages; are trying to introduce a different product in the mix of single family with front loaded garages; current zoning does not provide for rear garages and no condition required to do so; staff would prefer rear loaded garages; explained alleys are not cheap to construct; doesn't make as much sense on single family; a market for front loaded garage styles would cater to retired baby boomers, empty nesters; product homes are 2000 square foot single-family with downstairs master, common landscape maintenance; Verizon Homes provides different styles and themes, offers options for second floors, etc. (product home shown); could do too much rear loaded garages, and noted property separation by a creek, noted the other portion of OMV; the builder is ready to build and thinks he will have no trouble selling this type product; Planning Staff and Planning Board have given recommendations and would like to have Council's input.

David Rowland, Director of Planning stated staff looked at architectural criteria of the rest of the development with rear loaded garages (front yards not full of cars/concrete); historic area inside the Peakway finds most garages at the rear of properties and in keeping with the small town character; looking for more urban style development as this development has more of a suburban look; would like to see more rear loaded garages and can be accomplished by putting houses on zero lot line with garages in back; product presented is sometimes referred to as "snout houses" where garages dominate the house; does not feel this is appropriate in this location; Planning Board agreed this is more of an urban look and would like to see the house featured and not the garage. Manase responded to the comments noting 40' wide lots, stressed variety, noted steep topography and difficulty of having garages in the rear of the property and costly to do so; further expanded on attached garages and felt it best for this land to have front loaded garages; some like this and some do not.

No one spoke in opposition.



Public Hearing # 01 – Rezoning Case #06CU11

Council Member Jensen asked if shared drives had been considered. Rowland stated staff would be fine with shared drives, known as "California style" with grass median and two strips of concrete, and would reduce impervious surface.

Council Member Jones asked to look at the site layout. Rowland restated the amendment, noted retention ponds locations on site, buffers requirements, and with the property being separated by a stream; felt this project helps make the town and how it looks; there's no objection to the use.

Mayor Weatherly asked if this would be a deal breaker for the developer. Manase noted this would reduce the lots and increase costs; shared concerns with shared drives as they would create more impervious surface and if garage units were in the back drives would be longer. The developer of Verizon Homes addressed the design and esthetics of the product geared for the 55-plus market; noted the difference in slopes of the sites, and would be a deal breaker however wanted to do the job, and was the reason of the design for front loaded garages.

Council Member Jensen addressed stormwater management. Manase stated the pond is designed for a 10 year storm event for the single family lots and near the area and consistent with OMV.

Mayor Weatherly closed the public hearing at 7:32 p.m. Council Member Sutton was in agreement with staff; noted narrow 40' lots. Council Member Jones tended to agree, asking the practicality - could this be done. **Action:** Motion by Council Member Sutton to approve the rezoning amendment with recommended conditions by staff and Planning Board. No second was made to the motion. The motion failed. Mayor Weatherly asked if there were another motion to be made, with there being none, Mayor Weatherly asked Manase if he wanted to postpone or have Council vote.

Council Member Jensen understood the topography situation; asked if they were willing to try a combination of both front and rear garages, and would like to consider this over the next two weeks; if folks were happy with this product, they would not evaluate Apex on this; a combination would provide for some less impervious surface and noted the amount of water that dumps into Shepherds Vineyard; position/view of the garages from the thoroughfares were noted, and their placement on cul-de-sac; from the road, would see the backs of homes. Rowland stated this to be correct – they would not see them from the Peakway or from Old Raleigh Road; however development seen from the Peakway would be more of a suburban look and prefers more of an urban look more in keeping with the Town's unique look. Council Member Jones was more agreeable with a compromise. Mayor Weatherly commented on the unanimous recommendation from Planning Board and what the town wanted to see from the developer and if approved, the next would want the same exception; thinking this to be significant.

Manase responded they were willing to compromise, offering front garages on the south side and rear garages on the north side; plan would be resubmitted indicating the change; he noted the street connection that ties in with the lands proposed to be swapped with the Town. Manager Radford added the lands swap would increase frontage of the town's property off Old Raleigh Road, and would give more depth to these lots. Manase added this did not change the topography of the sites, and noted the drop-off to the creek with construction being difficult, however seems the compromise as stated would be beneficial to both. Rowland expressed understanding of the flexibility due to the severe topography; staff would like all rear loaded garages, however would be fine with Council's decision. Council Member Jensen asked if the cul-de-sac could be moved to the north. Council Member Jones stated this is a separate issue and was addressing the condition of the rezone with applicant offering a compromise to place front garages on the south side and rear garages on the north side.

Action: Motion by Council Member Jones to approve the rezone amendment with the conditions recommended and with regard to the property exchange and relocation of the garages as stated; second by Council Member Gossage. Council Member Jensen expressed satisfaction with compromise for garages, however would protest the rezone amendment due to stormwater. Motion carried three in favor and one opposed with Council Member Jensen voting in opposition. Motion carried.

End of Public hearing #01

**Public Hearing # 02 – Special Use Permit #07SUP02**

NOTE: Those speaking during this hearing must give sworn testimony

Review: Planning Board met 03/12/07 and unanimously recommends approval with conditions.

Public Hearing and possible motion regarding Special Use Permit #07SUP02 for a Flea Market Use located at 733 Center Street.

Town Clerk administered oaths to those testifying during this hearing.

Presenter: June Cowles, Planner stated this was Lot 6 in the same location for proposed flea market.

Cowles gave background information and presented the staff report which is attached and incorporated as a part of the minutes. Highlights: Planning Board met March 12, 2007; applicant requested to add Friday hours to SUP; Planning Board recommended approval with the conditions outlined on page 2 of the staff report; staff recommends with conditions, and being consistent with the 2025 LUP and UDO.

Mayor Weatherly opened the public hearing at 7:45 p.m.

Alan Manase, BBM Associates, representing the owner/applicant, Mike Howington, spoke in support of the Special Use Permit for the Apex Flea Market. No one spoke in opposition. Council Member Gossage addressed expiration, if any of a special use permit. Khin responded the special use permit would expire if the use ceases, if not was indefinite. With no further discussion, Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve Special Use Permit #07SUP02 for the Apex Flea Market with the conditions stated. Motion carried unanimously.

End of Public Hearing # 02

Public Hearing # 03 – Rezoning Case #07CZ03 – Salem Village PUD

Review: Continued from the 03/06/07 Council Meeting to allow Council opportunity to review the TIA; Planning Board met 02/12/07 and unanimously recommended approval with conditions stated by staff at the public hearing and agreed to verbally by the applicant; staff recommends approval of the 2025 LUP amendment and conditional zoning with conditions

Continuation of Public Hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Zoning Case #07CZ03, Winslow Properties, petitioner; seeking to amend the 2025 Land Use Plan from Mixed Use: Commercial, Office & Institutional, and High Density Residential to Mixed Use: Medium and High Density Residential; Office & Institutional; Medium Density Residential, and to rezone from Residential Agricultural and Medium Density to Planned Unit Development-Conditional Zoning (PUD-CZ) the property located at South Salem Street at future Apex Peakway, containing 313.8 acres.

Presenter: Dianne Khin, Assistant Planning Director, noted this hearing was a continuation of the previous hearing to allow Council to review the TIA; summary of traffic impacts and proposed improvements are attached (CD has TIA). Planning Board considered this 2025 LUP amendment and conditional zoning at their February 12, 2007 meeting and unanimously recommended approval with the conditions stated by staff at the public hearing and agreed upon verbally by the applicant. Recommended conditions are on page 3 of the staff report. Staff report is attached and incorporated as a part of the minutes.

Council Member Sutton addressed the traffic pattern for the proposed 1100 residential units with 8,000 trips per day and only one out noting the traffic going to the Peakway, NC55 and Tingen Road which also has the school traffic; he noted a viable need for a bridge over the railroad to S. Salem Street to get to Kelly Road and US64; to approve this creates a traffic problem knowing we have transportation infrastructure problems to support this development and thinks the developer should contribute to a bridge as the town does not have funds to build a bridge.

Mayor Weatherly opened the public hearing at 7:50 p.m. Jason Bertoncino of Withers and Ravenal, represented the applicant, and agreed with transportation issues in the area; projects had been reviewed by Kimley Horn considering all traffic and recommendations were made for improvements and signal noting the signal realignment of Tingen Road at Salem Street; stated a bridge was impractical as a part of a single-family project due to the expense; he did agree with intersection improvements and had followed the related traffic study.



Public Hearing # 03 continued

No one spoke in opposition, and Mayor Weatherly closed the public hearing at 7:55 p.m.

Council Member Jones noted this request was to amend the Land Use Plan and was a conditional zoning, not a site plan; he noted lots of traffic components with the zoning and if rezoned, there's nothing to say they have to approve a site plan, and didn't want to give that impression; he shares the traffic concerns for Tingen Road and NC55; he wishes there was a way to fund a bridge over the S. Salem Street railroad tracks, noting this was in the same category of another project addressed over the last three years.

Council Member Jensen addressed the same concern, wanting a compromise to construct a bridge and agrees without a bridge there creates a bigger problem. He also shared concern that a fee-in-lieu was being accepted and did not agree in getting a 5 acre park vs. a 30 acre park also noting the cost of land. He noted alternatives in the UDO that allow purchase of land elsewhere, offsite giving Seagroves Farm as an example; if there's not a large park planned here – the land in exchange vs. giving up \$375,000; he noted this area was not bad for a park even with another one near by.

Council Member Gossage addressed traffic issues, even with the bridge over to S. Salem Street and to NC55 would be crowded; noted Williams Street also needs improvements; Tingen Road is also packed and has its issues. He also stated fee-in-lieu was recommended to build the park, and would be change in policy from previous practice to purchase land elsewhere for a big park vs. collection of small ones; may consider this before going in that direction. Council Member Jones stated the Parks, Recreation Advisory Commission made their recommendation because the W.C. Park at the elementary school and a park the Town of Apex partners with; recommendation of a 10-12 acre park, plus fee-in-lieu to develop the park and in proximity of the school; he noted receipt of fee-in-lieu legislation 10 years or so ago - maybe some restriction. Council Member Sutton added the price of land had gone up since then. Council Member Jones didn't agree that you could make the comparison of \$375,000. Council Member Jensen asked if it were worthwhile or not to purchase land off site, with Council Member Jones responding this recommendation had come to them from the Parks and Recreation Advisory Commission.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Sutton to deny the request due to the traffic problems and wanting to consider property exchange for land and not accept a fee-in-lieu.

Council Member Jones called attention to and confirmed with staff the zoning of the property, residential with one piece being shown as medium density, and continued if developed with the current Land Use Plan the traffic would be more than what's being proposed; while he agrees with the traffic problem, it's not worse than one that would fit the LUP; staff agreed with his statement.

Council Member Jensen was willing to look at options for building a bridge for Salem Street access, and wanted to look at property exchange vs. fee-in-lieu. Council Member Jones agreed, but noted this was a rezoning before them. Mayor Weatherly noted receipt of a unanimous recommendation for approval by the Planning Board, and restated the motion was to deny. Council Member Jones noted they could rezone but not approve a site plan without a bridge or connection to the Peakway. Council Member Jensen felt it critical to have a bridge or some mechanism in place and willing to wait on a decision for two weeks.

Bertoncino responded to speak to the bridge would require railroad involvement and nothing could be resolved in two weeks; they had reacted to staff and Parks and Recreation Advisory Commission in regards to the parks even if they didn't like this. Mayor Weatherly added they wouldn't see any movement on the bridge in two weeks and asking if this was delay for the sake of delay but not to expect something on the bridge. Council Member Jensen wanted reasonable development for the town, however noted there was no money to build a bridge for this.

Mayor Weatherly restated the motion was to deny, however, Council Member Jensen was willing to wait to get a better visual as well as on the park situation. Council Member Sutton stated they had not said anything about the bridge or money to construct one.



Public Hearing # 03 continued

Council Member Jones thought perhaps John Brown, Director of Parks and Recreation may want to participate on this before a decision was made. Bertoncino understood they had some questions regarding contributions, and how to get there, and would talk with staff.

Action: Council Member Jensen withdrew his motion; Council Member Sutton withdrew his second. Mayor Weatherly asked if there were another motion to be made.

Action: Motion by Council Member Gossage and second by Council Member Sutton to continue this public hearing to the April 3, 2007 meeting. Motion carried unanimously.

Public Hearing continued to April 3, 2007

Public Hearing # 04 - Major Site Plan Enclave @ L'Hermitage

Review: Planning Board met 03/12/07 and unanimously recommends approval with condition recommended by staff.

Public hearing and possible motion regarding major site plan for The Enclave @ L'Hermitage; L'Hermitage @ Beaver Creek, LLC., petitioner, seeking major site plan approval for a four story building including 125 condominium units, an internal courtyard, and first story parking for the property located within L'Hermitage development on Olive Chapel Road, southwest of Zeno Road and the future WakeMed facility containing 2.99 acres.

Presenter: Brendie Vega Mkhwanazi, Senior Planner.

Staff report was presented which is attached and incorporated as a part of the minutes.

Highlights: Mkhwanazi oriented to the site location, adjacent zoning and land uses, project data regarding site plan third and final phase of L'Hermitage development 125 condominium units, building design, landscape and buffers, RCA, grading, parks and recreation, access and circulation, stormwater requirements. Planning Board met March 12, 2007 and unanimously recommended approval with the condition an arborist certification letter that the RCA relocated areas have been re-established and meet the RCA replanting requirements of the UDO prior to obtaining a Certificate of Occupancy. Staff recommends approval with conditions for the Enclave @ L'Hermitage Major Site Plan and recommended condition by the Planning Board, as the proposed site plan is consistent with the 2025 Land Use Plan and Apex Transportation Plan and the UDO, and L'Hermitage PUD-CU Plan.

Mayor Weatherly opened the public hearing at 8:20 p.m.

Brandon Moore, ETD, stated Phases 1 and 2 addressed stormwater with a 25 year storm design and will accommodate this phase. Council Member Jensen wanted to assure the design was followed. Moore assured he was working with Mike Deaton, Environmental Services and would be the cleanest phase of the project putting run-off in existing ponds on site; has met with neighbors and worked with staff for an acceptable high quality and compatible project providing a need for the area having valet parking and interior court yard with water features, benches, patio, and putting green.

No one spoke in opposition.

Staff clarified this would not change the organization plans for connectivity; a stub street has been provided to the north for a future connection to Zeno Road; clarified maximum height of the building 48' with Wake Med being 60'; noted the public road would be abandoned at a point just east of the clubhouse and converted to a private drive (they will maintain) that will continue along the west and south sides of the building and connect with the public street located immediately to the south; parking will have internal circulation rather than public thoroughfare.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the major site plan with the condition stated. Motion carried unanimously.

End of Public Hearing # 04



Public hearings continued

Public Hearing # 05 – Unified Development Ordinance Amendment

Review: Planning Board met 03/20/07 and unanimously recommends approval.

Public hearing and possible motion to amend the UDO - Section 7.5.4(E) Public Access Requirements; to require a second public access point for residential developments above 50 units; public access points would require a 1000 foot separation with Town Council discretion to reduce the distance between points of access to no less than 250 feet.

Presenter: Brendie Vega Mkhwanazi, Senior Planner, stated the new section 7.5.4 (E) Public Access Requirements would identify the number of public access points required based on the number of residential units above 50 units and would require a 1000 foot separation, with town council discretion to reduce the distance to no less than 250 feet. A community survey was conducted of the surrounding towns of Raleigh, Cary, Morrisville, Knightdale; Morrisville made this amendment. Holly Springs and Fuquay did not respond to the survey. Cary's has a ceiling of 100 single and multi family units for a 2nd access.

Mayor Weatherly opened the public hearing at 8:35 p.m. No one addressed this item and the hearing was closed.

Council Member Jones addressed the change to the NC Building Code Appendix D as part of the Fire Code and noted the building code would affect the units. Russ Dalton, Transportation Engineer, expressed the town sets higher thresholds not required by the fire/emergency departments regarding access.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones to amend the UDO adding the new section. There was no second to the motion. Council Member Jensen felt this was stringent, 50 to 100 makes more sense. Motion failed. Mayor Weatherly asked staff may want to address this at a future meeting.

End of Public Hearing #05

Public Hearing # 06 – Annexation Petition #411

Public hearing and possible motion regarding Annexation Petition #411, N&I Properties, LLC., owners/petitioners, petitioning to annex 2.988 acres into the Town's corporate limits and located on Investment Boulevard.

Presenter: David Rowland, Director of Planning oriented to the location of the property, needing town services.

Mayor Weatherly opened the public hearing at 8:44 p.m. and with no one speaking closed the hearing.

Action: Motion by Council member Gossage and second by Council Member Jones. Motion carried unanimously.

End of Public Hearings

NOTE:

Manager Radford stated this would be the last meeting of the Planning Director David Rowland, retiring after 20 years of service and expressed his appreciation for his service to the Town. Rowland expressed his confidence in his successors and looks forward to his retirement.

**OLD BUSINESS**

Consent agenda items # 7 and # 8 were removed from the Consent Agenda for consideration under Old Business as requested by Town Attorney Fordham.

CA 8 (A2) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ26, ALA Commercial, LLC, petitioner; changing the zoning classification of the lands described located at E. Williams Street (NC55) north of Bobbitt Road. Attorney Fordham stated a revised packet was before Council due to a house keeping matter and he now recommends approval of Consent Agenda Item # 8. **Action:** Motion by Council Member Jones and second by Council Member Gossage to approve Consent Agenda item #8. Motion carried unanimously.

CA 7 (A1) Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case #06CZ23 Kite Realty Group, petitioner; changing the zoning classification of the lands described located at South Hughes Street and Apex Peakway, west of NC55. Attorney Fordham stated this item relates to the Kite Realty petition for rezoning that was approved at the last meeting of the Council; lease holder that has interest in the gas station at US1 and NC55 had brought to the Town Clerk's attention an issue regarding the notice of the rezone and desired to express their position.

Attorney Clyde Holt representing Kite Realty and petitioner, stated they had met with Mrs. Hack, staff and others; Mrs. Hack expressed she was not interested in putting all of her property under contract which is the portion under lease and the home place. The land planners had recommended if not purchased or developed, include it in the zoning of all the land. Staff recommended the zoning for all the property, this parcel included. He does not have a current position, one way or the other, as the land is not under contract and no intent to do so. He urged Council to not take any action that would interfere or impede this project having given an affirmative vote on this project. He doesn't represent the Town however his view is when the ordinance passed it passed. He noted the parties who have interest to change the zoning can do so by rezoning proposal; he doesn't think Council can repeal, do away with or modify the action taken. Gas station is a permitted use, and as far as set back issues, reconstruct or improvements to the building, they have a method by which they can address the Board of Adjustment and staff for relief.

Attorney Fordham stated a representative of Holmes Oil wished to address this matter. Mr. Edward Holmes, President of Holmes Oil, explained they had acquired the Kenan Oil site with a long-term lease planned for a convenient store. In a joint venture, the McDonalds was built across the street; they removed the storage tanks and cleaned the site. Sewer easement was acquired; had addressed thoroughfare improvements on NC55 corridor with NCDOT; concerns were expressed regarding damage to the property and have been on hold with NCDOT. They and the realtor had met with Ms. Hack over the past two years in thoughts of planning the property together – a master plan being more usable long-term. Developer did want to meet with Kite however have not met and felt this should have been worked out before now. He visited the internet site and saw this item was on the agenda and didn't realize this had gone this far in the process; in January had written Ms. Hack to remove this site from the rezoning request as their understanding was if the parcel was rezoned, the setbacks and building criteria would be more stringent and would have less usable area and may not be able to build on it. At that time Planning staff indicated it was not on the agenda and to keep check, and now finds it rezoned. He has a recorded lease on the property and has paid rent a long time and felt it would work out having a fortune invested. He noted the buffer on Williams Street would be reduced by 80' seeing no solution, and asking help to work this out.

Dianne Khin, Assistant Planning Director, noted the site was not grandfathered with property not used in years and if there was a site plan had long expired; meets the current UDO; PUD reducing set backs is not necessarily the case; the reduced 100' buffer off US1 is less than PZ Zone – 30' off NC55, and she's not sure it makes any difference; there's not a lot of record for this, and if there's a hardship, they could request a variance through the Board of Adjustment process. Mayor Weatherly noted any proposed business would have to comply with the UDO. Council Member Jones added the impact to the site was not from the rezone but from the UDO which has an ordinance in place.



CA 7 (A1) continued

Holmes stated he has a recorded lease and looked at the Ordinance and PC Zone set back on NC55. Khin added he would have to look at buffers first. Khin stated the buffer setback requirements. Holmes asked if he had to comply with Kite site plan or could he be on his own. Rowland responded the property can be used for a convenient store and he could submit a site plan for the area and would look for architectural standards. Rowland further stated a subdivision plat had been signed on this. Holmes indicated they had satisfied his concerns for now and would work with staff. Attorney Fordham advised there was a revised packet before them due to housekeeping matters and recommended approval of the revised packet.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve Consent Agenda item # 7. Motion carried unanimously.

End of continued items from Consent Agenda under Old Business.

Old Business # 01 – Beaver Creek/Reedy Branch Regional Pump Station Site

Review: Presentation by Hazen and Sawyer Engineering Firm

Possible motion to approve the selection of the Beaver Creek/Reedy Branch Regional Pump Station Site.

Presenter: Tim Donnelly, Director of Public Works introduced Robert DiFiore, P.E. and Vice President of Hazan and Sawyer Environmental Engineers and Scientists to provide a review of the selection of the Beaver Creek/Reedy Branch Regional Pump Station Site, alternatives and recommended site. DiFiore stated his company was charged to find a way to best serve and comply with the goals to move water to the Cape Fear River. Four sites were investigated, site selection criteria was identified for each site, with a recommendation to select Site 4 on North Olive Chapel Road due to its unique advantages, being a single parcel with no residences and the least impact to the public, with the least associated costs of the four sites; map of site alternatives and site selection chart are attached. Site locations: Site 1- Richardson Road, Site 2-SE Olive Chapel Road, Site 3-SW Olive Chapel Road and Site 4-N.Olive Chapel Road. In discussion of associated costs for the site, it was the consensus of Council there be some balance of the cost to be fair to all Partners as the cost to Apex would be an estimated \$40 million with Partners being aware of this concern. Site 1 would be to the towns' advantage, however, conservation easement would create problems and could create several years of delay; also gravity flow would cost more money as well as shift the \$40 million to the Partners. Mayor Weatherly expressed Apex would stand alone among the Partners if Site 1 were recommended by Apex. Attorney Fordham advised the site selection must be unanimous with all Partners. He further offered Council may want to authorize the Mayor to address the Partners regarding equity of cost sharing. The design of the pump station site, time for construction and completion were discussed. Mayor Weatherly did not want to make a decision on the site selection prior to negotiations and talks with the Partners regarding the cost sharing. Donnelly added the sooner the site was purchased, more assurance the Partners would have. Mayor Weatherly will discuss the cost sharing with the partnership and return with what would be the best deal for all related to the site selection.

End of Old Business #1

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 addressed the building code asking Council to review it calling attention to the recent townhome fire in Raleigh. Asked Council consider impact fees with development that would provide more school construction due to the growth of the area. Mayor Weatherly responded the building code is the approved State Building Code, and impact fees are authorized by Legislature and no way for the Town to impose impact fees without legislation approval and imposed through the Town's Charter; offering Apex was one of the last towns to receive such legislation.

End of Public Forum



NEW BUSINESS

New Business # 01 – Proposed Land Exchange related to Fire Station # 4

Possible motion regarding adoption of Resolution that would authorize the exchange of real property between the Town of Apex and ALA Commercial LLC.

Presenter: Bruce Radford, Town Manager presented for adoption a Resolution authorizing the exchange of ALA Commercial LLC's 1.22 acres of land for the Town's 0.81 acre tract of land. The proposal is in the attached Agreement. The proposed land exchange is related to Fire Station #4 on NC 55. Both parties are in agreement to the exchange; both tracts are of equal value; map attached and noted common access point. Attorney Fordham recommended adoption of the Resolution with the exception noted on the map of the common access point.

Action: Motion by Council Member Jones and second by Council Member Gossage to adopt Resolution No. 07-0320-04 authorizing the land exchange between the Town and ALA Commercial for the tracts located on the east side of E. Williams Street in Apex. Motion carried unanimously.

End of New Business item # 1

Presenter: Mayor Weatherly

New Business # 02 – Apex Board of Adjustment

Mayor Weatherly made a request for Council's consideration the recommended appointment of Amanda Stokes to serve a three year term on the Apex Board of Adjustment that will expire December 31, 2009.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the recommended appointment. Motion carried unanimously.

ADD-ON

New Business # 03 – Agreement with CSX

Manager Radford asked Council to enter into an Agreement with CSX: Agreement No. CSX-05799 Pipeline Crossing Agreement by adopting a Resolution Authorizing him to execute the Agreement which allows for the construction of the water main to the New Hill project.

Action: Motion by Council Member Gossage and second by Council Member Jones to adopt Resolution No. 07-032-005 as requested and approving the CSX Agreement . Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session items to be discussed.



CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for a briefing by the Town Attorney regarding legality of contact with developers prior to conditional zoning hearings; potential lands swap at the intersection of Old Raleigh Road and the Apex Peakway, and a matter regarding condemnation. **Action:** Motion by Council Member Jones and second by Council Member Jensen to move into closed session at 10:05 p.m. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Gossage and second by Council Member Jones to move back into regular session at 10:20 p.m. Motion carried.

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

Action: Motion by Council Member Sutton and second by Council Member Jones to authorize the Town Manager to move forward with the process for the land exchange of the Town's property for property associated with Old Mill Village development. Motion carried unanimously.

Action: Motion by Council Member Jensen and second by Council Member Gossage to authorize the Town Attorney to proceed to provide a letter of the Town's assuming the risk regarding property access onto the Bagwell property in regards to an electric easement. Motion carried unanimously.

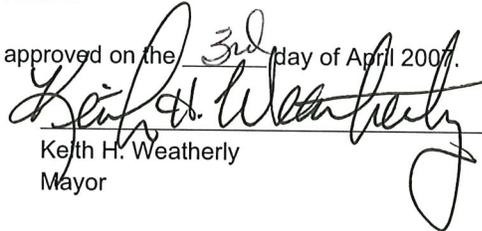
End of Regular Session

ADJOURNMENT

With no further business to come before the Council, a motion was made by Council Member Jensen and second by Council Member Gossage to adjourn at 10:20 p.m. Motion carried.

The minutes of the Council meeting of March 20, 2007 was approved on the 3rd day of April 2007.


Georgia A. Evangelist, MMC
Town Clerk


Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes of the Tuesday, April 3, 2007 meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street. Mayor Keith H. Weatherly presided over the meeting. All Council Members were present.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

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

PRESENTATIONS

Mayor Weatherly recognized and presented the Residential and Commercial Community Appearance Awards. Residential award was presented to Richard and Julia Brooks, 107 Hunter Street for the Tremendous Landscape Improvement That Expresses Quaint Downtown Character" and the Commercial award was presented to Hare Pipeline Construction, Inc., President Nelson Hare and David Hooks Vice President for "Maintenance of Natural Treescape."

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 for approval.

Action: Motion by Council Member Jensen and second by Council Member Schulze to approve the consent agenda. Motion carried unanimously.

- 1) Minutes of March 20, 2007 Council meeting.
- 2) Minutes of March 20, 2007 Council Closed Session (recorded separately).
- 3) Annexation Petition #413, Town of Cary, owners/petitioners, petitioning to annex 207.275 acres into the Town's corporate limits and located off Old US 1 Hwy; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a public hearing for May 1, 2007.
- 4) Annexation Petition #414, AB Properties of NC., LLC., owners/petitioners, petitioning to annex 6.163 acres and includes 0.399 acres of right-of-way into the Town's corporate limits and located on Apex Barbecue Road; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a public hearing for May 1, 2007.
- 5) Wake County Tax Report for the Town of Apex approved and accepted by Wake County Board of Commissioners on March 12, 2007.
- 6) Declare former courtroom furnishings housed in the Police Department, surplus property and approve donation of same to Wake Technical Community College for Basic Law Enforcement Training Program.

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 the following modifications:

Attorney Fordham asked to add three items to be considered during Closed Session: Real Estate Acquisition, Potential Litigation regarding EQ, and receive legal advice from Town Attorney

Mayor Weatherly asked to reverse Public Hearing # 1 and # 2 in consideration of time for the applicant of Salem Village PUD.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve the Regular Meeting Agenda as modified. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing # 02 – Rezoning Case #07CZ03 – Salem Village PUD

Applicant requests continuance of this public hearing until the May 1, 2007 Council meeting to address concerns related to traffic and construction of the Apex Peakway; Review: Public hearing #07CZ03 was continued from the 03/20/07 Council Meeting to allow applicant opportunity to consider options regarding bridge over CSX rail tracks over to S. Salem Street and having been continued previously from the 03/06/07 Council Meeting to allow Council opportunity to review the TIA; Planning Board met 02/12/07 and unanimously recommended approval with conditions stated by staff at the public hearing and agreed to verbally by the applicant; staff recommends approval of the 2025 LUP amendment and conditional zoning with conditions.

Continuation of Public Hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Zoning Case #07CZ03, Winslow Properties, petitioner; seeking to amend the 2025 Land Use Plan from Mixed Use: Commercial, Office & Institutional, and High Density Residential to Mixed Use: Medium and High Density Residential; Office & Institutional; Medium Density Residential, and to rezone from Residential Agricultural and Medium Density to Planned Unit Development-Conditional Zoning (PUD-CZ) the property located at South Salem Street at future Apex Peakway, containing 313.8 acres.

Presenter: Dianne Khin, Planning Director stated this was a continuation of Case #07CZ03; applicant requests a continuance of the Public Hearing to May 1, 2007 to address related concerns regarding transportation issues and Apex Peakway; request is attached. Mayor Weatherly called for a motion regarding the applicant's request.

Action: Motion by Council Member Sutton and second by Council Member Jones to continue the public hearing for Case #07CZ03 to may 1, 2007. Motion carried unanimously.

Public Hearing # 01 – Rezoning Case #07CZ02 – Kelly's North Carolina Leasing LLC

Review: Public hearing continued from March 6, 2007 Council Meeting and continued to April 3, 2007 Council Meeting; applicant requested continuation for one month; Planning Board met February 12, 2007 and unanimously recommended denial for this rezoning based on non-compatibility with adjoining properties, and difficulty of meeting UDO buffer requirements to neighboring RA property; Staff recommends approval based on the 2025 Land Use Plan and adjacent O&I uses; Valid Protest Petition is on file.

Public hearing and possible motion regarding Rezoning Case #07CZ02 of .50 acres located at 1302 N. Salem Street.

Presenter: Brendie Vega Mkhwanazi, Senior Planner, presented Case #07CZ02 continued from March 6, 2007 Council meeting. Staff report is attached and incorporated as a part of the minutes. Orient: Applicant is Kelly's North Carolina leasing LLC, 1302 N. Salem Street. Adjacent Zoning and Land Uses were noted with current zoning: Residential Agricultural and requested zoning Office & Institutional – Conditional Zoning. Planning Board met February 12, 2007 and unanimously recommended denial to rezone based on non-compatibility with adjoining properties, and difficulty of meeting UDO buffer requirements to a neighboring residential agricultural property. Project impacts: North Salem Street is heavily traveled area during peak traffic hours. Proposed use is adjacent to other O&I uses but is also near RA, Single Family. Minimal impacts can be expected with property mitigation. Property will require site plan along with buffering and compliance with UDO standards once it is rezoned.



Restrictions/Conditions agreed to by the applicant (signed copy attached):

- o Office, Business or Professional only
- o Outside storage shall be prohibited on-site
- o Off-street parking shall be limited to side and rear of structure. Off-street parking shall be screened for view from adjacent properties and from Salem Street
- o Owner shall create and maintain a Type A buffer along the property lien shared with Hurlock Richard E. Wake County parcel identification number, 0742462517. In addition to the Type A buffer, a six foot tall closed wooden fence shall be constructed along the same property lien as previously mentioned to further screen the side of the structure, any outdoor porches, decks, as well as parking located in the rear.
- o Owner shall submit site plan bringing all non-residential uses into conformance with applicable Town UDO standards.

Staff continued: Request to rezone complies with the 2025 Land Use Plan classification of Mixed-Use Commercial, Office & Institutional, and medium density Residential. Staff recommends approval of the rezoning request based on the 2025 Land Use Plan.

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

Speaking in favor: Pat Mallet, ETD, 2880 Slater Road, Morrisville, represented the applicant and presented exhibits regarding the rezone request. Applicant asked continuance of the hearing to seek the assistance of ETD, and was not currently involved in the original submittal. Applicant had consulted planning staff and due to lack of understanding of the zoning requirements and site plan requirements, was of the understanding he could move into the existing renovated home, and had spent a great deal of money on the older property and was unaware of how the mechanics of zoning works. Continuance of the hearing has allowed for a neighborhood meeting with two Salem Street residents participated and thinks had a positive discussion and believes satisfied their concerns; a site plan has been submitted; will commit to zoning conditions that has been submitted; believes the conditions address the issues of the Planning Board. He believes this to be the first time he had seen a planning board vote against a land use that is recommended in the land use plan and believes if they check the minutes was the basis of their decision. Conditions have been submitted and particular to deal with the one adjacent property. Photos showed improvements to the front view of the older house and property, located on one-half acre, and as a planner and one involved in design guidelines, and renovations of older properties sees this a textbook example of how to treat a property for an adoptable use for an older residential structure, and hopes this will become a benchmark for N. Salem Street corridor future development. Other views of the property were shown; Land Use Plan calls for residential, office and commercial uses on the site and is proposing office use with the conditions speaking to the nature of this use; North Salem Street Area Plan: both ladies attending the meeting were in favor of keeping the small town character as it exists with the small town appeal, curb appeal and putting parking to the rear, screening properties and improving all of the older structures that are worth improving. Aerial images of the site were shown and its compatibility with the surroundings; to the rear of the property he believes to be industrial uses; conceptual site plan shows plantings and property lines; at the northern end of the property proposes a wooden fence and additional plantings – the landscape preserves the existing house, the rear area parking and screening keeps the historical character; conditions have been submitted; more photos of the property and surrounding properties and other views were shown and hopes this would be a benchmark for future improvements; hopes to preserve the drive at the front of the property; would like to utilize, and screen and supplement the area. He believes at the public hearing issues of the adjacent property owner was unsightliness, noise, employees being there after hours; he believes the conditions offered will take care of these issues. He showed a view from the porch looking at the neighbors property and from a side view appears to be an accessory structure and variety of storage items in the yard; view of the rear deck issues are addressed in the conditions; rear view of the property is clear that the viability of these properties for residential uses is marginable dealing with the uses (commercial) each day and during the hot months, noise, dust, and would impact any residential use or non residential use for that matter. His applicant believes in being a good neighbor and believes he can do whatever needs to be done; neighbor has chickens and lets them come onto the property and has no problem with that. Intent is to follow the site plan and bring this into conformance; his client regrets the fact that he launched into this process and moved into the building prior to having compliance with the zoning but trying his best to rectify that. Applicant agrees to all the added conditions as stated and has submitted a signed original to the Clerk.



Public Hearing # 01 continued

Council Member Jensen asked if he would be willing to remove in condition # 2 regarding off-street parking... limited to the side and rear of the structure, to remove side. Applicant was willing to remove side.

Council Member Sutton understood the applicant had already occupied the building and conducted business there. Mallet stated there had been a misunderstanding of the zoning and submittal and as to what the rights were in the zoning ordinance; the operation has four or five staff persons, including his wife who finances the books operating there; they have no sign and no need for a sign, and keep normal hours, are very quiet. Other than the one objection from the adjacent property owner, had no complaints with their activity. It's about as low anticipated office use as you can get.

Mayor Weatherly asked if anyone else would like to speak in favor of this rezoning:

Jacque Burgess lives across from the property down the pasture at 1207 N. Salem Street and owns 1201 and 1203 N. Salem Street, and was one of the ladies that went to look at it and didn't know it was commercial until she got a letter from the next door neighbor. After visiting there, it really has improved the looks of the neighborhood; it was bad looking until he fixed it. She doesn't know how anyone would notice it was commercial unless they drove in to the back of the property; they have really done a lot to improve the looks of it. She feared before that saying yes to one commercial thing would make everything commercial out there and is the entrance to the historic district; her home is about 60 years old and believes in keeping it like it is, but it really has improved the neighborhood.

Letter speaking in favor of the rezoning was submitted and attached by Dorothy L. Goodwin, 1409 N. Salem Street, stating the property has been improved and made the building more attractive; all parking is in the rear of the house and provides plenty of space; has no objection to Mr. Kelly's request.

Mayor Weatherly asked if anyone would like to speak in opposition of this rezoning:

Dr. Richard Hurlock, 1304 N. Salem Street, adjoining property owner, an Apex resident since 1997 single family, four unit rental and property next door; is against the rezoning believing it would effect his property value if he tried to resale with folks looking for a home would not want to be next to a business as they average five cars parked in the back every day with others coming in and out; as far as he knows, he was not notified of the second meeting and does not know about this proposed plan; didn't see a driveway in the plot shown because the current drive way is between that house and his house; he stated they were not his chickens, but the Smith's chickens next door; he has chickens but those were not his; picture of the rear property is not the rear property view that exists behind the house; all you see is pine trees and a lake; you do not see any vehicles and doesn't know where they got that picture; he also was responsible for getting a petition signed by all the major property owners within 100' adjacent to this property.

Council Member Jensen asked clarification on the location of the drive. Mallet referred to the conceptual site plan, showing what was drawn will achieve an opaque screen between the drive and the house, and with a closed wooden fence; if faced with a situation where the Doctor wants or prefers that to be relocated, then feels that's unfortunate, but are willing to work with him. They will share the plans with him, wasn't invited to the meeting they had and was right next door, he was not clear on the miscommunication; the applicant is willing to work with the driveway and if it needs to be moved, it needs to be moved.

Council Member Schulze clarified the type business there. Mallet responded it's an office strictly administrative storage, no storage, for a soil and erosion control business for a separate location where the crew works from and all the storage occurs. The office is a separate location so they can work and not deal with constant questions from the work crews. Manager Radford asked to address Council Member Schulze question: this is Kelly's Soil and Erosion Control Fencing (green fencing) and place it around commercial properties.



Council Member Sutton asked staff if the property is sufficient in size to meet the UDO requirements for buffer on the site plan, and Council Member Jones added and any other UDO requirements; if they did approve the rezoning will they be able to meet the other requirements. Staff responded no site plan has been submitted; they do not review site plans during the rezoning; she assumed the applicant's representative has advised him on this.

Council Member Jensen asked how they could limit vehicle types and thought it was limited to automobiles; Mr. Joseph Kelly, owner, stated there were no tractors or equipment, he drives a pick-up truck and would be the biggest truck. He has a two and one-half acre facility off Bob Horton Road where they keep all their equipment. Mallet felt this fell under condition # 1, no outdoor storage but if they wanted to add vehicle/ equipment, obviously the intent being to with Council Member Jensen wanting to add "no storage of equipment".

Manager Radford reminded Council there was a valid protest petition. Mayor Weatherly closed the public hearing at 7:30 p.m. Council Member Gossage asked Khin to read on page 3 of the Planning Board report to Council the Reason on No. 10. Khin read: size of lot possibly will not allow compliance with UDO in terms of buffers, parking, etc. Council Member Jensen says if it doesn't comply we don't have to give them a site plan. Khin responded they will have to meet the UDO when they submit their site plan; that is correct. She stated this is what the Planning Board said and staff has no idea if they can comply or not; they have not reviewed a site plan. Mallet stated at that time there was no conceptual site plan prepared; he believes they can submit a site plan and demonstrate compliance with the landscape requirements. Council Member Gossage asked what the Land Use Plan designates the site; staff responded mixed use, medium density, commercial and office and institutional.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve rezoning case #07CZ02. Mayor Weatherly stated a valid protest petition requires a super-majority and needs four votes to pass the motion. Mayor Weatherly asked if there were discussion on the motion. Council Member Jones he made the second to the motion as it is in line with the land use plan, it is a rezoning and not a site plan, and remains to be seen whether or not they can make a site plan that meets the requirements; it's a small piece of property; it's hard for him to deny a rezoning request that is consistent with the land use plan; will see what happens when he comes with a site plan. Council Member Jensen agreed they would deal with the situation at site plan. Council Member Sutton asked why they would approve the rezoning if he can't meet the conditions, if the site plan is not going to work – we can't get the buffers; staff tells us it may not meet the requirements of the UDO, with Council Member Jones responding they didn't know if it would work or not. Council Member Sutton was bothered that they moved in and started business prior to the rezone, and it sets a dangerous precedence; someone goes ahead and puts a business and then comes in and we give them squatters rights, we'll go ahead and give you the zoning you want, they think the rezoning is automatic; even if it is on the land use plan, they should have come in first before they started using it for that business. Council Member Schulze agreed with this, but based his decision on the merits of case only and not whether or not they were already in business. Council Member Sutton noted they had violated the zoning ordinance. Council Member Schulze responded this did not play a role in the decision. Council Member Sutton stated the fact that they had violated the zoning ordinance played a role in his decision and he can't support this. Council Member Jensen felt if they violated the zoning ordinance they should pay the penalties; they were not supposed to do this. Council Member Jones agrees this is legitimate, but is a separate issue from the rezoning request; what's before them is whether or not to rezone it, not whether or not they violated any ordinances. Attorney Fordham advised that the issues should be treated separately.

Mayor Weatherly called for a vote on the motion. Vote on the motion was four in favor and one opposed, with Council Member Sutton voting no; motion carried four to one which is a super majority vote.

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.*

Trish Creeda, 203 W. Moore Street, has lived for three years adjacent to the property with the sheep, and does not understand the on-going issue and how it got to this level and deserves answers; the neighbor has been asked to do what had been asked the town to enforce for a long time; she hasn't been able to use her back yard, and neighbors have been asking for the town to look at this for over six years. She stated the media had said Watts had 70 sheep living down stairs in his house and this is inaccurate; she didn't know where that came from; because the town wouldn't address these issues she addressed them with him; she stated the town did not stand behind her and she dealt with the best she could; she stated she has a pretty good neighborhood and complained to him about the smell and asked him to do the things he could do.

Mayor Weatherly asked the council's indulgence to respond. He apologized to her and the neighbors, noting this un-excusable that this would happen with the nature of the problem exposed last week. Apex adopted Wake County Animal Control Ordinance and those people have been very responsive coming out to every complaint; their issue was not the number of animals, but the health, safety and welfare of the animals; they found no abuse of those animals and he's convinced they know what they are doing and very tentative to their mission which is to look at those issues; but as far as to the condition of the surrounding properties, the effect or negative impact why the town's public nuisance ordinance did not come into play, he can't explain, evidently it is not sufficient to address this issue, but hopefully this is behind us and will not happen again. He doesn't believe the Wake County animal control ordinance is no longer sufficient for the town any longer and need an ordinance of our own; we need to address specific animal issues that go beyond those things; did respond to complaints but didn't have enough teeth to any of those ordinances to fix it, but we will now. She was told by her neighbor that the County and Town had said he was in compliance, so he's not been given direction as to what to do and now out of control; the hammers gone down. Mayor Weatherly told her this case is now allegations of animal abuse and a serious issue, and is a criminal problem and the judicial system would address this issue. The Town ordinance does not address this.

Tom Colhoune, 1491 Salem Street, understands the land use plan and is a plan and apt to change; thinks we do need an animal ordinance but concerned that it may have an affect on folks that live in the ETJ who dive have farm animals such as cows and pigs as he does. Mayor Weatherly stated this will be addressed in the upcoming discussion.

Liz Ladd, sister of Trish Creeda, lives in Raleigh and understands Mr. Watts is accused of abuse; she sees her sister's concern that the Town that the hammer has been dropped on Mr. Watts; she has observed over the three years the animals and observed the communications between her sister and the town and thinks her frustration now that the hammer has fallen feels it's a major reaction from the town; she understands he's been given a citation to clean-up the property and people there looking to condemn his home today; she observed a broken man last Monday and she's does not condone what's going on with those animals, but she does know that she has seen documentation that she thinks this man thought what he was doing was ok. He was getting information from the town that what he was doing was ok.



Public Forum continued

Mayor Weatherly responded there was no violation of the ordinance to have an animal, animal cruelty is a state of NC statute, that he allegedly violated; as far as cruelty to animals if he didn't do it, he's sure the judicial system will resolve that issue, but if he's guilty of that ... hopefully we do have animal cruelty statutes that will address those things. He referred to her email, and stated the media was here and that they continually run the film clip of the animal struggling to get up and she had told him in her message the animal was crippled since birth asked her to tell him about this particular animal. She stated her sister has an elevated deck and she could see over into the yard and she asked about this animal and he said it was a special sheep to him; he would carry it around the yard and make sure it was fed and watered. Mayor Weatherly asked that she didn't know for a fact that it was crippled since birth. She responded it was, he said it was crippled at birth. She has never walked around in the back yard; Mayor Weatherly stated he really hoped that was the case, with Ladd responding yes but she didn't know that for sure. She stated the frustration now, they asked for help and feel now they are having a major reaction from the town. Mayor Weatherly continued they way it should be viewed is the proper authorities for animal control issues in the county have now been called in and have looked at every issue and never saw abuse and never saw any violation until last Monday and then once the violations of animal cruelty then those statutes have to be addressed and have to be taken through the process, and to say the hammer fell, the hammer couldn't have fallen before then because there were no violations ... with Ladd responding that property has not changed, the treatment of the animals has not changed. Mayor Weatherly did not want to get into a debate with her, but he told her every single time, the Manager had been out there himself, but every single complaint was referred to the folks that do investigate animal cruelty and he was diligent in following up with those complaints – never sighted, never viewed a situation where there was animal cruelty in his professional judgment until last Monday; he thought it rose to that level clearly on that occasion; he told her as he understood the situation; those charges have been preferred and the DA will run the course and if he's innocent, is sure that will be borne out in the courts.

Council Member Jensen recalled in 2002 the property owner had committed to a reduction in the number of sheep and chickens that was acceptable to the neighbors and was only like six or eight at the time; this was a surprise to him, not knowing what was going on, didn't recall seeing anything in terms of what was going on there; he thought it was corrected and what he said he would do, he had done what he promised. If he had done what he promised probably would not have gotten this far. Ladd knew her sister had acquired the property in 2004 and was quite a novelty and when they looked over the fence, there was quite a bit of livestock there.

End of public forum

NEW BUSINESS

Presenter: Manager Bruce Radford

New Business Item # 01 – Regulation of Certain Livestock Animals

Discussion to consider an ordinance regulating certain livestock animals: Mayor Weatherly stated the town is currently under Wake County's animal control ordinance and recent events have caused need to consider a town ordinance. Attorney Fordham presented two versions of an ordinance that address livestock bans, regulations, etc., one regulation by police powers and the other under the zoning ordinance; he explained the difference between the two. The first ordinance for consideration is the Police Power regulated ordinance that would apply within the corporate limits of the town and would not apply in the ETJ; there's no grandfathering which means if adopted and if there is anyone that has livestock or animals in the town limits, they would immediately be in violation; the town may take some reasonable amount of time to enforce it, if those folks were making a good faith effort. You could distinguish between various types of animals as to what is permissible and what is not. No public hearing is required. Zoning type ordinance is the second ordinance for consideration and limited under the UDO and would apply within the corporate limits and the ETJ, grandfathering would apply, regulations could be tied to various zoning districts, public hearing would be required, referral from the planning board would be required. Attorney Fordham gave examples of what other towns have done and read the provisions of Cary's ordinance. Council Member Schulze asked if the zoning ordinance could be restricted to the corporate limits. Attorney Fordham responded that regulations could be tied to zoning categories; if rural type land in the ETJ or the corporate limits were dominated by the zoning category, if you exempt that category you would be exempting the ETJ except in those areas that are very urban and have development.



New Business Item # 01 continued

Mayor Weatherly clarified the Police Power Ordinance would prohibit livestock of various types and domestic fowl, including chickens, in the city limits. Attorney Fordham stated the language as it reads from the draft ordinance, to include but not limited to cows, goats, sheep, swine, and other similar animals within the corporate limits of the town. Exemptions can be included in with for instance horses. Council Member Jones noted each ordinance contained a sentence which he thought would control pot-bellied pigs, suggesting perhaps a weight limit. Attorney Fordham noted this sentence was in several ordinances he reviewed and thought it best to name species throughout the ordinance vs. putting a weight limit.

Council Member Sutton thinks the police power ordinance doesn't grandfather in, and from forcibility standpoint by staff, is straight forward and allows for some interpretation for domestic fowl. Attorney Fordham thought the commonly understood definition of domestic fowl would apply. Council Member Sutton thought it easier to enforce and become effective immediately, and would not affect the ETJ. He doesn't think we need to exempt animals at this time, but may need to consider adding some in the future, example horses, if they become a problem within the city limits – manure and flies, and consider this under the health ordinance. Attorney Fordham advised horses would be covered by this ordinance; horses are livestock however did not list them specifically but would be in the general definition; he thought they may be exempt under section # 2 of the ordinance. Council Member Sutton sees them as much of a health hazard in town as a cow, or any other manure producing animal; he's not for exempting any species of swine, pot-belly or otherwise; exemptions start getting you in trouble. Council Member Schulze agreed, as far as exemptions, he had rather hold off and see what comes and address this later. Council Member Jones felt we would get some requests and could address exemptions on a case by case basis. Mayor Weatherly stated the ordinance could be addressed, if its found to be overly restrictive; asking why not start at this point; he's not aware of any horses this would be affected, but again this would only apply in the corporate limits and reassuring anyone that has horses or livestock outside the corporate limits, or ETJ or just have an Apex mailing address, this will not affect them at all. Attorney Fordham suggested Council may want to consider an effective date out a couple of weeks to allow folks who may be in violation a time period to remove animals. Mayor Weatherly added there could be cases of, say for instance a pet goose or ornamental swan on a residential pond, this could prohibit that. This time frame would give Council time to percolate over the ordinance, and if overly restrictive, could address this. Attorney Fordham stated the way it's addressed now, it doesn't have exemptions. Council Member Jones noted horses in the general area, but didn't know if they were in the corporate limits of Apex. Council Member Gossage noted one of the town plans includes bike pedestrian and equestrian; there is some acknowledgement of folks who own horses and may need to come back; he's thinking about the western part of town and maybe not in the corporate limits but in the ETJ, but something that in the future would have to be very mindful of; this maybe the one animal we may want to consider exempting.

Manager Radford added that in regard to this issue tonight, he will be the one dealing with the phone calls from those folks that have horses that we don't know about within the town over the next two weeks. In keeping with what Council Member Gossage had said about the pedestrian and equestrian plan, in the northwest portion of town, they already acknowledge and believe that the ability to keep horses on larger tracks of land, that is not today a nuisance, be acknowledged and would like to ask to include horses in the excluded/exempt section of this ordinance, knowing we will find a ground swell of folks that will come forward to address horses individually sometime soon, and will deal with these folks until this is brought up again. It has been addressed in the past, we've expressed an interest in being an equestrian community and adjacent to the American Tobacco Trail where horses are an amenity in that community and ask to discuss this. Mayor Weatherly was in favor of this and asked staff to come back with some parameters if horses are put in as an exemption, and may want to consider location of stables. He explained the NC Cooperative Extension Service, Equine Division shared with him the acreage needed for grazing animals and supplemental fed animals. He shared business people west of town, soon to be in the ETJ, that board horses, have riding stables, and board a lot of horses on a very few acres, but supplemental feed them and do not use the pasture as grazing or forage. The Cooperative Extension Service says they are healthy animals and not a negative; they are boarded but different than grazing such as a cow would do, they are fed. Council Member Schulze was ok with this, asking for a sixty day window to enact the ordinance; as far as he knows there are no recent violations, the problem has been solved; the sense of urgency is not there. Mayor Weatherly preferred to adopt the ordinance. Attorney Fordham offered an advantage to having an effective date, the Chief of Police would not be in a situation where he would have to use a lot of discretion as far as a violation and whether to site someone or not.



New Business Item # 01 continued

Action: Council Member Gossage asked if a motion were in order, and moved forward with a motion to adopt the ordinance striking the word "production" from the first paragraph, the three incidences, also in Section 2, adding horses as exempt animals, and with an effective date of May 1, 2007. Council Member Schulze felt there should be more time as for the effective date preferring June 1. Council Member Gossage was in agreement with June 1, 2007 for the effective date, adopting the Police Power Ordinance Section 4. 3. Council Member Sutton understood the nature of the conservation, they could come back and add horses as an exemption, to start off with the ordinance and with an effective date later; could come back at a later meeting with exemptions if needed to. Mayor Weatherly stated that was the nature of the conversation, but Manager Radford pointed out he anticipates ... with Council Member Sutton interjecting let him deal with the phone calls over the next two weeks and tell folks what the ordinance is that he is to enforce; he may not get as many complaints and thinks most of the horses he sees are in the ETJ not in the town limits. Mayor Weatherly stated if the majority of the council wanted to exempt horses, asked why subject those people to questions and confusion and stress that their horses are going to be outlawed and go ahead and include them unless there is a majority that wants to prohibit them to begin with; if they want to, then we can come back and put some parameters on this later; he didn't know why they would want to wait to add horses if the majority wanted to put them as exempt now and would reject all the confusion about any that may be in town. Council Member Jones asked Council Member Gossage to restate the motion.

Action: Motion by Council Member Gossage to approve Section 4. 3 to the Town Code striking from paragraph 1 and the title, the word "production", also striking the swine species characterized by swine and completion of that sentence, and in Section 2 adding horses as an exemption, with an effective date of June 1, 2007. Second to the motion was made by Council Member Jones. Council Member Jensen agreed with the passage of the ordinance, and the need to add horses; he's further thinking where a person has two acres and has one chicken, or what happens to the 4H child that has one goat on two acres; he hates to restrict folks anymore than have too and afraid now they are, but if they come back in 30 days, and start adding exemptions giving an example: miniature goats that are only a foot and one-half high and putting out less bad stuff than a smaller dog. Mayor Weatherly responded they could put out all the potential exemptions and never come to a conclusion. Council Member Jensen wanted to come back to this, with Mayor Weatherly responding they will, and sure the phones will ring from folks that have pets for a while and wants to.... with Council Member Jensen adding we need information from the Manager. Attorney Fordham advised if Council wanted to come back within the time limit to establish various performance criteria such as distance from residences, property lines or something like this..... with Mayor Weatherly interjecting he was thinking particularly for horses; he requested staff come back as soon as practical, with Council Member Jones adding and all the calls we may get regarding other animals that we need to know about as well to consider other exemptions. Council Member Gossage added, what they had heard from citizens is that we need to give our town staff authority that they did not have before hand and this will do that. Mayor Weatherly called for a vote on the motion. Vote on the motion was 5 – 0 with the ordinance being unanimously adopted as suggested by the Town Attorney.

End of New Business

WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session at 8:12 p.m. to discuss the following: Real Estate Acquisition, Potential Litigation regarding EQ, and receive legal advice from Town Attorney. **Action:** Motion by Council Member Jones and second by Council Member Gossage to move into Closed Session for the items stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Motion by Council Member Gossage and second by Council Member Jones to move back into Regular Session at 8:45 p.m. Motion carried unanimously.



ADJOURNMENT

With no further business to come before the Council there was a motion by Council Member Gossage and second by Council Member Sutton to adjourn at 8:46 p.m. Motion carried unanimously.

The April 3, 2007 Council Minutes were submitted by the Town Clerk for approval on the 17th day of April 2007.

Georgia A. Cranglist
Town Clerk

Kevin A. Cranglist
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, April 17, 2007 held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street.

Mayor Keith H. Weatherly presided over the meeting with all Council Members present.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

Council:
Mike Jones
Bryan Gossage
Bill Jensen
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.

PRESENTATIONS

Mayor Weatherly read a Proclamation for National Women's Health Week, May 13 – 19, 2007.

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: Motion by Council Member Schulze and second by Council Member Jones to approve the consent agenda. Motion carried unanimously.

- 1) Minutes of April 3, 2007 Council meeting.
- 2) Minutes of April 3, 2007 Council Closed Session (recorded separately).
- 3) Minutes of April 4, 2007 Finance Committee meeting.
- 4) Resolution authorizing condemnation of easements over certain properties for improvements to the sewer distribution system. Res. # 07-0417-06
- 5) Memorandum of Agreement between Town of Apex Fire Department, NCTF1 and NC Emergency Management for a \$25,000 equipment grant award and, to authorize Fire Chief to execute this MOA.
- 6) Amend Harris Contract # 52048 to change name from Apex Volunteer Fire Department to Town of Apex Fire Department and extend completion date to July 31, 2012 and to authorize Town Manager and Fire Chief to execute Contract.
- 7) Authorization for Mayor to execute revised General Load Reduction Plan and Procedures.
- 8) Approve Interlocal Agreement for Phase VI of the Triangle Area Water Supply Monitoring Project.
- 9) Wake County Tax Report for the Town of Apex approved and accepted by Wake County Board of Commissioners on April 2, 2007.

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. He asked to modify the agenda: Old Business # 3 would require receiving legal advice from the Town Attorney and moving into closed session and asked it be moved to the end of the meeting to include a closed session. Attorney Fordham asked to add a related item regarding a street matter. Mayor Weatherly asked for a motion to modify the agenda as stated with the request of the Town Attorney.

Action: Motion by Council Member Jensen and second by Council Member Sutton to modify the agenda as stated. Motion carried unanimously. The regular meeting agenda was set as modified.

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case # 07RZ09

Public hearing and possible motion regarding rezoning case # 07RZ09 Ambassador Presbyterian Church, petitioner, seeking to rezone from Light Industrial to Medium Density district classification; property location 1010 Schieffelin Road (formerly 722 Center Street), and containing 0.67 acres of the 6.07 acre parcel.

Review: Planning Board considered rezone case #07RZ09 April 9, 2007 and unanimously recommended approval; staff recommends approval based on consistency with the 2025 Land Use Plan and compatible to surrounding land uses.

Presenter: Amy Overfield, Planner presented rezone case # 07RZ09 and staff report which is attached and incorporated as a part of the minutes; oriented to the site currently zoned light industrial and medium density. 1) Churches are not allowed in light industrial district however are allowed in medium density; 2) one point of access onto Schieffelin Road; both facts necessitate the rezoning. Applicant requests to rezone 0.67 acres of the 6.07 acre parcel. Zoning request is consistent with the 2025 Land Use Plan and adjoining properties. Planning Board recommended approval of #07RZ09 April 9, 2007; staff recommends approval. Staff noted the location of the abandoned railroad.

Mayor Weatherly opened the public hearing. With no one speaking in favor or in opposition to the rezone request, the public hearing was closed at 7:05 p.m. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve rezone case # 07RZ09. Motion carried unanimously.

End of Public Hearing # 01

Public Hearing # 02 – Rezoning Case # 07CZ05

Public hearing and possible motion regarding conditional zoning case # 07CZ05, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial, Low Density Residential and Residential Agricultural to Planned Unit Development-Conditional Zoning located at US64 on the north, Hunter Street on the south, and CSX rail right-of-way to the east and west containing 167.92 acres.

Review: Planning Board considered rezone case # 07CZ05 April 9, 2007 and unanimously recommended approval; staff recommends approval.

NOTE: Planning Board continued the public hearing for Trackage North major Site Plan and Master Subdivision Plan to their May 14, 2007 meeting because plans were not submitted in time for staff report to be written for the April 9, 2007 Planning Board meeting.



NOTE: Applicant and Staff request Town Council continue the public hearing regarding major site plan and master subdivision plan for Trackside North scheduled for April 17, 2007 to May 15, 2007 Town Council meeting in order for the project to be reviewed by Planning Board on May 14, 2007. (Council should vote to continue this hearing to the specific date of May 15, 2007).

Presenter: Dianne Khin, Director of Planning, stated the applicant is ready to move forward with the rezone portion of this hearing and asked for continuance of the major site plan and master residential subdivision plan; reason was they did not submit their site and subdivision plan in time for a staff report to be written, although it had been advertised. Planning Board continued this portion of their public hearing to May 14, 2007 and the request is to continue just the site plan and master residential subdivision plan to the Council's May 15, 2007 meeting.

Mayor Weatherly stated Council could move forward with the public hearing for the rezoning. Khin presented the staff report which is attached and incorporated as a part of the minutes; oriented to the site, noted the location of CSX Railroad, Hunter Street, Laura Duncan Road, and US64; property was formally known as Trackside North and Trackside South and now under one developers control and known as Trackside. Rezone request is consistent with the 2025 Land Use Plan; it is high density residential, medium density residential, commercial, office and institutional; there is no change from the current land use plan designation. Surrounding land uses: North: self storage and carpet store; East: Apex High School and Brookfield neighborhood, vacant O&I parcel, and Vineyard Station Shopping Center; Town Campus and West: CSX rail lines. Existing conditions are mix of old agricultural fields and wooded areas. Adverse impacts on neighboring properties could be expected in terms of increased traffic, light, and noise; however will be mitigated by road improvements, by the conservation and provision of buffers and natural areas, and by the current light standards of the UDO.

PUD Project Data: plan includes a maximum density of 6.84 residential units per acre north of the Peakway, with a 638 unit maximum. The area south of the Peakway is limited to a density of 7.83 units per acre, with 585 units maximum or 700 units maximum, depending on whether the office and retail sites utilize the minimum or maximum square footage. Since the last time the project was presented, they have given minimum and maximums within Trackside South which is south of the Peakway. Office 20,000 SF minimum and 80,000 SF maximum; Retail 60,000 SF minimum and 140,000 SF maximum. Noted the different colors on the map and what they meant which included townhomes, single family residential, mixed use, attached residential, mixed use across from town campus on Hunter Street that will be more of a downtown streetscape – retail on the first floor, office above, and two stand alone commercial sites at the corner of Laura Duncan Road and Hunter Street, and the other at the Peakway and Laura Duncan. RCA has increased 22.5% percent of the site or 37.78 acres and are only required 20% per the UDO.

Buffers:

- o 30' Type A re-vegetated buffer along the east and west property lines adjacent to the railroad tracks.
- o 30' Type A thoroughfare buffer along the Apex Peakway.
- o Pedestrian oriented streetscape buffer along Hunter Street per UDO Section 8.2.6.
- o 15' to 30' variable width Type E buffer along Laura Duncan Road.
- o 40' Type A buffer along US 64. Per the UDO, the minimum buffer the Town Council can approve along a controlled access highway is a 40' Type A buffer.



Public Utilities: The proposed project will utilize Town of Apex water and sewer facilities. The Williams Creek Pump Station is anticipated to begin construction this year. However, the PUD Plan includes language that the applicant acknowledges that Town will not be held to any time table for the appropriate utilities and that the applicant assumes all risk.

Storm Drainage: The proposed project shall meet all applicable requirements of the UDO, which require that the post development rate of on-site stormwater discharge from the entire site will not exceed predevelopment levels.

Parks and Recreation: At their February 28, 2007 meeting, the Parks, Recreation, and Cultural Resources Advisory Commission unanimously recommended the following:

- . The developer would dedicate 12.98 acres for a public park as shown on the site layout presented to the Park, Recreation, and Cultural Resources Advisory Commission (she noted Hunter Street location and Guy C. Lee and noted the public park dedication that is proposed)
- . The developer would receive credit for the equivalent of 454 units for that dedication based on 12.98 x 35 units per acre. That calculation would be 454 units x \$899.04 per unit 408,164.16.
- . \$408,164.16 would be subtracted from \$982,650.72 and the estimated balance for Public Park / greenway development would be \$574,486.56 and in addition to the land dedication to develop the park.
- . The developer would use the pro-rated fee in lieu money to build a public park and associated public greenways as approved by the Town of Apex.
- . The agreed upon public recreation amenities would be in place by the time 50% of residential units of the project receive their Certificates of Occupancy per the UDO.

Access and Circulation: The Town Council has approved \$3.5 million for the construction of the Apex Peakway Bridge over the CSX high speed rail line, so the Peakway will connect from Laura Duncan Road across both rail lines to North Salem Street. This was an issue the last time the project was presented. See attached summary written by Transportation Engineer Russell Dalton. Council Member Jensen recalled the developer offering \$300,000 in addition ... with Khin not being aware of this; she stated the developer could address this. The Planning Board considered the rezoning at their April 9, 2007 meeting and unanimously recommends approval of the PUD-CZ rezoning as proposed. Staff recommends approval of the PUD-CZ rezoning.

Council Member Schulze addressed the traffic issue, asking if this should be considered as part of the zoning or site plan. Khin responded with the PUD, they are required to do a TIA and did. Council Member Schulze assumed this hearing would be moved to May 15, 2007 meeting and did not fully review and noted there was a lot of information in the traffic study. Khin responded there was nothing saying they were asking for continuance, they wanted to go forward with the rezoning at this meeting. He read the cover sheet of the agenda, and would have made more effort to review the details: Council Member Sutton and Jensen thinking the same. Council Member Sutton asked if density was a part of the rezoning with Khin responding yes; it's a PUD and on page one of their plan talk about density, which was requested by Council at your Worksession that they specify densities they specify minimum and maximum for square footage for retail and office. Council Member Sutton thought that was part of the master plan, with Khin responding, no, it's a part of the rezoning. Khin stated Council was not given any of the materials for the site plan or the subdivision plan; those will come next month.



Mayor Weatherly stated they could move forward with the public hearing and if Council was not prepared to vote, could continue the public hearing on the rezoning as well as the major site plan and master subdivision plan. Council Member Schulze responded this was ok with him and it didn't have to be the meeting of the 15th, it could be the next one. Mayor Weatherly stated they could do whatever Council wished. He asked if there were any more questions of staff. There being none, he opened the public hearing at 7:20 p.m. and asking those wanting to speak in favor of the rezoning to come forward.

Alan Manase, BBM Associates, Inc. represented the petitioner, Apex First Development, brought forth the Trackside property and a few developments since Trackside north was presented. The developer working on Trackside south vacated his position with that property, and his client in the mean time has taken the property under control, and now controls 167.92 acres for Trackside north and south combined; this was a concern they had heard in the workshop and previous Council meetings that there may be some disparity between two developers trying to do this project; they have eliminated this large hurdle. He oriented to the PD plan layout of the densities and land uses for the property.

Manase gave a breakdown of the different uses: Trackside North: area in green is single family townhomes – 58.3 acres with a density of five dwelling units per acre; area in red across Hunter from Town Hall is a street front mixed use – 1.3 acres with a mix of office and retail; area in purple along US64 and interior of Trackside south are townhomes/attached residential – 20 acres and range from 5.71 to 30 dwelling units per acre; area in orange are retail and office – 2.3 acres; area in blue along the tracks are attached residential – 10.6 acres and 30 dwelling units per acre; area in yellow is attached residential, retail and/or office – 12.2 acres ranging in 15-30 dwelling units per acre. They far exceed the RCA requirements providing 37.78 acres, 4 plus more acres than required by the UDO. Stormwater: there will be several storm water control facilities; do intend to limit post-development flows to predevelopment flows for the 1-10 and 25 year storms for the entirety of the development. 4.55 acres of land will be provided to the Town for construction of the Peakway and will also transportation impact fees and noted to Council Member Jensen this may be the number he was referring to with fees being somewhere around that number. Approval by the Parks and Recreation Advisory Commission dedicates 12.98 acres for a public park in an area fronting Hunter Street between the two tracks; also access for a road built from the Peakway down to this property for access it. Will be receiving a credit for the dedication with the rest of the recreation fees to be used to design and construct this park and are committed to doing this in the first part of the development; commitment is to have it constructed prior to 50% of the CO's and sees it as an amenity to everybody and wants to get it built upfront also. Breakdown of density: Residential density within Trackside North and South: Trackside North maximum density is 6.84 du/ac for 93.25 acres or 638 units. Trackside South maximum density is 7.83 du/ac on 74.67 acres or 585 units; do have the caveat to increase this number to 700 units if they did go with office or retail they are listing in Trackside South. Total density would be 7.2 8 du/ac for the 167.92 acres with 1223 units total. Commercial Density for Trackside South: minimums and maximums by use for office will be building between 20,000 and 80,000 SF, with retail between 60,000 and 140,000 SF for a total of 80,000 to 220,000 SF of non-residential development.

Conceptual site plan for Trackside South was shown: oriented to Laura Duncan Road and the Peakway, railroad tracks and Hunter Street; a lot of thought has gone into this product type with access off Hunter Street across from the Town Hall Campus drive, tree lined boulevard, median divided with plantings in the median, coming to a round-a-bout with the same treatment being given to Laura Duncan. From the front is a mixed use area, ground floor retail office above, three stories high planned to give a nice façade from Hunter Street and from Town Hall Campus, almost an extension of Town Hall Campus.



Along the boulevards will be townhomes, areas near the round-a-bout would be ground floor retail with condominiums above; also will be a live-work townhome option to own a unit with a ground-floor office or retail spot and owned residence above as well. Vision more intense retail use nearer the Peakway and Laura Duncan with an opportunity to mix office or condominiums above some of this retail; also will be some pure condominium buildings with ground floor parking and condominiums above. Along the tracks will be carriage house units where you would own your own garage and a small carriage house unit above that; a good price point and a good area to enter the market for people to move into Apex and get a start. He showed a conceptual drawing of a view from Hunter Street; elevations drawn by Perry Cox, local architect and resident of Apex; the idea townhomes and brownstones with townhomes lining what they call Town Hall Drive heading into Tracksouth where you would see ground floor retail and condominiums above that; brownstones are a more urban look than what's in town now; view looking at Hunter Street from Town Hall Campus main entrance and being flanked by the buildings on either side.

Conceptual layout of Tracksouth North: will see next month for subdivision review, the one that is being continued; once again oriented to the location of the Peakway, US64, and railroad tracks. This is similar to the plan brought forward some months ago. Tracksouth North has a mixed of townhomes and single family residences, all are rear loaded, alley fed, a neo-traditional type product; other than this one plot of townhomes would be front loaded, envisioning a more luxury-upscale type unit there, one of the later phases within the development; are incorporating some central green space for passive recreation for residences with townhomes surrounding. Also, a 3 acre lake on the property will be maintained and enhanced with a greenway trail will be tied into the town's greenway system as well; there will be a maintained access point out to US64; do have a secured driveway permit for that and improvements could begin as soon as our construction drawings are approved here. Conceptual elevations of the products were shown for Tracksouth North. He has a letter of intent from a group of twelve builders, independent custom builders; have heard input from town staff and some of council desire to see it done, more of a small custom scale and agree this is how it should be done; no contract is signed, as they do not have a zoning yet, but do have a letter of intent that these will be built independently. There is also an architectural review committee that has already had one meeting and will be meeting regularly to review and approve elevations for the product in Tracksouth North, and composed of some from their side and from Planning staff, as well as Council Member Jones sitting on that committee as well. Drawing of the product type – looks for more of a way to have variety in the neighborhood looking as if it were built over time and not all at once.

Mayor Weatherly asked if there were any questions from Council.

Council Member Schulze wanted to revise the slide of Tracksouth North showing the units; he saw this as 90% one size of lots and some tiny ones, asking if the tiny ones were townhomes and the other single-family homes. Manase responded within the single-family homes they have a 40 foot wide lot and a 50 foot wide lot for two different size houses. He showed the location of the townhome lots, which are 22 feet.

Council Member Sutton clarified with the 168 acres there was 4 acres slated commercial. Manase responded no, it's hard to define acreage and explained they have 12.2 acres attached residential, retail, and/or office and where you would see the more intense retail use; he described maybe a larger store within the 12.2 acres; there is 1.3 in the street mixed use and is 2.3 that is retail/office, but the mixed use areas would make up the remainder of the commercial space. Manase showed all the areas proposed for the mixed use, and calling it attached residential, retail, and/or office. He showed the area it would encompass on the conceptual site plan, and also the areas of the round-a-bouts see true mixed use, retail with condominiums, and/or office above.



Council Member Sutton confirmed they had only dedicated about 4 acres, saying maybe or maybe not. Manase responded that he would not say that's correct, with the numbers they are guaranteeing, with minimums, couldn't build this on 4 acres. Council Member Jones asked if he were correct that it would be a minimum of 80,000 square feet, office/retail combined, with Manase responding this is correct 20,000 offices and 60,000 retail; 80,000 square feet minimum of non-residential could not fit on 4 acres, unless they built really tall. Council Member Jones added it would have to be mixed use somewhere, and Manase responded yes, would have to be.

Mayor Weatherly asked if anyone would like to speak in opposition to the proposed rezoning. With no one speaking in opposition, Mayor Weatherly asked how Council would like to proceed with the rezoning; Council should continue the site plan and subdivision plan hearing to a future meeting. Council Member Jones asked for clarity of the conditions for the rezoning if approved. Khin responded it was everything within the published book "PD Plan for PUD-CZ Trackside Development". Council Member Schulze asked if this includes the Traffic Impact Analysis; he had not finished it; his impression was this would be postponed. Mayor Weatherly stated then they did not need to go further if there's nothing they need to dispose of this meeting; he stated they could have a motion on continuing the public hearing for the rezoning that they are in now, having not closed the public hearing for the rezoning, and also continue the public hearing for the subdivision and major site plan as well. Attorney Fordham reminded them if they continue the hearings to a date certain, would not have to readvertise. Council Member Jones asked if there were a need to do the rezoning May 1 with the others continuing to May 15 meeting. Khin responded the applicant would like to have this rezoning May 1. Mayor Weatherly asked if there were a motion to continue the rezoning hearing to May 1.

Action: Motion by Council Member Schulze and second by Council Member Sutton to continue the rezoning case to the May 1, 2007 Council meeting. Motion carried unanimously.

Public Hearing for rezoning case # 07CZ05 continued to May 1 (Public Hearing remained opened).

Action: Motion by Council Member Schulze and second by Council Member Sutton to continue the major site plan and master subdivision plan to May 15, 2007. Motion carried unanimously.

Public Hearing for major site plan and master subdivision plan continued to May 15, 2007.

Public Hearing # 03 – Unified Development Ordinance Amendment

Public hearing and possible motion to amend various sections of the Unified Development Ordinance to include: public access requirements for houses and multi-family units; non-residential roof cover; outdoor sales for seasonal items; a change to the maximum slope permitted; and a change to a buffer type between residential and unimproved land.

Review: Council considered the public access requirements of the UDO for houses and multi-family March 20, 2007 and asked staff to revise the number of units served by one access point and return to Town Council.

NOTE: Planning Board considered all remaining UDO amendments April 9, 2007 and voted to pull the roof cover for separate consideration, and unanimously recommended denial of the roof cover amendments based on possible redevelopment especially in the downtown area where roofs are black; felt it should be property owner's choice and should not be regulated by UDO.

NOTE: Planning Board unanimously recommended approval of all other items considered; staff recommends approval of proposed UDO amendments.



Presenter: Brendie Vega Mkhwanazi, Senior Planner presented the proposed amendments to the UDO and staff report which is attached and incorporated as a part of the minutes.

9.3.2 Roofs: non-residential roof cover white vs. dark proposed amendment was brought forth by Council Member Jensen; building department commented this is becoming standard practice for non-residential development; Planning Board unanimously recommended denial of the roof cover amendments. The recommendation for denial was based on possible redevelopment especially in the downtown area where the roofs are black. The Planning Board stated that this is an item that should be a property owner's choice and should not be regulated by the UDO; staff recommends approval of the proposed amendment.

Mayor Weatherly recognized Town Attorney Fordham for comment: Attorney Fordham stated there is a legal issue that relates to this; this particular type regulation would be considered a building code regulation and would be up to the building state code council to consider this. Mayor Weatherly stated it is not under our purview to include this in the UDO without approval or ratification by the state building code. Attorney Fordham advised on this particular topic he thinks the state board council has exclusive jurisdiction; there are other topics flood plain regulations and fire codes where that's not true, there are some joint jurisdiction; on this particular thing, it's the States call.

Council Member Jensen commented that a final sentence stated this subsection is effective upon approval by the state building code council and was not included; it was revised. He noted it not critical to pass this tonight, however, he thought this to be a good item: 1) in the summer the electric power supply is taxed to a much greater degree than in the winter and the objective would be to minimize those peak loads, which it does by doing this. He did studies on a couple of buildings and it showed on an average over a full year you may not reduce the total energy although other studies have said you will. He will proceed with the state building code council and come back at a later date with this. He thought by putting it in the UDO it would alert companies to go ahead with the white roof. He compared the Lowes building with a white roof and the Home Depot with the black roof. He did an energy consumption study of those buildings over the summer time and Home Depot peaked way up compared to the Lowes. It is something that the town should be looking at once the state building code council looks at this to try and push because it is better for our system, better for the total overall energy production system; the state will look at this and make their decision and will go from there. Attorney Fordham added the code specifically provides for local governments to petition the state building code council to amend the state building code; there is a mechanism to do this if council so chooses. Council Member Jensen added he was going to ask that tonight but opted for more detail from Council, but will look at this later.

Senior Planner continued: Outside storage and Sales, brought forth by Council Member Jensen as well, that would allow outdoor sales; standards were added that would not extend 10 foot out from the building or fenced outside sales/display area; must not exceed 25% or sixty-feet of the length of the building whichever is less; must not exceed 6 feet in height; must not interfere with 8.4.4 Pedestrian flows; must maintain five feet of clear sidewalk and must meet standard building code and ADA compliance requirements for sidewalk display areas. Section 7: outdoor displays shall not interfere with pedestrian flows. Planning Board recommended approval and staff recommends approval of this amendment.

Council Member Jensen commented he had looked at Lowes and would be better if the sixty-feet of the length of the building would be 100 feet. The total building length was 600 feet and 100' is 1/6. He would hope this could be amended if Council so decides. He noted lots of places with hanging baskets hanging from 8' hangers and how to handle those. Senior Planner responded if hanging from the canopy is permitted.



Senior Planner continued:

8.1.4 Development restrictions on steep slopes – no slopes greater (or steeper) than 2 to 1 ratio, which affects several selections; 8.2.3 maintenance responsibility and replacement of damaged vegetation and 8.2.6 buffering expanding on the buffer regulation to a 20 foot Type A instead of Type B: Planning Board and staff recommends approval.

7.5.4 Public Access requirements was before Council in March and with Council input and with the Fire Chief and the Fire Marshall included the number between multi-family and single family and requiring more than one point of access; staff brings forward: single family stays at 50 units and multi-family increased to 100 units. Clarification was added on major collector or thoroughfare on the town transportation plan can provide opportunities for additional points of access when the existing roadway frontage can not provide those opportunities. Planning Board unanimously recommended approval; staff recommends approval.

Chief Haraway made his case regarding safety concerns for access of emergency vehicles, egress routes for citizens in emergency situations, alternate access for emergency vehicles; safety evacuation for citizens from multiple routes (noting the EQ evacuation); explosions; gave examples of emergency situations expanding on a recent Raleigh neighborhood fire, having the same concerns for Apex should such type fire occur; blocked access for citizens and school buses, delay of apparatus from other resources, less than desirable placement of apparatus, inability to move citizens out of harms way should there be a blocked access; flood concerns; another example: Piney Woods Fire off Olive Chapel – hazardous materials fire and explosion.

Council Member Jones asked the Fire Chief if he were in agreement with the proposed for the 50 single-family units and no more than 100 multi-family units. Fire Chief Haraway was in agreement with what has been proposed and agreed upon.

Mayor Weatherly opened the public hearing at 7:55 p.m. and with no one speaking in favor or in opposition to the proposed amendments, the hearing was closed.

Action: Motion by Council Member Sutton and second by Council Member Jensen to approve the proposed UDO amendments as recommended by the Planning Board with the roof exception and with an increase in the 60 foot to 100 foot Section 4.1.2 Outside Storage and Sales 3b(ii). Must not exceed twenty-five percent (25%) or one hundred feet (100') of the length of the building, whichever is less. Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 04 – Annexation Petition #412

Public hearing and possible motion regarding Annexation Petition #412, Trinity Apex Investments, LLC., owners/petitioners, (list attached) petitioning to annex 694.841 acres including 12.271 acres of public right of way, into the Town's corporate limits; and property location is between US Hwy # 1, Old Holly Springs-Apex Road (east and west) and future I-540 (Western Wake Expressway).

Presenter: Dianne Khin, Director of Planning presented annexation petition #412, orienting to the location of the property with a majority being contiguous with a small piece that will be a satellite annexation; currently Apex satellite percentage is 6.16% and per state law can be up to 10%; this satellite annexation would bring Apex up to 6.25%, and well within the state requirement.



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

Sal Lasara, Kimley Horn and Associates spoke in favor of the opportunity to bring a consolidated master plan for a very large area in a key part of the Town of Apex and is a coordinated effort for infrastructure improvements in a manner; sees it critical to be looked at in a contiguous manner given its association with key thoroughfare corridors and the proposed I-540; this is a great opportunity to bring land under town services and will bring key improvements to Apex.

No one else spoke regarding this hearing and the hearing was closed at 8:02 p.m. Council Member Schulze asked clarification of the location of the contiguous properties.

Action: Motion by Council Member Jensen and second by Council Member Sutton to approve annexation # 412. Motion carried to adopt Annexation Ordinance # 07-0417-412.

End of Public Hearing # 04

OLD BUSINESS

Old Business # 01 – Seagroves Farm Park Project

Presenter: John Brown, Director of Parks and Recreation and Cultural Resources, gave an update on the Seagroves Farm Park project and noted the property was a combination of the WHOPS Park land swap and acreage dedicated by the developers of Seagroves Farm giving a review of the site conceptual plan. Representatives of Surrey Meadows and Waterford Green offered support for the preliminary concept plan for the Seagroves Farm Park project which includes all items proposed. Parks and Recreation Advisory committee has reviewed the plan and gave unanimous support. Would like to have signage closed to the entrance or next to the historic property stating the significance of the Historic nature of the farm site; Fred Stancil, HOA President, Waterford Green supports this idea for the signage.

Tim Carley, Surrey Meadows gave his support in working for a common goal of the community; fears however there will be no money to complete the project; hopes to keep the promises made which is a great opportunity asking Council to find the money to start the park either partial or fully, either budget funds or bonds to see this project complete.

Council Member Sutton asked if this would be included in the next year's budget. Brown responded he and the Town Manager have discussed this; the next phase is to have the construction drawing completed; eventually would fund it down the road. Brown thinks there should be more development there before building; he doesn't know how much it would cost. Council Member Schulze asked if he could get an estimate. Brown responded he didn't know how it could be done without the construction drawings; he would first get the construction drawings (estimated cost of the drawings \$100,000), and then an estimate based on the construction drawings.

Council Member Jensen recalls receipt of \$50,000 from JVI to be used for parks and the UDO says could be used in the area. Council Member Jones felt the sooner the better; that we start the process and know how long it takes. Mayor Weatherly questioned the historic property and what is anticipated for this; at one time thought they had talked about selling it. Dianne Khin, Director of Planning, responded Capital Area Preservation would market the site, they plan to move the house back off the road; they have either the option to sell it for a single-family residence or make an office, and if so would have to rezone the property if it were for an office.



Mayor Weatherly asked for more information regarding a display of some type for the historic property. Brown stated once a decision is made regarding that property, have something as you left the park property into the historic property, something that would depict what the Seagroves Farm used to be, and its use, some past history and photos. Mayor Weatherly confirmed this does not include the houses, with Brown responding no.

Council Member Gossage asked if funds are there to do at least the next step. Manager Radford responded the funds are not included in the upcoming budget. Council Member Jensen thought the funds from JVI had to be used in the immediate area, and is the immediate area. Manager Radford responded not the immediate area, but in total in-town, not necessarily ear-marked.

Mayor Weatherly stated in the future may want to have an item on the agenda, a briefing on the recreation issues and lay out the priorities, obviously will have to set some spending priorities to put this in front of something else. Manager Radford stated staff had discussed some of the recreational needs today, immediate and long term; he's not ready to put out a plan yet, however, can be ready to do so within the next 60 days or so. Mayor Weatherly was trying to stall any adhoc decisions; how to spend money without looking at the overall picture and need to know the spending priorities for recreation.

Council Member Sutton asked if this park was on the master plan. Brown responded it was on the master plan to have some type park in this area, not clarifying what type, but designated, that's correct, but not included in the bond package in 2004; did not have the land, and not one of the projects listed. Council Member Sutton added we may have to look for funds other than those in the bond package if we want to do this, with Brown adding either that or shift priorities. Mayor Weatherly said this was what he was talking about we didn't need to do this piecemeal, but do this as a comprehensive discussion and let Brown tell them parks, acquisition, and other things down the road for recreation. Council Member Jones added it was time for a master plan update, and not only look at what's in the current bond package and what money is available over the next four years and what's in the master plan.

End of Old Business # 01

Old Business # 02 – Nature and Environmental Education Park Project

Presenter: John Brown, Director of Parks and Recreation and Cultural Resources, gave an update on Nature and Environmental Education Park project that was included in the 2004 Bond package being done in two phases, with the first phase in 2008 and the next in 2010. A concept drawing was shown for the overall master plan of the site. The Seymour tract was added to the original 110 acres, and totals 160 acres, and purchased with a combination of funds. The architect and engineer for the project were present. He hopes to put the project out for bid in 2008, with construction beginning spring of 2008. The original design includes a restroom facility, discussion and interest by Council originated regarding a solar energy project, and logical to do so in an environmental education park; asked the architect for an option for inclusion in the base package. The architect addressed the restroom building, that would face the north to the forest in the park and the solar component of the project for three buildings and their uses; the amphitheater, stage is about 20' by 40' slab on grade will seat approximately 100 people and located in the lower level of the park, open air, used for certain type productions, and a sound booth light control and storage building; note other amenities of the project. Brown stated a future classroom facility footprint was included in the original contract and envisions it in Phase II and similar to Hemlock Bluffs; noted bond park amphitheater that is for local performances and this would be on this level for Apex, for instance concerts at the depot, etc.



Mayor Weatherly asked about the mountain biking portion of the park. Brown stated the golf portion would be first and get it designed and see what's left for the biking area, and will not be a part of Phase I; seeing a user conflict on the trails. Mayor Weatherly understood there maybe some volunteers to help lay out the portion for mountain biking; Brown said there may be, and after the other components were addressed. He was concerned with user conflict on the trails, and if there was mountain biking wanted to assure it is contained in the area that was suppose to be, opposed to the user conflict on other trails; it will be done at some point, but not included in Phase 1. Mayor Weatherly noted the one at Lake Crabtree and the Harris County Park with Brown adding there was also one in Raleigh.

Council Member Sutton was in agreement with the solar energy component being appropriate for the nature park. Brown noted there would be a cost associated with the conversion, and wanted to see if Council thought it worthwhile investment, and whether the town would get their money back from this. Council Member Sutton responded it was not only the money it's an education, with Brown adding this seems to be the right place and will be included in the packet for contract, with Sutton agreeing.

Council Member Jensen asked if grants were considered from the county for the Seagroves project. Brown responded they do not help with development, but would help with buying land provided it meets strict criteria in regards to protection of wetlands, and water quality issues; all that money is gone and are talking about a county referendum in November for open space money; county has placed restrictions on impervious surface lands and what can be put on the land, reference: ball fields and soccer fields; local governments are concerned about this; he's open to looking for other grant funding sources.

End of Old Business # 02

This item was moved to the end of the meeting for consideration.

Presenter: Kent Jackson, Director of Construction Management

Old Business # 03 – Lufkin Road Realignment Project (considered at the end of the meeting)

Possible motion to adopt a Resolution to approve a Municipal Agreement with NCDOT for reimbursements totaling \$250,000 for the Lufkin Road realignment project.

Old Business # 04 – Water and Wastewater Capacity Fee Payments

Presenter: Council Member Mike Jones, Chair of the Finance Committee, gave a review of the Finance Committee's deliberations concerning the financing of water and wastewater capacity fee payments. There was no firm recommendation from the Committee; he had some issues relative to not only policy but practical issues as to whether the Town should be a lender of financing capacity fees and what they have yet been able to define as small business. He stated the Committee could not come up with a firm recommendation, he continued, if they choose to do this, he didn't feel comfortable asking staff to develop details until they knew there was support from the majority of the Council. He was bringing this back to Council, asking as a policy decision, do we want to do this, and then determine how it would happen.

Council Member Sutton did not remember it this way; he's probably right, but thought they had directed staff to come up with a detailed way to do this, and then would determine whether or not to recommend to the full board; also they directed public utilities to review the cost of capacity fees, which is here; he thought they would have another meeting to decide whether to recommend this to the full council. This is what he thought. Council Member Jones from his perspective, and needed a consensus of the full Council's opinion before we burdened staff with too much detail. Council Member Gossage did not get the sense from reading the minutes that there was a recommendation. Council Member Sutton said he didn't think there was one and that's why he thought they were going to give them a scheme to see if this were practical or could recommend it, and what he thought.



Council Member Jones stated he agreed with this, and maybe had misspoke, but thinks we asked staff to do some preliminary work, but at the same time were asking Council to weigh in, with Council Member Sutton thinking the opposite, bringing it back to Council so they wouldn't have to do the work. Council Member Jones noted correspondence from Director of Public Works Donnelly to the Manager and would speak to this. Mayor Weatherly stated of course staff would come up with whatever they asked, but understands staff has some serious reservations whether this is appropriate or not. Council Member Jones felt Donnelly should go over the information and thinks as Chairman of the Finance Committee would like some feedback and yes the Finance Committee would have another meeting.

Director of Public Works Donnelly began with an April 9, 2007 memo reviewed the basis of water and sewer capacity fees as directed by the Finance Committee. These fees are collected for replacement for the costs of water/sewer capacity; you have to build before you collect and are never ahead. Regional Waste Water Plant would cost Apex share: \$72 million; plant capacity 6.2 MGD peak monthly flow or \$11.61 a gallon for replacement capacity. Capital Improvements for the water plant is approximately \$22 million with capacity increase at the plant 3.68 MGD flow, and a cost per gallon of \$5.77. These numbers are lower than he had thought, and the reason; we already have an investment in the plant. When planning to expand it's easier to add capacity than if you are just building new capacity from scratch and his math is \$17.30 a gallon; he noted regional plant numbers are rising daily, and can expect this amount for water/sewer, taking into account the basic infrastructure, plants and transmission lines. This is the reason for capacity fees. Council Member Sutton noted the cost had gone from \$15 in 2000 to \$17 for water/sewer capacity fees. Donnelly responded yes, currently \$17. Council Member Sutton felt this was an appropriate item to consider in the budget for a recommended fee increase. Donnelly responded it was up to the Manager and Finance Committee and would appreciate guidance. Council Member Sutton felt there should be a recommendation included in the budget; all other fees are in there. Mayor Weatherly stated this matter would be referred to the Finance Committee too.

Donnelly began that the second item was concern to help small businesses finance water and sewer capacity fees, and shared staff concerns, that it's hard to start small business, with 50% of small businesses failing due to trouble with money and related to location. Finance Committee asked staff to come up with a mechanism to not only finance capacity fees, but also for collection of the fees upon default; staff looked at a proposed 60 month finance period with a 6% collection rate of interest, which is lower than prime rate and came up with a definition of small business as something over 300 gpd to 1000 gpd ex: 40 seat restaurant; the proposed finance schedule would average \$290.00 month for \$15,000 in principal and about \$2,400 in interest; this \$290 monthly would be added to their water/sewer bill; suggested they may not want to finance what they ask every homeowner in Apex to do; he noted he saw no reason to finance something like an insurance office capacity fees must be paid before issues of a Certificate of Occupancy. Fees added to regular bills may be problematic for someone already having finance problems; first payments would be higher in interest and later principal. Another question: how would the town get the money should the business fail; Attorney Fordham reviewed this, and should the next one come along, say a restaurant, how would you make someone take over the obligation, and he saw this problematic; he suggested the possibility of a temporary CO, where all parties of interest, the building owner, and the tenant, and probably the lender would all sign and agree to this 60 month temporary CO; one would not receive a permanent CO until the money was paid. If they had been in business 30 months and they went out of business then the calculations show they owe more than half of their capacity fees; the next person moving into the building would accept that they had no CO and would have two choices at that time: either do something that requires less capacity fees, if it were no longer a restaurant and became an insurance office than probably the fees would be paid; or pick up the bill from that point on, finance it again, track it again, and complete the obligation to Apex taxpayers.



Problematic: people are not going to want to sign and waive their right for a CO; they could probably voluntarily waive that right to a CO in exchange for the financing. Attorney Fordham would probably want to do more research if this was the choice. This mechanism could be done and could fit with current ordinances, with some modifications to implement this. Problems seen by staff: 50% would probably fail and do not see this changing very much with this financing scheme; it will take a lot of staff effort to track this, and are short of staff with an ever growing population. We need money; the whole schedule is for paying for the treatment plant and any delay of this, collecting the money, and there will be some.

Mayor Weatherly asked if it would be logical for every business that qualified have the incentive to take advantage of this, than pay a lump sum cash up front, just let the town finance them, and if on the 50% of the side that doesn't pass, not out that amount of money to start with; all pay it up front now. Donnelly stated Council Member Sutton had pointed out early in business, cash flow is the problem, and this may be harder on a person than getting a loan from the bank and more likely a 10-15 year loan and adding a smaller monthly bill to their payments than this would be; he saw from the other members concern about this issue. Council Member Jones noted it much like a second mortgage, with Donnelly noting this making double payments; it may encourage some folks who have not thought this through to jump at this opportunity and may be in a worse situation, they may be hurting for money, and may use their credit card but their cash flow doesn't get any better. Mayor Weatherly stated they now have to have a business plan up front before they get a CO. Council Member Jones they may not have this figured in their plan, until they get their CO, and find out they have to pay it then. Donnelly stated those that are financing usually finance with a bank, the bank has reviewed the proforma; we will be partner in their success with the taxpayers of Apex, without understanding the proforma, and there was a concern expressed if they couldn't get money from a skilled lender, this maybe putting the taxpayers at risk.

Council Member Jones stated there were some instances brought to the attention of the Finance Committee; seems like it would be the right thing to do to let folks pay over time, but when you start trying to apply this in general, and define a certain type business, size of business, establish criteria, it's extremely hard to do and ensure that we get the capacity fees that we need; once we put on paper a restaurant with "x" number of seats, using "x" thousands of gallons of water and sewer, than that's reserved for that particular use; two years from now if out of business and is sitting dormant for a year, that reservation is still there for that water and sewer. This would be extremely hard for Donnelly to keep up with, and the other issue is to keep up with the financing. This is his personal opinion, not coming from the Chairman of the Finance Committee that we don't need to be in the lending business; we provide services, but that's a service from other institutions.

Council Member Sutton stated the government exists to help people, and certainly at times small businesses do need help; he gave the example brought before the Finance Committee of the coffee shop owner in Scotts Mill whose capacity fees were \$50,000 for 30 seats, and was a big hit. Mayor Weatherly asked if this were out of land with other municipal towns, would she have had to pay this much, with Council Member Sutton adding but she cut back, and it would have been this much if she had built what she wanted to build; he saw this the type business that might have needed help to get started; he was surprised it was this much, and if you try to spread it out over five years, that's \$10,000 year, and to pay over time, not counting interest \$800 month in addition to the water/sewer bill; he's worried, is it practical; better to finance with the bank, and spread payments out over a 20 or 30 year period.



Council Member Schulze asked if she were going into an existing store front, she wouldn't have to pay this. Council Member Sutton stated had the landlord paid she would not. Council Member Schulze thought this was unfair although he does agree with Donnelly sees a delimea here. Donnelly explained council then and now seems to struggle with this issue; when the capacity fees are paid on the building the fees remains with the building forever; some landlord pays, in this case she found out as she was into the process; some quotes for 40 seats was \$15,000, but she presented \$50,000. Council Member Sutton stated no one corrected that. Council Member Schulze asked if what Apex does is standard with other municipalities. Donnelly explained all have different schemes of collection of fees, and Apex fees are a logical way to do collections and tied to the needs; there are towns that are cheaper and some more expensive. Apex collections probably favors single-family residential more than a restaurant.

Mayor Weatherly noted there was no recommendation from the Finance Committee. Council Member Jones stated there are different perspectives on this with a two member committee, and his was to bring this to the council and see what the council thought before putting staff to work; he continued Council Member Sutton wanted a recommendation from the Finance Committee, Council Member Sutton added that the recommendation might have very well been that they couldn't agree on a recommendation, or thought it was impractical. Council Member Jones continued it was up to Council if they wanted to refer it back to the Finance Committee and will try to come up with a recommendation or at least a split vote or whatever it ends up being.

Mayor Weatherly asked if there were a motion to come from any of the Council. Council Member Sutton gave an example of Jersey Mike's situation when the landlord paid the capacity fees and when he moved to another one, thinking it would be paid and was not and he had to pay. Council Member Jones, stated there have been discussions on this and the issue is the fee is based on use, how much water and sewer are they going to use; example: Hallmark shop with one toilet uses less than a coffee shop or restaurant; when a building is built with a bunch of store fronts for lease that have to be upfit, you can't charge a developer because we don't know the uses, know what size the tap is, know the pipe size going and coming, but don't know the volume that's going through it; that's why some pay up front; Beaver Creek Commons put a lump sum in the bank for these fees and drawing down from them; if you don't know the use, you can't charge that capacity fee for the shell CO, but have to wait for the upfit.

Manager Radford added comments to the temporary CO; anyone who has financed anything will tell you that prior to the bank going to a closing, they require a firm CO, and would not allow a TCO.

Council Member Jensen asked if a renter is buying the capacity for a business, why does it get assigned to the building and why doesn't the renter who is paying for the capacity as a business, and if they move the business take the capacity with them, and if they go out of business, then the capacity stays with them, so be it, whoever moves into that building next time could buy new capacity; this would solve the problem. It's not so much financing that bothers him, it's the person who pays the \$50,000 up front and goes out of business, a year later the \$50,000 goes to the building owner and they could make a side agreement with the owner, and seems to him another approach is to sell it to the business because that's the person that is paying for it. Mayor Weatherly asked if this was a private contractual relationship with a lease agreement, if the tenant is required to pay that it would be in the lease agreement, if he vacates the premises in an "x" number over time that outstanding indebtedness falls to the other. Attorney Fordham responded this could be. Council Member Jensen stated the question was can't we sell it to the business owner; the person who's renting the person who is paying the money, rather than assign it to the building; another person comes in, let them pay the capacity, and if they move can carry the capacity with them.



Donnelly thought this theory has merit, the problem is there is no perfect system; Apex system says if you have a building and you give it a CO and you tie the capacity fees to the CO, you don't want to create a situation where you take away the right for someone to occupy that building; which is if the tenant leaves and takes the capacity fees with them, you have created this situation. The town would have to get the money from the next person that wants to occupy. This was well visited in 2000 and well visited today; he doesn't know there will ever be a perfect system that makes everybody happy, given if you have a building and connected to the town's system, in current theory needs to get capacity fees because they are using up the plant capacity and don't want the situation where there's a nice building there and somebody can't move in it. The leverage always traditionally used is that they don't move in until the fees are paid and generally this is understood so they don't move in, but if somebody moves out and takes the fees with them, you are creating the situation again, where you have a building, trying to get the fees and they are not going to like it, then you get a different complaint; this is a difficult situation. He appreciates the desire to please everybody, but not sure it can be done, given town needs to come up with almost \$100 million dollars for improvements in the CIP.

Mayor Weatherly offered to Council to leave this matter with the Finance Committee; if staff or committee wants to come forward with something, he doesn't see a consensus and could continue this and not get anywhere. This is currently referred to the Finance Committee and if it never comes back its fine. Council Member Sutton stated it would come back hopefully with a recommendation.

End of Old Business # 04

Mayor Weatherly reminded Council Old Business # 03 will be considered at the end of the meeting. NOTE: no action was taken on this item.

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.

Mayor Weatherly opened public forum at 9:05 p.m.
Michelle Barry, of Castlewood Subdivision and her daughter, addressed recently adopted animal control ordinance, stating they have 10 pet hens on four acres of land zoned rural residential; have had no complaints from anyone and enjoy their eggs from the hens, and are responsible for their keeping; asking Council to reconsider the ordinance allowing chickens. Barry stated their well went dry and asked to be annexed for water and was the only lot in Castlewood that is in the town limits; her property was not a part of the original Castlewood Agreement. She was told she would have the same rules when the property was annexed that exists in the ETJ. She asked for a compromise on the size of lots, limits on number, or coop setbacks; expressed any animal could be a nuisance, asking council to allow backyard chicks. Mayor Weatherly responded Council will have a public hearing to allow folks to weigh in, consider exemptions and parameters and hopes to find a good solution and would like to revisit this ordinance on May 1 before the June 1 effective date for the ordinance. Donnelly explained the situation regarding the water agreement in Castlewood with a number of land owners choosing not to participate; town agreed those lots that become entitled to water could not have water without annexation; if the property was not a part of the Castlewood Agreement, to get water would have to pay the fees and be annexed. Attorney Fordham advised this type public hearing didn't have to be advertised by the normal advertising requirements. Mayor Weatherly felt there may be more livestock in the town limits than had first thought, and didn't mean to be overly restrictive. End of Public Forum



NEW BUSINESS

New Business Item # 01 – Subdivision Plan

Possible motion regarding a Subdivision Plan for Old Mill Village Lot 3, BBM Associates, petitioner, seeking approval for 28 single family homes.

Review: Planning Board considered this subdivision plan April 9, 2007 and unanimously recommended approval with conditions; staff recommends approval with conditions based on Old Mill Village PUD Plan.

Presenter: June Cowles, Planner presented the subdivision plan for OMV Lot 3, for 28 single family homes, orienting to the site, following the staff report which is attached and incorporated as a part of the minutes. Lot 3 was approved on March 20, 2007 for single family homes in Old Mill Village Planned Unit Development Plan that includes mixed use of commercial, office, and residential density of 8 to 12 units per acre, development standards, and architectural standards. Planning Board met April 9, 2007 and unanimously recommended approval with conditions of Old Mill Village Lot 3 Subdivision Plan:

Conditions:

1. The applicant/owner shall provide an additional right-of-way to provide 50 feet (half of 100 feet) from the existing centerline of the Apex Peakway along the property frontage prior to approval of Construction Plans.
2. The applicant/owner shall provide sanitary sewer and easement to the parcel to the north prior to approval of Construction Plans.
3. The applicant/owner shall relocate the Town of Apex public utility easement outside the retention pond prior to approval of the Construction Plans.

Staff recommends approval with these conditions of the Old Mill Village Lot 3 Subdivision Plan based on the Old Mill Village PUD Plan. Manager Radford commented this was inclusive with the proposed land swap. Council Member Jensen clarified the cuts on the Peakway, with Khin responding there was a right-in and right-out. With no questions, Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve the subdivision plan for Old Mill Village Lot 3, with the conditions stated. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen casting the opposing vote. Motion carried.

End of New Business Item # 01

New Business Item # 02 – Site Plan

Possible motion regarding a Site Plan for Old Mill Village Lot 7, BBM Associates, petitioner, seeking approval for 32 townhomes.

Review: Planning Board considered this site plan April 9, 2007 and unanimously recommended approval; staff recommends approval.

Presenter: June Cowles, Planner presented the site plan for OMV Lot 7, for 32 townhomes, orienting to the site, following the staff report which is attached and incorporated as a part of the minutes. Lot 7 was approved on March 20, 2007 for residential uses in Old Mill Village Planned Unit Development Plan that includes mixed use of commercial, office, and residential density of 8 to 12 units per acre, development standards, and architectural standards; all in accordance with the original rezone. Planning Board met April 9, 2007 and unanimously recommended approval of Old Mill Village Lot 7 Site Plan.

**New Business Item # 02 continued**

Staff recommends approval of the Old Mill Village Lot 7 site plan based on conditions of the Old Mill Village PUD Plan. With no further questions, Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the site plan for Old Mill Village Lot 7. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen casting the opposing vote. Motion carried.

End of New Business Item # 02

New Business Item # 03– Apex Peakway Project

Possible motion to award construction contract for R-05-1B Apex Peakway Project from North Salem Street to Haddon Hall.

Presenter: Kent Jackson, Director of Construction Management, stated bids were received on April 12, 2007 at 2:00 p.m. Engineering Staff recommends contract be awarded to the lowest responsible bidder, local area contractor: Mainline Contracting for a total bid of \$982,915.00. Estimated cost was \$1.1 million for construction of the 2 lane section with turn lanes at Salem an extra left turn on the Peakway and on Salem for a left turn into the Peakway and a deceleration taper on Salem to turn right; will be graded for four lane for now and pave two, with grass median in the center. Bid tabulations are attached. Council Member Jensen asked if we are doing left turn lanes at all the major intersections of the Peakway. Jackson responded yes, the connection at Olive Chapel has this. Council Member Gossage asked about the traffic light at this intersection, asking the time frame. Jackson clarified at Salem and the Peakway, and responded they will have to work with NCDOT once there is traffic on the road; timeframe for the light at the Peakway and Center was discussed. Council Member Sutton asked the Attorney if he felt the land acquisition would be resolved in time to start, and Town Attorney Fordham responded yes, in terms of acquiring them. He continued in good faith negotiations, he has been directed to acquire all he can so the contractor will not be held up. Mayor Weatherly called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Gossage to award the construction contract for Apex Peakway Project to the lowest bidder Mainline Contracting for \$982,915.00. Motion carried unanimously.

End of New Business # 03

New Business Item # 04– Municipal Vehicle Tax

Presenter: Manager Bruce Radford requested inclusion of the Town of Apex in a local bill to increase the municipal vehicle tax from \$5.00 to up to \$15.00 for each resident vehicle located within the town. Two local bills HB 568 and HB 885 are currently under review and would both authorize this type increase. This motion would direct the Town Manager to contact the appropriate legislator and seek the Town's inclusion in such a bill. Proceeds may be used for transportation related purposes, including sidewalks. Mayor Weatherly was in favor of this, when we can to exercise to do this, and are granted greater authority should take advantage to do so. Mayor Weatherly called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Schulze to approve the Town Manager seeking the Town's inclusion in the municipal vehicle tax bill. Vote on the motion was 4 in favor and 1 opposing, with Council Member Gossage voting the opposing vote. Motion carried.

End of New Business



WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session at 9:30 p.m. to receive legal advice from the Town Attorney regarding street matters and related Lufkin Road realignment project.

Action: Motion by Council Member Jones and second by Council Member Sutton to move into closed session. Motion carried unanimously. Closed session minutes are recorded separately. Motion by Council Member Gossage and second by Council Member Jensen to move back in regular session at 9:51 p.m. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 9:52 p.m. **Action:** Motion by Council Member Schulze and second by Council Member Gossage to adjourn. Motion carried unanimously.

The minutes of the Apex Town Council meeting of April 17, 2007 was submitted by the Town Clerk for approval on the 1st day of May 2007.

Georgia A. Cranzler
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes and General Account for Tuesday, May 1, 2007 meeting,
held at 7:00 p.m. in the Council Chambers located on the 2nd Floor,
Town Hall and Town Campus, 73 Hunter Street.

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order, asking Council Member Jones to give the Invocation. Pledge of Allegiance was led by Cub Pack # 205. 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: Motion by Council Member Jones and second by Council Member Jensen to approve the consent agenda. Motion carried.

- 1) Minutes of April 17, 2007 Council meeting.
- 2) Minutes of April 17, 2007 Council Closed Session (recorded separately).
- 3) Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning # 07CZ02, Kelly's North Carolina Leasing, LLC., petitioners; property located at 1302 N. Salem Street.
- 4) Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning # 07CZ09, Ambassador Presbyterian Church, petitioners; property located on Schieffelin Road between Center Street and Investment Boulevard.
- 5) Findings of Fact and Conclusions of Law regarding Special Use Permit # 07SUP02, Apex Flea Market located at 733 Center Street.
- 6) Budget Ordinance Amendment and Capital Projects Ordinance Amendment for Apex Parkway project for the section connecting Hillcrest to North Salem Street.
- 7) Resolution of Intent of the Town Council to close a portion of Forest Grove Drive between SR1010 and certain parcel of land designated to reconfigure roads in the Groves II, Resolution # 07-0501-07 (Public hearing will be held June 19, 2007).
- 8) Resolution approving Interlocal Agreement regarding removal of human bodies in connection with medical examiner intervention and emergency fire, law enforcement and medical communications services, Resolution # 07-0501-08

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. Mayor Weatherly asked to add a work session to brief on "toll roads". Attorney Fordham asked to add a closed session item related to condemnation matters. Manager Radford asked to add a new business item to declare surplus property. Mayor Weatherly called for a motion to include these items requested to the meeting agenda and with the same motion approve the agenda as modified.

Action: Motion by Council Member Schulze and second by Council Member Jones to amend the agenda as requested and set the meeting agenda as modified. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing # 01– Livestock Ordinance

Public is invited to give input in regards to the keeping of livestock of all kinds within the corporate limits of the Town of Apex.

Presenter: Mayor Keith Weatherly stated this hearing was to receive citizen input regarding the livestock ordinance adopted by Council with implementation delayed to June 1, 2007. The Ordinance allows for the exemption of horses and will hear from citizens regarding any others that may be considered for exemption. The public hearing was opened at 7:05 p.m.

Craig Hardy, Buckingham Subdivision resident has 2.5 acres of land and owns rabbits; asked Council to consider an exemption for rabbits; they are quiet; has had up to 90 rabbits and now has 29; uses the manure for compost; uses rabbits for breeding and showing; sells rabbits for pets and to breeders; has special cages and fencing. Hardy stated 90 were too many and 4 or 5 may be appropriate for a quarter acre, and thinks set backs 20 or 30 feet from the property line may be appropriate. Hardy stated he had tried to be a good neighbor. Attorney Fordham stated perhaps to avoid problems there should be some consideration for criteria in the ordinance and gave an example of enclosed pins.

Michelle Barry, Castlewood Subdivision resident has had a rabbit for seven years, has ten chickens on four acres of land and the chickens continually supply fresh eggs; asked the ordinance maybe should consider the amount of space. She presented a handout of chicken laws across the country, noting some towns have chickens and some do not; asked Council to consider exemption for chickens and rabbits.

Jean Cash, 111 S. Salem Street resident stated she has a wide long lot and noted railroad tracks and Methodist Church grounds behind her property and the two adjacent residential homes belonging to the Herndon and the Mills. She asked Council to allow chickens, she has two laying hens for fresh eggs in a small coup and enclosed with wire that runs along the railroad fence and uses the manure for her garden.

Ross Olive lives on the edge of town and has property in the historic district of town. He noted pass circumstances were unfortunate; he has chickens and dogs, cats; is served by city water and stated he maybe annexed in the future. He is sensitive to animals, and shows his chickens that he has owned since 1999 at schools, churches, and shows them as for education to children, and thinks this in some way deters children from drugs, alcohol, etc.; he has grandchildren that live in the City of Raleigh and they have chickens allowed by the City. He asked Council to grandfather chickens with maybe some conditions considered under the nuisance ordinance, for odor, and maybe for those that have several acres of land.



**Public Hearing # 01 continued
Livestock Ordinance**

Mayor Weatherly closed the public hearing at 7:25 p.m. Council further commented on noise and odor and amount of space and numbers. Mayor Weatherly had understood the town's ordinance as it existed was not sufficient in the past situation; as livestock ordinance is written, rabbits are defined as livestock and poultry is prohibited. Attorney Fordham advised the ordinance could allow for a pet exemption. Mayor Weatherly stated the ordinance could be amended at anytime in the future; he was not saying barn yards of animals, not suggesting it to that extent; noted the rabbits talked about were used as a business, however, could modify the ordinance to prohibit the number of rabbits in the future. Attorney Fordham noted some districts where agricultural animals were not allowed and would be considered a zoning violation; current ordinance is enforced by police powers and as problems occur, could consider amendments; if there were no problems, could add to the exemptions.

Council Member Jones commented on the number of animals and if too many added how they are cared for, and didn't feel there should be an ordinance created for a problem, that we don't have. Council Member Sutton felt roosters would be a problem. Mayor Weatherly asked staff to work with the livestock ordinance and having heard requests to consider exemptions for chickens, rabbits, poultry, and ducks and swans. Attorney Fordham asked if Council wanted to consider categories and criteria. Mayor Weatherly asked to consider animals for exemption, and then later maybe criteria. Attorney Fordham noted it easier to take fowl out of the list. Ms. Cash offered that chicken are considered fowl and animals have four legs. The Attorney will bring options for the Council to consider.

End of Public Hearing # 01

Public Hearing # 02 – Rezoning Case #07CZ03 – Salem Village PUD

Review: Town Council considered this 2025 LUP Amendment and Conditional Zoning March 6, 2007; Council closed the public hearing but continued the item to March 20, 2007 to allow for Council Members to review TIA; TIA summary by Russ Dalton and Executive Summary of TIA are attached as well as preliminary designs and cost estimates for Apex Peakway and S. Salem Street interchange; full TIA document was included on a CD in March 20 agenda packet. Applicant requested at March 20, 2007 Council meeting to continue Public Hearing to May 1, 2007 Town Council meeting so they could have more time to explore options for Apex Peakway and S. Salem Street intersection; applicant plans to present their findings at the May 1, 2007 Council meeting. Planning Board met 02/12/07 and unanimously recommended approval with conditions stated by staff at the public hearing, and agreed to verbally by the applicant; staff recommends approval of the 2025 LUP amendment and conditional zoning with conditions.

Continuation of Public Hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Zoning Case #07CZ03, Winslow Properties, petitioner; seeking to amend the 2025 Land Use Plan from Mixed Use: Commercial, Office & Institutional, and High Density Residential to Mixed Use: Medium and High Density Residential; Office & Institutional; Medium Density Residential, and to rezone from Residential Agricultural and Medium Density to Planned Unit Development-Conditional Zoning (PUD-CZ) the property located at South Salem Street at future Apex Peakway, containing 313.8 acres.

Presenter: Dianne Khin, Director of Planning stated Developer of Salem Village PUD requests Town continue the public hearing and delay any action on this zoning indefinitely. Developer is addressing concerns relative to traffic and construction of Apex Peakway and hopes to bring the matter back to Council in near future. Letter from Withers & Ravenel is attached and signed by Jason A. Bertoncino, PE representing the applicant. Khin noted this would not be a continuance, however, will be readvertised for hearing at the appropriate time. Attorney Fordham noted any motion should be stated to be continued indefinitely. Mayor Weatherly called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Jensen that this hearing be continued indefinitely and readvertised at the appropriate time. Motion carried unanimously.

Public hearing # 02 continued indefinitely and will be readvertised



Public Hearings continued

Public Hearing # 03– Rezoning Case # 07CZ05

Review: Town Council continued the public hearing for Tractside PUD-CZ on April 17, 2007 in order to have more time to review the TIA; PD Plan for Tractside and Tractside TIA on CD were included in April 17, 2007 agenda packet; Planning Board considered the rezoning at their April 9, 2007 meeting and unanimously recommends approval of the PUD-CZ rezone as presented; staff recommends approval of the PUD-CZ rezone.

Public hearing and possible motion regarding Conditional Zoning Case # 07CZ05, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial, Low Density Residential and Residential Agricultural to Planned Unit Development-Conditional Zoning property located at US64 on the north, Hunter Street on the south, and CSX rail right-of-way to the east and west containing 167.92 acres.

Presenter: Dianne Khin, Director of Planning stated this hearing was continued to review the TIA. Planning Board met April 9, 2007 and unanimously recommended approval of the PUD-CZ rezoning as presented. Staff recommends approval. Staff report is attached and incorporated as a part of the minutes.

Mayor Weatherly opened the public hearing at 7:38 p.m.

Alan Manase, BBM Associates, representing Apex 1st Development, gave a recap of the presentation from the previous meeting for Tractside formerly known as Tractside North and Tractside South. He began the presentation with Tractside North: oriented to site, noted the acreage of the tract, and number of dwelling units per acre; exceeds RCA requirement; retention storm ponds are designed for the 1 year, 10 year, and 25 year storms; will dedicate 12.98 acres of public park land; gave the breakdown in densities for residential and commercial, guaranteeing the minimums for commercial, office and retail. Tractside South: oriented to the site, noted mix of commercial, office, townhomes, and condos; noted location of proposed roundabouts; showed elevations views of the commercial and town homes. He showed the conceptual layout plan for Tractside North with plans to maintain the lake and provide a community center. He showed conceptual elevations of the homes with intent to have 12 custom builders to build out the project. TIA was prepared by Ramey Kemp and Associates; an Engineer from their staff and Town of Apex Engineer Russell Dalton were present to answer questions. Project Data is supplied in the attached PD Plan. TIA was presented at the April 17, 2007 meeting.

Council Member Schulze in review of the TIA asked about allowing a gas station. Manase responded the parcel at the Peakway and Laura Duncan Road, gave a conservative response it could be an allowed use. Council Member Jensen questioned levels of service, seeming low to him from the traffic summary; asked if density were lower would levels of service improve. Russ Dalton, Transportation Engineer for the Town responded change in density was not the factor but a background traffic driven problem. He explained N. Salem Street and Hunter Street have constrained right-of-way due to the Historic character of the street and the railroad tracks. He stated the development of the Peakway would help the conditions. He addressed the roundabouts and circulation operations and the impact of Laura Duncan Road and Hunter Street; long range plans indicate a roundabout; traffic shows level of service F, and with continued discussion regarding perhaps a traffic signal should be considered in lieu of a roundabout. Council Member Schulze addressed garages, with Manase responding all homes have two car garages.

Mayor Weatherly closed the public hearing at 7:50 p.m.



Public Hearing # 03 continued

Council Member Jensen shared concern for the dedication of 13 acres of land for public park land and fee-in-lieu vs. keeping the 30 acres and sees this a loss of 20 acres; stated 30 dwelling units per acre was extremely high and had rather see money generated rather than acceptance of a fee in lieu and then have the developer build a public park.

Council Member Jones added there's considerable open space planned other than those 13 acres; the recommendation was unanimous decision from Parks and Recreation Commission and had recognized greenways located in other areas and further additional private recreation opportunities, with an additional 37 acres for RCA; agreed on the clustering for added green space, and noted not all of it was dedicated as park space, some 47 acres not all developed; location shape and size was important, and the recreation recommendation had come from staff as well. Manase stated plans were to dedicate the public park, also enhance and maintain the lake with added green way trails and perhaps fishing pier and there will be lots more opportunities for recreation within the development.

Action: Council Member Jones made a motion to approve the zoning as recommended. With no second to the motion Mayor Weatherly asked if there were another motion.

Action: Council Member Schulze made a motion to deny the zoning and second to the motion by Council Member Sutton. Council Member Schulze shared his concern that the development was too dense, and knowing it was showing zoning for high density, feeling over 1200 units were too much, and too burdensome, and if the proposed was scaled down he would be in favor of it; felt he had made his concerns clear all along. Council Member Sutton agreed as proposed it was too much density.

Mayor Weatherly stated the Planning staff had worked with the developer and had agreed to every request of them and had been cooperative and had conceded to every condition placed on the proposed with the Planning Board being unanimous, having made a strong recommendation for approval, thinks this deserves approval.

Council Member Jones felt if this were the feelings, there should be a special meeting to amend the land use plan if this were too dense. He noted several workshops had been held on this, and had worked on the issues of traffic and density. He stated Trackside had been a focal point of discussion over a long period of time and thought all, almost unanimously agreed was a priority for the town and previously designed with more density than shown; that they had asked the developer to jump through hoops to get here and now to say they don't want them he didn't agree with.

Mayor Weatherly commented they had tightened the density and this was a high quality development for the town and asked if time would matter and unsure of the next product and could be a long time coming. Council Member Sutton expressed disappointment regarding mixed use, and had envisioned more. Council Member Jensen recalled in the organization plan more office space on the north side and now there are townhomes on the north side.

Mayor Weatherly restated the motion was to deny the plan and noted it would be some time before they could come back with a plan, asking the petitioner's options. Khin responded the time would be one year before the applicant could submit a substantial changed plan. Mayor Weatherly asked if he had support from the Council for a delay on the action to allow the petitioner to address the issue regarding density.



Public Hearing # 03 continued

Manase stated the land cost was not cheap; that RCA takes away use of the acreage and saw this as a trade off with density; stating the ordinance allows density in PUD for trade off and that staff had encouraged density for quality development; the town had planned for Trackside, a neo-dense urban development. He noted the concern for lack of commercial space and with O&I would cause more intense demand of traffic and the north portion does not have direct access to Laura Duncan Road or Hunter Street and would not work with a right-in and right-out connection onto US64; he noted with the minor streets this would not work with the neighborhood. He could not understand council's decision as he had done everything requested and what was envisioned by the Town for Trackside. Mayor Weatherly also noted there was a proposed build out for the bridge.

Manager Radford added the applicant had done many things to work out the densities for the area which were greater when first proposed; he asked Council rather than a one year delay, give two weeks to look at the density and come back to Council at the next meeting. Mayor Weatherly asked if a motion to table were in order, with Attorney Fordham advising they could return in two weeks. Mayor Weatherly asked if Council wished to withdraw the motion to deny and offer another motion to table this item for two weeks.

Action: Motion by Council Member Schulze to withdraw his motion to deny and a new motion to table this item for two weeks to the May 15, 2007 Council meeting. Council Member Sutton withdrew his second on the motion to deny. Council Member Jones made the second to table this item for two weeks. Vote on the motion was 4 and 0 to table this item to the May 15, 2007 meeting of the Council. Motion carried unanimously.

Public Hearing # 03 tabled to May 15, 2007 meeting.

Public Hearing # 04– Rezoning Case # 07CZ08, Master Subdivision and Major Site Plan

Review: Planning Board reviewed this item April 9, 2007 and unanimously recommended approval with conditions of the Heavner Tract Rezone #07CZ08 from HDMF-CU to PUD, Master Subdivision Plan, and Major Site Plan and outlined in the staff report; staff recommends that the Heavner PUD Plan, Subdivision and Major Site Plan be approved with conditions outlined in staff report.

Public hearing and possible motion regarding a Rezoning, Master Subdivision, and Major Site Plan of 54.65 acres from High Density Multi-Family Conditional-Use to Planned Unit Development - Case #07CZ08 - [Heavner Tract]; the proposed subdivision and site plan includes 101 single-family homes and 128 townhomes; property is located on East Williams Street (NC55) between Bobbitt Road and Straywhite Avenue.

Presenter: June Cowles, Planner, oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes; stated the zoning request that would include 101 single single-family and 128 townhomes for 229 total units. Applicant held a neighborhood meeting, public concerns were with traffic and site buffers. Noted RCA standards, creek and greenway connection; architecture standards and conditions on page 3 and 4 of the staff report; access and circulation and parking on page 4 of the staff report. Project was reviewed and recommended for approval by Park and Recreation Commission with conditions outlined on page 4 of the staff report, with open space and trail connections along the street. Staff recommended conditions be added to architectural standards for townhomes on page 5 of the staff report. Planning Board met April 9, 2007 and unanimously recommended approval with conditions of Heavner PUD rezone, Master Subdivision, and Major Site Plan. Proposed is consistent with 2025 Land Use Plan and UDO; road will be built over the creek and flood plain; staff recommends approval.



Public Hearing # 03 continued

Mayor Weatherly opened the public hearing at 8:15 p.m.

Jason Bertoncino Withers and Ravenel represented the applicant and stated the rezone would allow PUD for single family; additional standards included limited lot grading, architectural standards, and addressed citizen concerns regarding site buffers, traffic, drainage, and water pressure. Fire Flow analysis addressed town water mains, and believes loop connection will help with pressures; storm ponds address drainage on the site; grade for single family lots with a 17% reduction in units from the original study proposed by the previous applicant; road will connect to the east over middle creek; north and south collector streets to the site promotes access and not cut-through traffic and speeding. Council Member Jensen asked if he were willing to commit to a 25-year storm pond design as Miramonte Subdivision had committed to do. Bertoncino stated he can commit to a 25-year storm design pond as well as the staff and parks conditions.

With no one speaking in opposition Mayor Weatherly closed the public hearing at 8:20 p.m. and called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Sutton to approve the request for the rezone, master subdivision and major site plan; both saw this better than the old rezoning. Motion carried unanimously.

End of Public Hearing # 04

Public Hearing # 05 – Annexation Petition # 413

Public hearing and possible motion regarding Annexation Petition #413, Town of Cary, owners/petitioners, petitioning to annex 207.275 acres into the Town's corporate limits and located off Old US 1 Hwy.

Presenter: Dianne Khin, Planning Director oriented to the property for the location of the water reclamation facility located on Old US 1 to new US1. Mayor Weatherly opened the public hearing at 8:20 p.m. and with no one speaking in favor or in opposition to the annexation closed the public hearing and called for a motion.

Action: Motion by Council Member Schulze and second by Council Member Sutton to approve Annexation Petition # 413. Motion carried unanimously.

End of Public Hearing # 05

Public Hearing # 06 – Annexation Petition # 414

Public hearing and possible motion regarding Annexation Petition #414, AB Properties of NC., LLC., owners/petitioners, petitioning to annex 6.163 acres and includes 0.399 acres of right-of-way into the Town's corporate limits and located on Apex Barbecue Road.

Presenter: Dianne Khin, Planning Director oriented to the property location, noted it an infill piece for the Nature Park site. Mayor Weatherly opened the public hearing at 8:21 p.m. and with no one speaking in favor or in opposition to the annexation closed the public hearing and called for a motion.

Action: Motion by Council Member Jones and second by Council Member Jensen to approve Annexation Petition # 414. Motion carried unanimously.

End of Public Hearings



OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

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

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

No one spoke during public forum.

NEW BUSINESS

New Business Item # 01 –Financial Summary

Presenter: Lee Smiley, Director of Finance, gave a review of the 3rd Quarter FY06-07 Financial Summary which is attached. Benchmark for 3rd Quarter financial performance is 75% for revenues and expenditures; significant variances were noted. Financial Summary was well received by Council.

Director of Finance presented a Capital Projects Plan regarding General Fund Balance and showing available cash as of May 1, 2007: \$7,800,000. Cash financing for three major projects were offered regarding: 1) Police Building 2) Public Safety Center and 3) Cultural Arts Center to supplement funding, and would require approximately \$7,800,000. Director of Finance was not comfortable with the cash financing as it would have a significant strain on the budget and offered an alternative debt financing plan: example: a 20 year term loan of \$7,800,000 at 4.70% Interest Rate would have one payment per year or \$610,071. He expected the current bond rating for the Town to be maintained. He further offered recommendations for a reorder of priorities for transportation improvements and parks and recreation improvements and the public works complex expansion. These recommendations would make less constraint on the General Fund for any future needs. The Capital Projects Plan and recommendations are attached.

New Business Item # 02 – Declare Surplus Property

Presenter Bruce Radford, Town Manager offered the Police K-9 had lived out his usefulness to the department as a drug tool, having searched vehicles and yards, and is recommended he be taken off the street, declared surplus property and offered to the handler for a fee of \$1.00. Brief discussion followed in that it has not been determined whether the K-9 would be replaced. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Jensen to declare the Police K-9 as surplus property and offered to the handler for a fee of \$1.00. Motion carried unanimously.

End of New Business

**WORK SESSION****Work Session Item #01 – Toll Roads Facility – I-540**

Mayor Weatherly stated CAMPO would consider the I-540 as a toll road facility at their next meeting, earlier than anticipated. He asked to include on the agenda for May 15, 2007 meeting a representative from the NC Turnpike Authority (David Joyner) to speak. He gave a status report of the current positions regarding toll road proposal for I-540 as he understood them, and would like to hear from Council prior to voting for need to justify his vote and should there be a split vote of the Council he will use his own judgment in voting, however if there's a 4 vote of the Council he will vote the will of the Council for the residents of Apex. As a toll road facility I-540 would be built out over the next 6 or 7 years and without a toll road facility, would be 25 years or better. He foresees more to this than just a toll, not only a user fee but a dedicated tax to the Wake County citizens to be determined by the legislature; he noted a gap in the funding and that NCDOT will not finish the project and feels we are being short-changed as others ride free and we would have to pay the toll to ride. Mayor Weatherly further extended an invitation to Skip Stam and Joe Malonzo to attend the meeting; perhaps may ask the legislature to come up with an open-ended funding (it will not come from existing sources of revenue but new revenue). This doesn't make sense to him and something he can't justify. Mayor Weatherly suggested a 30 minute hearing for this item; he will ask for and provide a set of assumptions Council could work from to see what they are voting on.

End of Work Session

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session for the following for an item related to condemnation matters.

Action: Motion by Council Member Jones and second by Council Member Schulze to move into Closed Session at for the purpose stated. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Schulze and second by Council Member Jensen to move back into regular session. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council a motion was made by Council Member Jensen and second by Council Member Schulze to adjourn at 9:51p.m. Motion carried unanimously.

The minutes of the May 1, 2007 Council Meeting was submitted by the Town Clerk for approval by the Town Council on May 15, 2007.

Georgia A. Dranzel
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes and General Account for the Tuesday, May 15, 2007 Meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

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

PRESENTATIONS

01 - Mayor Weatherly presented a **Proclamation in Recognition of National Police Week**, May 13 – 19, 2007. Chief of Police Jack Lewis accepted the Proclamation.

02 - Mayor Weatherly stated CAMPO at their May 16 meeting will make a decision whether or not to move forward with a formal vote on the **Proposal by NC Turnpike Authority to construct I-540 as a toll corridor**. While recognizing need for completion, asked public input before the vote that would be a permanent decision to move in this direction. He noted some had asked do we want to move the time frame up by six or seven years to build this corridor partially by toll revenue or extend the time out in the future and wait for additional funding sources. Not the only issue, recognizes the gap in funding: bond revenues will make up a portion of total construction costs and the rest is before NC General Assembly to come up with additional funds with indication that it would have to be a new source of revenue and not carving up existing revenue to come up with the gap funding; knows going in could be another tax if not on all of NC specifically Wake County, an issue that has not been decided and being asked to vote with this issue still being outstanding; cost of the project goes up monthly by \$4 million and would have to cut costs to make this reality under the current proposal; also an unknown idea the outer-loop could be sold to a private firm for profit in the future. NC Turnpike Authority and others have worked in good faith and hopefully will reach an agreement, a memorandum of understanding to provide clarity to these issues; he hopes speakers will address this. Mayor Weatherly introduced Chief Engineer, Steve DeWitt, NC Turnpike Authority for a presentation. (proposed Triangle Expressway)

Steve DeWitt, PE, Chief Engineer of NC Turnpike Authority presented the proposal for Interstate 540. Highlights: challenge in transportation funding is at a critical stage and lacks resources to take care of the infrastructure and provide the quality of life citizens demand; government returns are not being given back as promised; growth in this area is tremendous, second largest area in terms of commuter traffic in the country as it relates to growth; inflation in construction costs are astronomical; NCDOT has lost 50% of its buying power over the past four years; increase in construction costs, shortfall is huge; Legislature has asked NC Turnpike Authority to look for options. Proposal: build a 20 mile 6 lane corridor at a cost of \$800 million; lack of State and Federal revenues to build these kinds of highways. Before building a toll road community officials gave ok to study this last year and now the vote for this section. While some agree a toll project is unfair feeling as they have already paid for the road and being forced to pay a toll, noted money does not exist; toll fees would pay a portion 75% of the costs, 25% has to come from other sources; are seeking help from Legislature for additional revenue to cover the gap in funding. Money pays for construction, maintenance, and operation for years into the future. Are on tract to advertise as soon as the gap funding is secured through the Legislature and why the vote is so important.



Award contracts early next year 2008; target opening date for the Triangle portion fall 2010 with corridor open in fall 2011. Toll costs are undetermined, estimated 10 to 12 cent a mile or approximately \$2.00 for the 20 mile corridor; not look like the initial tolls, initial cash lanes will become electronic (device will automatically charge an account); showed locations of the toll plazas and ramp plazas when exiting off. Why toll: money in the State does not exist to build roads anymore. Why here and not the rest of the outer-loop: Legislature has to make this decision – a longer toll would help the gap in funding. Already paid for this: paid gas taxes at the pump – (example: can't keep building schools with the taxes paid; to build more schools need bonds) same situation here; maintenance costs are astronomical on existing roads. Force to pay a toll: are not forced to use the road (I-540); could continue on NC55 or I-40 for free; this toll would provide a choice for drivers and could save 20 minutes in their daily commute one way, and relieve traffic on other roads. Mayor Weatherly recognized David Joyner, Director of the Turnpike Authority, here for a major meeting, however gave time to this community.

Joe Milazzo, Regional Transportation Alliance, stated the group focuses on ways to relieve traffic issues and enhance mobility; 2005 Resolution was adopted to look at I-540 and Triangle Parkway (essentially Davis Drive Bypass) and does it make sense for I-540 to be accelerated as a toll road. The Alliance has and continues to support this as an option; the northern portion was not tolled because there were resources at the time; inflation prices have increased; tolls are not the first choice of the Alliance, in looking at options available to them, considering growth of Wake County, the most populous county in the state in the next ten years, it's amazing we have not had turnpikes for as long as we have; of all states that touch the Atlantic Coast NC is the only state a that does not have a turnpike; given the option to accelerate this looking at the current estimate of NCDOT over the last 18 months is to complete with no tolls is 20 or many years away, no one can answer; Alliance is not a fan of tolls but not a fan of congestion even less; Alliance hears this project could be underway soon and are looking at the option with the project going to bid next year, open three years, the Triangle Parkway Davis Drive Bypass, and four years for rest of I-540 down to Holly Springs; Alliance stands by the fact that stopping at the Holly Springs Bypass is not sufficient for them, but to continue through Southern Wake County and tying into the Clayton Bypass or the Southern Wake Freeway; the whole loop needs to be completed as soon as possible; agrees resources need to stay on this freeway; NC Turnpike has passed a policy in regard to this and knows no one that would want this any other way; Alliance is pushing for additional revenue sources from the state law makers to alleviate the gap in funding and to accelerate the road, and if legislatures will provide \$18 million a year for the balance of the road, it seems to them the best possible way to accelerate this freeway, and will allow you to avoid stop lights on NC55, stoplights on Davis Drive and for their organization, is not an acceptable way for folks in Apex to get to RTP over the next four years without an option.

Mayor Weatherly called on Paul Stam, House of Representatives to address gap funding, and representative of Apex asked what the bonds will sell for and the cost of construction; the update. Representative Stam lives in Apex stated the gap funding is about \$18 million a year; legislation has been filed, but noted it's not included in the House budget that has been passed, however had huddled in the appropriations committee over the idea of an amendment that would have handled the gap funding for this year and next year, but the co-chair of the subcommittee, this is second hand, assured delegation that the Senate would take care of it in their budget. Senate Appropriations Chair came over and had a lot to say, at the end of the day more or less assured them, as much as one person can assure someone who speaks for a body of 50 that the Senate at the final end would have it in its budget, the gap funding; take that for what its worth; he would say it would probably happen but its not sure. Mayor Weatherly asked what would the source of those funds be, with Representative Stam responding it would be from the highway existing revenues.

Council Member Schulze stated they had always heard the Northern Wake Expressway could not be tolled, it's the law, can the law be changed and if so, is there any support for that. Representative Stam responded his first thought was toll each section of it for about 20 years to be fair, but it is not practical in getting people to agree to that and could talk all day about practical things but at the end of the day have to do things that will actually accomplish something; it makes sense, and the way he thinks about it in his own mind, we think of the loop as a circle, but if you look at it from the air, you can't tell what roads bare what numbers, giving the example of one driving from Fuquay to RTP will go first on NC55 that is free, then on the Holly Springs bypass which was free, then a toll for a part, then another part, its not like people follow road numbers all the time to stay on that road, you have to think of the total trip and not just a segment of the trip.



Ed Johnson, CAMPO has served on the Blue Ribbon Committee looking at all infrastructure needs; Wake County covers 10% of the State, and has \$11 Billion of unmet needs over the next 25 years, only \$6 Billion is in transportation; NCDOT has \$65 billion of unmet needs in the entire state. Most turnpikes are built on collections of 10 to 12 cent a mile to build a quality road; some vary and would pay more to use it during peak hours; gas tax is about \$0.43 a gallon and works out to be \$0.02 per mile; two cent vs. twelve cent. An unrealistic opinion that a two cent a mile revenue system can take care of the needs of the state and he stated it can't. Until we come to grips with the fact we can't double the gas tax to collect the nickel a mile, we have to come up with other ways to do it; one way to do it is turnpikes, another way is a VMT tax where they send you a bill on a monthly basis by how much your odometer spends a month; lots of things are being looked at and this is not something that is unique to Wake County. He stated the revenue issue is a challenge and turnpikes are one way to address those challenges.

#03 – Mayor Weatherly opened the Public Hearing to allow the public to express views regarding approval or disapproval of proposal by the NC Turnpike Authority.

Larry Balas lives in Chatham County and spoke against toll roads, believing residents are overtaxed, taxed at gas pumps, asked to pay tax for toll roads, and tax on income, and taxed on cars – being taxed four times for roads. Asked how important this is; is it a quality of life issue; we are a rapid growing county and someone is lying that growth pays for itself, an impact on schools, roads and infrastructure, and its not. Asked why place a 1% tax on sale of houses; this road has nothing to do with growth in NC and little to do with growth in Wake County; asked if Holly Springs and Apex would grow to need toll roads; he doesn't see why build a road when NC55 could handle the traffic for 15-20 years; solution to bottleneck in Apex is take I-540 money and build around Apex it would lead to the Triangle with few lights and rapid movement and no need to toll; recessions are being predicted and land would be cheaper; what growth in this county would require a toll road that we would have to pay for.

Russell Contania stated he moved from New Jersey; asked how much would it cost to build as a toll vs. free road; toll infrastructure is a major part of the construction costs; AAA says since 1990 NC diverted over \$3 billion from its transportation fund to general fund and now we don't have enough money in the transportation fund to build this; in 17 years \$3.4 billion comes to about \$200 million a year, so apparently, we have been paying enough in transportation taxes but its not being used for the roads; he thinks \$2.00 toll on average \$1,000 would spent in a year; a car 20 mpg 20,000 miles per year a 5% increase in gas tax would be \$50 year. He addressed problems Jersey had with the easy pass system; money has to be paid up front; confusion in cash lanes; accidents, insurance rises; speed limits for transponders to read properly; WC and state want this road as much as those that anticipate using it; it will bring economic development, increased population and increased taxes and increased gas taxes; transportation fund if it uses its collected money for the roadway and anticipation in additional funding believes should be more than enough to fund the road without a toll. How long until the tolls would be collected anyway.

Bonnie Fischer, Apex Chamber of Commerce, 500 members, spoke in support of the toll roads to fund I-540 critical to the success of economic development in Apex and the surrounding community. Providing non-stop travel free of stop lights and delays; estimated cost \$800 million; with limited state transportation funds continuing to loose the battle with growing demands and inflation costs, likelihood of construction completion in a quick period of time is waning everyday; as a result of the combined reasons Apex Chamber is in favor of toll roads for the RTP Expressway Turnpike.

Dave McDowell represents "notollsonI-540.org" address concerns I-540P section from 40 to NC55 in RTP is ready to open with bags over the signs, labeled as I-540; if some of the gap funding comes through those signs could be removed and road called a different name decided by CAMPO or whoever and confusion being called different names on the loop; he added Connecticut doesn't have tolls and Georgia may have one from suburbs into downtown center; Charlotte will have a 45 loop; 55 to RTP will open up free – legislature made an amendment to SB 31 allowing the Turnpike Authority to toll this section of the road not knowing their relationship but goes against a key restriction of the Turnpike Authority that they have had on their books for a long time – no tolls on existing roads; concerning this can happen and we had no say about it.



Ralph Horn, Apex resident seems some concerns have passed, the money does not exist, and would like for everyone to pay a toll around Wake County, would like the legislature to pay for it, for gas taxes to cover it, but at the point this didn't happen and not going to happen and angers him. Asked is the turnpike a solution and hears how great it will be, in New Jersey was ticketed for going in the wrong lane; is it a road of dreams, build it and they will come; he has not heard from the Turnpike Authority what is the difference between a road paid for by regular taxes and toll road; spending a lot of tax money costing more to use, what will the impact traffic decrease at NC55 and S. Salem; what will it change how many would use it before committing to spend an enormous amount of money. We've send the advantages to northern wake county with the outer loop in terms of growth and infrastructure, home prices, and we knew it was coming soon, far enough but reap the benefits, will we see Briar Creek, Wake Field development to our part of the county or does a turnpike have a negative affect on growth and infrastructure; he thinks we are over a barrel; what will it be like and do we want it.

Clare Owens, Olive Chapel, lives near the I-540 where it goes through; can hear it and is a good idea to ahead with the project and have a toll, probably the lesser of the two evils; he sees the problem in funding and is probably no other way to build it in the seeable future; it is optional and can use NC55 which is what he would do most of the time; to Triangle Town Center, would be a great road to take, and saves time; concerns with the funding - will it pay enough for bonds and maintenance - not told if the toll plan is flexible, if 10 cent or 12 cent is not enough, will they raise it, hopes so not wanting it to become a huge financial burden to WC and the state and is the only way to do it; Good idea do it planned for long time; Asked if update drawings on-line wants to look at them.

Ron Margiotta, WC Board of Education, representing Apex, stated he was disappointed the Turnpike Authority could not give a specific toll anticipated for this road and at this stage in the game unsure; maybe \$2 and may not be; many in Apex come from other parts of the Country and are familiar with toll roads, absorbent taxes, and why many moved to Wake County and sees that same train moving into Wake County and almost unstoppable; he knows the tolls here to New England and they continually increase; \$2 daily \$4 roundtrip is outrageous; Apex is fortunate they have good government and good property tax rate; not sure we can say this about State government nor Department of Transportation with the problems they have had and the reason why we are being asked to support the toll road. Asked what do we do next - do we toll other roadways, thinks so, and agrees it's convenient to build now; asked not to sacrifice convenience for principal; State plan was in affect to complete this road without toll and thinks they should be asking and demanding the State to complete this road without tolls; move money back into the highway fund they moved out; asked Mayor and Council to just say no to toll roads.

David Stanfer, South Salem Street stated a blind man can see toll roads are unfair and unjust; he has no problem with the toll road as far as they system is concerned, the more you use it the more you pay for it; when they help build the northern section of the road, we helped, now when we are ready to build, are told we are on our own, we pay for it; he stated this unjust and unfair; either we need to get tolls on entire I-540 for the southern section or no tolls anywhere.

Marty Allen, business owner in Town for over 20 years, lifelong NC resident in Wake County most of his life, no formulas or numbers, Chamber member; doesn't want to call anyone a liar but told all his life they are going to put this tax on and take it off after paid and whatever it was designed for and still pay them; doesn't think any people here will tell something that's false, but what is being told is not completely true, but one thing he does know is that we have lived in a state during a time it has had unprecedented growth and don't have tax problems but a spending problem in this County; he's here to counter some of the people that are saying there's no other way; NC55 was mess when it had 2500 people in it and no one knew where Holly Springs was, it was on a road to Fuquay Varina; NC55 is still a mess; he knows we need the road, but he's not for toll roads and to him its an indictment on State government that they don't know how to manage their money; he's not for toll roads.

Mike Baker, Apex asked talking \$800 million in bonds, a lot of money and are talking about paying them back with toll revenues, and in the case where toll revenue isn't sufficient to pay the bonds, who's on the hook for them; he probably wouldn't use the road but about once a year, but for commuters its a big issue, \$1000 year - a big hit and may convince him he shouldn't use it on a daily basis; it may relive traffic on NC 55. This County approved million dollars in school bonds and found this want get the job done and need more; if we put in the toll road what will it do to the growth west and south, he personally feels his lifestyle will be dramatically improved by more homes and say we need schools for those folks; he has serious reservations about it and thinks once we get this train rolling we are opening ourselves for toll roads for everything; he's personally opposed to this.



Herman Jaffee expected facts and figures and heard hot air from Turnpike folks; come August have figures to vote on again not agreeing; noted the audience opposed this only for is business; they hope to make money; at this time, we do not need it; cars are getting smaller not bigger and NC55 will carry more traffic 5 and 10 years due to smaller cars; use common sense; vote no and let the highway department do what they are suppose to do, a complete loop.

Mayor Weatherly turned to the Council for their input as to how they thought the vote from Apex should be on this issue.

Council Member Jones stated its been talked about for two years and last years the number one priority to CAMPO for TIP every year; recognizing NC55 has worsened especially peak hours of 5 p.m. to 7:30 p.m. and believes I-540 will relieve this to a large degree; unfortunately, there are so many unknowns and inequity, its hard for him to say go do it, and if he can't say it with enthusiasm to spend \$800 million, he doesn't think he can do it at all; if we had a choice toll road option built by 2011, if not 20 whatever, then he would have something to weigh for a decision, and if we knew where the gap in funding was coming from, \$200 million as said, it's another form of tax; \$18 million could and maybe should be spent for something else; he was not ready to vote yes, based on what they know at this point.

Council Member Schulze stated we have been discussing this issue for over two years, and he has gone back and forth on this issue; we been told they build and its tolled, people can use, but are not forced to use it, its a matter of convenience, but on the other hand there are too many unknowns; we don't know how much the tolls will be or when the tolls will come off, and look at how many sunset taxes have never seen the sunset, he doesn't trust the tolls will ever come off even if it is 35 years, and he plans on being here; he thinks Ron Margiotta summed it up well, don't give up principals for convenience, and to him in principal is opposed to the toll road; the fairness factor, not knowing how much it will be, too many unknowns; one question he has that has still not been answered, what happened to all the money in the trust fund and we are told we need this road, and there is no money, where did the money go; he's not comfortable paying \$800 million for a road he thinks we deserve anyway.

Council Member Gossage has thought about this a lot, gone back and forth, very much in favor of road and very much opposed to the toll; he does think we need the road, there is a lot of commuter traffic in Apex that comes from the south of us and goes to the north of us, that's on Davis Drive; Manager experienced turning off his street onto Davis Drive at rush hour, and he doesn't think there is any question that we need the road; he doesn't think we are in this position because of growth or inflation, but are in this mess because of the absolute failure, the absolute ineffectiveness of our State legislature and our Governor's Department of Transportation to exercise fiscal discipline and to prioritize; quite frankly he resents the fact that the buck has been passed down to local level in stead of those officials who are elected to make those decisions, has been kicked down to us to make a State transportation decision that's a State Transportation decision; He asked the Mayor in regards to the vote at CAMPO, did he have any information on the sense of vote of how the vote will go. Mayor Weatherly stated there would a total of 23 votes at CAMPO, having expanded beyond Wake County, frankly some municipalities have told him privately, and that they have severe reservations about it; he doesn't think the vote will be unanimous; everybody hasn't been engaged in the debate. Council Member Gossage doesn't think he can say go and support new tax, go and support a new toll; as one of the speakers said, the State doesn't have a revenue problem, they have a \$300 million surplus he believes in the budget this year, and didn't cut the temporary taxes that were suppose to sunset, they renewed them again, and they are going to spend that \$300 million in addition to it, they don't have a revenue problem but they have a spending problem. Different leadership in Raleigh might provide a different result.

Council Member Jensen personally likes the idea of user fees so long as they are applied across the board, and the problem he has with this is that this will be a user fee applied just to us and not everyone else; he is concerned about gap funding and it hasn't been said what if the funds from the toll road don't make it, then if they don't you raise fee most use the road and you are in a downward spiral; he's not heard a solution to this; the other thing not directly applied to this highway, but are looking at getting a highway to get to RTP; that's the traffic you see; needing this road is a result of no true regional planning; we plan our town, others there's but nothing that brings the whole thing together and is where the State needs to come in and bring this together; we have relied on 1960's RTP concept as the engine to promote this area, and was before we have communication like we have today; the other side is we need an RTP here someplace between here and Holly Springs so the traffic goes in two directions; the way it is now going all in one direction is an idiots program in his opinion and need regional planning; he hates drop dead dates, they are phony, if we don't vote up tomorrow and something changes can look at it another year; overall wait and take a good look at this.



Mayor appreciates this, those that gave incite and reflective of the community at large; he really thinks tomorrow will be an important day for the long term future of our town.

Mayor Weatherly called for a recess at 8:17 and reconvened the meeting at 8:25 p.m.

04 – The Planning Committee of the Town Council has invited the public to express their opinions regarding grading, clearing and street trees.

Mayor Weatherly recognized Council Member Gene Schulze, Chair of the Planning Committee, for a report from the Planning Committee regarding grading. Council Member Schulze reported on the two meetings of the Committee having allowed the public to voice their opinion; experts offered different view points on this issue offering advice on how to proceed with regulations in the Unified Development Ordinance; he offered this is an opportunity for the general public to voice their opinion; staff will gather all the information and return to Council. He asked those wishing to speak to come forward.

Sean Dolle, Jones, Cnossen and Dolle Engineering, he appreciates the town is seeking advice from the citizens and the parties that are dealing with this on a daily basis; and important to get these issues worked out. He thinks the simplest way to work with this is to tie it to the zoning; ex. Low density residential, no mass grading, medium density residential, some percentage say 50% or something else, and high density allow mass grading, everything would be tied to zoning, and with Planned Unit Developments and Traditional Neighborhood Districts could be a conditional of approval during approval process when considering the project and zoning.

Mayor Weatherly closed the hearing at 8:31 p.m.

Mayor Weatherly in discussion of trees, stated he has asked staff to do some work and before too much, and since the Chamber is here, stated the City of Raleigh has a "Neighbor Woods" program, public / private partnership where they plant trees, replacing lost ones through natural disaster or development, partnering with developers and business community and private citizens where they could give a couple of dollars a month contribution through their utility bills; concept is that staff would go through a neighborhood placing door hangers in areas where they see homeowners have need of trees or vegetation; town purchases the trees and are offered free to the homeowners if they would put sweat equity into it; it has been successful in Raleigh and they have received great support from the business community, having planted 2000 trees a year. He has had an offer from a business in Apex offering to contribute money to the program; he thinks it would be a good here in Apex to start such a program. If Council would have interested in starting such a program, money would come from private sector and private citizens; he asked Council to let him know, and maybe the Chamber thinks this has merit to participate would be great.

Council Member Jensen stated he had received calls from Carter Crawford, Landscape Architect and Dave Duncan; both support the street trees between the curb and sidewalk; this would have to be worked out with Public Works Department; he thinks it's important to touch on this.

End of Presentations
8:35 p.m.



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 Jensen asked CA #8 be considered separately.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda with the exception of CA # 8 which will be moved to New Business. Motion carried unanimously.

- 1) Minutes of May 1, 2007 Council meeting.
- 2) Minutes of April 1, 2007 Council Closed Session (recorded separately).
- 3) Minutes and General Account of the Planning Committee meeting of April 18, 2007.
- 4) Minutes and General Account of the Personnel Committee meeting April 23, 2007 continued to May 3, 2007.
- 5) Annexation Petition #415, Robert Alan and Amy McDevitt Rossi, owners/petitioners, petitioning to annex 2.438 acres including 0.349 acres of right of way into the Town's corporate limits, and located on Schieffelin Road (SR 1306); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a public hearing June 5, 2007.
- 6) Budget Ordinance Amendment # 19 and Capital Projects Ordinance Amendment for Fire Department grant and transportation development fee credit.
- 7) Authorize Fire Chief to execute funding agreement between Town of Apex and Wake County for purchase of new brush truck.
- 8) Amend Town of Apex Ordinance Sec. 14-31 Sound Emission Standards and Limitations ORD # 07-0515-05
- 9) Adopt Classification Study results as presented in the May 3, 2007 Personnel Committee meeting and to adopt the Position Classification Plan for FY07/08.
- 10) Approve Contract with NC League of Municipalities and Springsted Inc. to perform benchmarking study as directed in Council Retreat.

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 the agenda be modified the agenda to include a Closed Session regarding condemnations.

Mayor Weatherly asked for a Closed Session prior to consideration of New Business Item # 2 to receive legal advice from the Town Attorney.

Action: Motion by Council Member Jensen and second by Council Member Jones to add the requested Closed Session items. Motion carried unanimously. The Regular Meeting Agenda was set as modified.



PUBLIC HEARINGS

Public Hearing # 01 – Conditional Zoning Case # 07CZ04

Review: Planning Board will review this proposed land use plan amendment, and rezoning at their May 14, 2007 meeting; staff will report their recommendation at the May 15, 2007 Town Council meeting; staff recommends approval with conditions.

Public Hearing and possible motion regarding Conditional Zoning Case #07CZ04, Brad & Christina Zadel, petitioners, seeking to amend the 2025 Land Use Plan from Medium Density Residential to Low Density Residential land use classification, and to Rezone from R-40W (Wake County) to Low Density Conditional Zoning district classification, for the property located at 2417 Mt. Zion church Road Wake County, containing 60.32 acres.

Presenter: June Cowles, Planner presented staff report which is attached and incorporated as a part of the minutes. 2025 LUP identifies the site for medium density residential; proposed LUP amendment is for low density residential at maximum of 3 units per acre. Applicant held neighborhood meeting; most concerns were due to eventual development of the property, traffic, stormwater, buffers and forceful annexation; additional concerns were town may require adjacent property owners to tap on to town's water and sanitary sewer lines. Restrictions/Conditions proposed by applicant: applicant is request land use amendment from medium density to low density and rezone from Wake county R-40 to low density conditional zoning to include all uses allowed under low density except: modular homes, church or place of worship, school (public or private) water or wastewater plant. In addition, applicant is including conditions: homes will be built on masonry foundations; a minimum of three risers to the porch and a minimum of 21 inches from grade to finished floor; no vinyl siding will be utilized other than trim and window cladding. Planning Board reviewed the proposed LUP amendment and rezoning at their May 14, 2007 meet and unanimously recommended approval; staff recommends approval of the LUP amendment and LD-CZ Rezoning with conditions for the Harris property.

Mayor Weatherly opened the public hearing at 8:40 p.m.

Sean Dolle, Jones, Crossen, Dolle Engineering spoke in support of the request as stated and has no further to add.

Jack Whetstone, property owner of the land to the right, asked for clarification of the conditions which were restated by Cowles as previously stated.

No one else addressed this request Mayor Weatherly closed the pubic hearing at 8:42 p.m. and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve, since neighbors are concerned about development, thinks they would be in favor of the change from medium density to low density. Motion carried unanimously.

End of Public Hearing # 01



Public Hearing # 02 - Rezoning Case # 07CZ05

Review: Town Council continued the public hearing for Traskside PUD-CZ on April 17, 2007 in order to have more time to review the TIA, and on May 1, 2007 to allow time for reconsideration of density; PD Plan for Traskside and Traskside TIA on CD were included in April 17, 2007 agenda packet; Planning Board considered the rezoning at their April 9, 2007 meeting and unanimously recommends approval of the PUD-CZ rezone as presented; staff recommends approval of the PUD-CZ rezone.

Continuation of Public Hearing regarding Conditional Zoning Case # 07CZ05, Apex First Development, LLC and Douglas W. Duncan, Trustees petitioners, seeking to rezone from Light Industrial, Low Density Residential and Residential Agricultural to Planned Unit Development-Conditional Zoning property located at US64 on the north, Hunter Street on the south, and CSX rail right-of-way to the east and west containing 167.92 acres; possible motion regarding the same.

Presenter: Dianne Khin, Director of Planning stated this, a continuation of hearing #07CZ05 Traskside, from Council April 17, 2007 meeting with the hearing being left open allowing time for review of the Traffic Impact Analysis and allow time for reconsideration of density. Additional conditions of the rezoning for Traskside Development by the applicant are attached and incorporated as a part of the minutes. They will downzone the 8 acre tract between Guy C. Lee and eastern rail line designated as mixed use with a maximum residential density of 12 dwelling units per acre. Tract will also be made available for lease by the Town for a period of five years for use as playing fields and developer reserves the right to terminate the lease with six months notice to the Town; there is no minimum number of years. Applicant will answer the questions.

Alan Manse, BBM Associates, Inc. authorized agent for Apex First Development presented seven additional conditions addressing additional concerns from staff and answer questions raised, and has improved the project greatly and happy to have reached an agreement on some of the items. Within the condition 1 an 8 acre tract now designated as mixed use with 10 dwelling units maximum was previously 30 dwelling units per acre; available lease to the Town for a period of five years for use as playing fields would be \$1 per year terminated with a six month notice which would be about the same time it would take to get a site plan approved for that.

Attorney Fordham recommended on legal grounds would recommend against having a lease provision as part of as a part of the land use plan; he knows its offered in good faith and not in any way commenting on that, advising it should be stricken from the proposal. Mayor Weatherly asked if there were any other way this could be accomplished. Attorney Fordham advised it was not a land use matter. Mayor Weatherly stated they could do a memorandum of understanding as a separate issue after a decision on this matter is reached. Attorney Fordham stated as it's not related to the land use matter, any decision could be reached between the parties. Manager Radford requested as offered this to be leased to the town for \$1 per year and willing to take direction from council later to negotiate fine print of this with the town attorney and will be brought back to Council for execution. Council Member Jensen was not supportive of the decision to sod, grass and then loose it. Attorney Fordham recommended this not even be considered now. Mayor Weatherly asked issues regarding the release be discussed later.

Manase continued with condition 1 will strike anything regarding the lease and will make that mixed use with 10 dwelling units per acre maximum. Conditions 2, 3, 4, and 5 were stated. Condition 5 related to buffers along US64, Council Member Jensen understood the plantings would be additional buffer outside the 40' as close to the top of the bank along US64 on NCDOT property to ensure there is two buffers from the highway to the buildings; he stated where its planned it doesn't serve as a buffer from the highway, recommending the planting within NCDOT's property. Manase stated typically this is not allowed, it could be done with an encroachment agreement, he would be happy to plant them there but not guaranteed they will be able to obtain an encroachment for this. Council Member Jensen stated he could give him the people to get in touch with. Manase asked if he should revise this to say they would attempt to obtain an encroachment agreement with NCDOT to plant an additional buffer and thinks this is all they could legally offer at this point. Council Member Jensen an additional buffer adequate in the view of Town staff. Manase stated that was the wording adequate in the view of the Town staff. He was ok to try and obtain an encroachment with NCDOT, he can't guarantee they could obtain that; he can't have a condition that the buffer be planted, with Council Member Jensen interjecting subject to an encroachment with Manase continuing subject to an encroachment with NCDOT, with Council Member Jensen adding or with permission whichever. Manase responded encroachment would be the proper term, as they would be encroaching on their right of way with those plantings.



Manase continued with condition 6 committing to a pond in the southeast corner of Trackside south oversized to maximum extent practical to prevent increased downstream flooding; he noted discussion with the pond as to what it would be able to do; have committed to 25 year flow control for all ponds within the PUD and with this one thinks can do a little more than that; do not think they can do volume control that being containing the entire run-off of the entire storm from within the pond, but will work with town staff to enlarge this pond to the maximum extent possible given the plan they see, and given the stream buffer next to this as well.

Council Member Jensen was of the understanding it would be at a minimum the 10 year 24 hour storm control would be for both flow and volume and so indicated that to the folks in Shepherds Vineyard and looks like at this point was stepping back from what he certainly did understand as to what was going to be done. Manase didn't think he had indicated they would be able to do this, he has run some preliminary numbers, and are talking about a much larger pond than the town ordinance would require; they are already going beyond the town's ordinance by doing a 25 year flow control, but certainly never meant to imply they would do volume control for 10 year or 25 year rainstorm; he thought he made clear that the calculations he ran on the pond would be four or five times the size it would need to be. Council Member Schulze thought he had agreed to the 10 year volume and turned to Manager Radford who stated he would say that he also said he could do 10 on that one pond and 25 year flow on the rest. Manase thought they had stated they would try to, with Council Member Schulze interjecting try to and Council Member Jensen also wants 25 year volume control and thought he was saying that they couldn't achieve that and understood that but said at least 10 and more than that if possible. Manase thought the numbers they had discussed, he had taken an example of a pond designed in town on a 10 year flow control and looked at it for a 10 year volume control and had said they would be obtaining double the volume that they would have to for the flow control, but they can't just stack the volume up, can't dig deeper, can't build the dam higher, topography dictates that so they will get much larger land area in order to do that; he said to double that volume would be four or five times the size of the land area that would be. Council Member Jensen clarified four or five times to double the volume of the capacity of the pond, with Manase responding yes topography dictates how high the dam can be built or how deep they can dig that pond. Council Member Jensen stated if it were the same depth and they doubled the pond they doubled the area with Manase adding in most cases they can't get any higher. Council Member Jensen was not saying get higher, he was saying if you double the size, you double the volume, you double the area. Manase responded these ponds aren't hemispheres or rectangles, with Council Member Jensen saying he fully recognizes this. Manase spoke with his partners and stated they will do 10 year volume control for this pond even if it results in losing usable land area.

Manase continued with condition 7 regarding the 10 foot wide multi use path coming from the north to the park left permanently to connect the neighborhood to the park. He noted changes to the proposal, numbers are updated in terms of density with a net loss of 130 units in density, and now at 1093 total units and a 6.44 dwelling units per acre for the entire PUD.

Bonnie Fischer, Apex Chamber, supports Trackside development asking town's approval, believing the \$327 million development will add to Apex; high quality residential homes will require services Chamber members will be pleased to provide, understanding 23% of the project will be zoned for commercial use and with increase will diversify the business climate in Apex and benefit all by increased job services and tax base; also understands the Town has done due diligence in insuring all the requirements regarding infrastructure to support the project will be met.

No one spoke in opposition.

A representative of the Shepherd's Vineyard Home Owners Association asked for clarification of the 10 year storm volume control. Manase stated he would have to work with staff Mike Deaton as to exactly how to do this. He explained what had been asked of them to do was to control the entire run off of a 10 year 24 hour storm; they typically look only at flow rate and how fast the water comes out of the pond; he has asked them to make the pond large enough to contain that run-off and then will have to figure how fast to let it ran out, what's acceptable release rate and an acceptable release period. Council Member Jensen wanted to add to this that it will be released during the storm, but at no greater volume than it was prior to development; it will not change the volume coming down stream, for a 10 year storm during the storm; its not like you are containing all of the water and then are going to release it, you will still release some of it during the storm.



Manase added you will be releasing the same volume, an increased volume of water, with Council Member Jensen adding total overall, not during the storm; it will be released after the storm with Manase adding for a longer period in order to meet state standard total suspended solids removal are suppose to let this out in 2 to 5 days. He didn't know they could let it out in 2 to 5 days and hold that volume of water; there will be a lot of work on staff to figure out about how best to do this. Council Member Jensen added the longer you hold this the better for removal of the solids so 2 to 5 days is to allow that pond to get ready for the next storm is his understanding; if you oversize this above what the State and the town of Apex wants, then it's not so critical to get it down and ready for the next storm of the 10 year variety; you just have to get it down to the 2 year variety. Manase stated they would work with Mike Deaton and Public Works to figure out how to accomplish this; right now, he doesn't know that he can tell them.

Mayor Weatherly asked how much of the flow from this project will flow into Williams Creek, with Manase adding Shepherds Vineyard, with Mayor responding yes, Manase continued not very much, with Mayor Weatherly asking he clarify that, they are saying it really doesn't impact Shepherds Vineyard, with Manase responding nothing from Trackside North goes in that direction; there is a ridge line indicating from the railroad tract running through the property that contributes to this stream, showing where it goes to Shepherds Vineyard, only a small portion goes into it from the entire PUD. Mayor Weatherly noted they had calls regarding it all draining from this project into Shepherds Vineyard and is a lot of misinformation. Manase stated it's really a small portion of the entire PUD with Council Member Jensen agreeing, and addressing the Mayor stated he didn't say anything like this to anybody, with Mayor Weatherly responding he did not point his finger to him, with Council Member Jones adding this was an understanding of a lot of people that had sent emails to them, with Council Member Jensen adding there is a misunderstanding certainly because his guess is only an eight of this development will go through Shepherds Vineyard, on the other hand is important not to impact Shepherds Vineyard anymore. Mayor Weatherly closed the public hearing at 9:02 p.m. calling for a motion.

Action: Council Member Mikes Jones stated with the additional conditions tonight, had been aware of the details, and moved for approval. Second by Council Member Gossage. Attorney Fordham asked if this was with the conditions as modified. Council Member Jones responded yes with the removal of the last two sentences in condition 1; with Attorney Fordham adding and with an attempt to obtain an encroachment with NCDOT for the buffer plantings in condition 5, and including the commitment to 10 year volume control and 25 flow control (stated by Council Member Jensen) in condition 6. Council Member Jones and Council Member Gossage agreed with the modifications for inclusion in the motion. Council Member Schulze stated he was pleased with the change, the density by the increase of 10% and applauds them for the good faith efforts and changes made, and supports the rezoning. Council Member Jensen expressed excitement on the work/live units and the direction we should go and appreciate its chancy but will turn out to be nice and keep people off I-540. Motion carried unanimously.

End of Public Hearing # 1

Public Hearing # 03 - Trackside North Master Subdivision and Major Site Plan

Review: Planning Board will review this subdivision and site plan at their May 14, 2007 meeting; staff will report their recommendation at the May 15, 2007 Town Council meeting; staff recommends approval.

Public Hearing and possible motion regarding Residential Master Subdivision and Major Site Plan, Apex First Development, LLC; Douglas W. Duncan, Trustees, petitioners, seeking subdivision and site plan approval for Trackside North located with US64 on the north, Hunter Street on the south, CSX rail right-of-way to the east and west containing 93.25 acres; possible motion regarding the same.

Presenter: Dianne Khin, Director of Planning presented the staff report which is attached and incorporated as a part of the minutes, stating it's actually Apex Peakway to the south. There are 93.25 acres for proposed project; for single-family units, townhouse units. Impacts are expected in terms of traffic, light and noise however mitigated by road improvements by conservation and provision of buffers and natural areas, and by current lighting standards of the UDO. 2025 LUP identifies the site for high density and medium density residential, commercial and office and institutional uses; north includes single family, townhomes and recreational facility. Maximum density in Trackside North is 6.84 residential units per acre with a maximum of 638 units. RCA is provided throughout the Trackside project 22.5% of the overall north and south sites; buffers: 30' Type A revegetated buffer along the east and west property lines adjacent to the railroad tracks; 30' Type a thoroughfare buffer along the Apex Peakway, and 40' type A buffer along US64 with additional plantings as stated in the rezoning. Project will utilize town water and sewer; Williams Creek Pump station will be built this year; storm drainage meets the requirements of the 1-10-25 year flow and the added condition of the 10 year volume control in the rezoning.



Parks and Recreation Advisory Commission recommends approval (stated in detail on page 3 of the staff report) developer dedicate 12.98 acres for public park, developer receives credit for the dedication; fee in lieu \$408,164 (calculated in the report) pro rated money would be used to build a public park and associated greenways approved by the town; public recreation amenities would be in place by the time 50% of the residential units of the project receive their CO per the UDO. Access and Circulation: town approved a bridge over the CSX high speed rail line so the Peakway will connect from North Salem to Laura Duncan Road. Proposed plan is consistent with the UDO and meets all the requirements and Conditional Zoning #07CZ05 or will require that at construction plan in terms of additional plantings along US64 and the stormwater pond requirements. Planning Board recommends approval unanimously of the Trackside North Subdivision plan; staff recommends approval of the subdivision and major site plan.

Council Member Jensen asked if on the northwest corner, the small subdivision was there any discussion to try and connect that across through the storage facility. Council Member Jones stated to a make a connection through the existing storage facility. Khin responded there had been some discussion, and do have some agreements with the storage facility. Manase stated the recorded easement is 30 feet adjacent to the US64 right of way and not wide enough for a public street it's for the cell tower and have not pursued it further. Council Member Jensen thought connectivity would be nice and asset to the town, if the town had to get involved to get it. Manase stated they would be glad to pursue it but doesn't know how it would turn out adjacent to US64 and have to tie into retail. Manase stated this was identified as Phase 5 of the development and one of the last things built and would have some time to try to work this if they can.

No one spoke in opposition and Mayor Weatherly closed the public hearing at 9:10 p.m. and called for a motion.

Action: Council Member Gossage stated the Town had long talked about doing higher density in our infill areas, this being one of them and based on staff's recommendations and hearings with citizens; he thinks this is a great example of what we are looking for and moved to approve. Second by Council Member Jones. Motion carried unanimously. Manase pledged to make this a high quality development, one to be proud of.

End of public hearing # 3

Public Hearing # 04 - Upchurch Commons Land Use Plan Amendment, PUD Conditional Rezone #07CZ 06 and Site Plan

Review: Planning Board will review this proposed rezone, land use plan amendment, and site plan at their May 14, 2007 meeting; staff will report their recommendation at the May 15, 2007 Town Council meeting; staff recommends approval.

Public Hearing and possible motion regarding Conditional Zoning #07CZ06, Major Site Plan and Land Use Plan Amendment, North Channel Investments, LLC., seeking to rezone four parcels, 3.28 total acres, on Upchurch Street near Hwy 55 from Light Industrial and Office and Institutional to Planned Unit Development – Conditional Zoning. A Land Use Plan amendment is requested to change from Office and Institutional to Mixed Use – Office and Institutional and Commercial. A Major Site Plan with four mixed use buildings is proposed.

Presenter: Brendie Vega Mkhwanazi, Senior Planner stated the Planning Board continued this item to their June 11, 2007 meeting to allow applicant time to address concerns; staff will advertise the public hearing before Council for June 19, 2007.

Public hearing # 4 will be advertised for June 19, 2007 Council Meeting

Public Hearing # 05 - Hendrick Automotive Conditional Rezone #07CZ07 and Major Site Plan

Review: Planning Board will review this proposed rezone and site plan at their May 14, 2007 meeting; staff will report their recommendation at the May 15, 2007 Town Council meeting; staff recommends approval of the conditional rezone; staff recommends the major site plan with conditions.

Public Hearing and possible motion regarding Conditional Zoning #07CZ07; Gregory, James and LaRue Mills, seeking to rezone 4.08 acres from Rural Residential Zoning to Planned Commercial – Conditional Zoning. Hendrick Automotive Group seeking a Major Site Plan for Vehicle Sales, Light for 28.54 acres at the northwest corner of Laura Duncan Road and US Hwy 64.



Presenter: Brendie Vega Mkhwanazi, Senior Planner presented the staff report which is attached and incorporated as a part of the minutes for Hendrick Automotive conditional rezone and Major Site Plan. Two parcels for rezone on Laura Duncan, Rural Residential Zoning to Planned Commercial – Conditional Zoning. Master site plan at current Laura Duncan Village including the two parcels on Laura Duncan; LUP calls for Commercial and adjacent zonings and land uses are listed on page 1 of the staff report. Existing conditions: vacant Winn-Dixie building with tenant spaces in the adjoining buildings housing commercial will be demolished as part of the site redevelopment. Out parcels: gas station, Taco Bell, Bojangles, Scruffy Duck and Jiffy Lube will remain. Dixie Belle Barbeque will become part of the project and will be demolished. Concept layout has conservation and stream buffers on the west side with the Hendrick Automotive building in the center; storage areas in rear and customer parking in front of the building. Project impacts are listed on page 2 of the staff report and will be similar or less than when the Winn Dixie was operating. Increase of traffic and noise with automotive sales, having been accustomed to a vacated site. New structure, storage and parking will meet the current standards of the UDO. Neighborhood meeting was held attended by 13 residents. Restrictions/conditions of the rezone and site plan are proposed by the applicant and listed on pages 2 and 3 of the staff report.

Applicant requests buffer along Hwy 64 be reduced from a 100' undisturbed buffer to a 40' Type A buffer. 60' Type A buffer is being provided along the north side and a 30' type E buffer is being provided on the east side along Laura Duncan Road.

Applicant has been asked to work to incorporate building materials and design compatible with others which will remain in the location. All of the remaining buildings include red brick. Applicant has submitted several elevations to staff which have included several variations of the same material with different colors (samples were shown). Traffic Summary has been provided by Russell Dalton, Transportation Engineer outlines road improvements will be made along Hwy 64 and Laura Duncan Road. There are 1080 parking spaces 68 designated for customer parking. Plan is consistent with the 2025 Land Use Plan calling for commercial development on this site. Planning Board recommends approval with conditions: 1) Staff's recommendation regarding architectural design to meet the UDO, and 2) Strongly encourage petitioner to ensure test drives remain on US64 and the frontage of property (to get in and out). Staff recommends approval with conditions: Applicant revise elevations to include material that will meet the architectural design standards in the UDO; construction plans shall not be signed until design of building is consistent and in harmony with existing structures to remain on the Laura Duncan Village site.

Council Member Jones asked for clarification regarding the compatibility of architectural condition leftovers asked what they need to be consistent with, not seeing consistency there. Staff stated there is red brick on all structures opposed to what had been proposed earth tone split face (showed design fronts and colors), stating the red brick is more consistent with remaining commercial developments and would like to see something that tied in; however they could use a split face red color. Khin elaborated on the proposed and didn't think it would work and would like to see red brick not saying it has to be brick, but red element that would tie them together.

Mayor Weatherly opened the public hearing at 9:25 p.m.

Clayton House, Hendrick Automotive, Charlotte, NC stated an attempt had been made earlier for another site; they moved to another site for many reasons, access, topography, and came to a site, the vacated Winn Dixie. His associates are present to answer questions in support of the rezone and site plan. Counsel Don Grimes presented that the present shopping center was based on lesser standards than today, another grocery store and big electric consumer, but didn't work out and don't need another grocery store; UDO sets higher standards planning to demolish and rebuild; as pointed out by staff this proposed site plan and rezone is consistent with the 2025 LUP and compatible with surrounding land uses replacing commercial with another one much more viable; restaurants and gas stations should benefit greatly from the placing of this project on the site; will be minimum impact to the surrounding properties; buffers and environmental protections are equal too or exceeds the UDO; square footage of Winn Dixie was greater than what's being proposed; minimizes impact on the environment in several aspects; RCA is twice the size the code requires; placing a 25 year storm event facility; multitude of energy efficient devices being put in this project; no gasoline on the premises.



Toyota is the number one car maker in the world, their engineering design and sales outweighs General Motors and leads the pack; Hendrick represents a good product "Toyota" and a good site and see what they did down the street; will bring a huge tax base increase to Apex; noted thousands own Toyota in Apex and will not have to go elsewhere for warranty check ups and can be provided here.

He asked the condition presented by staff approved by Planning Board suggested alternative language that applicant shall consult with staff in selecting materials for the elevations to insure they meet the architectural design standards of the UDO rather than language that currently exists.

House noted the buffer request for reduction is in the area in front of Dixie Bell planting more, an opaque buffer and a riparian buffer along the railroad tracts as a result of discussion regarding esthetics in an outdated shopping center, working with staff in what they are trying to achieve.

David Eve, Redline Design Group, Charlotte, NC presented they have gone back and forth trying to blend in to the surrounds; all buildings have single story, nicest carwash building; presented sample materials/colors they plan to use addressing some staff concerns, downplaying the building with no much detail, as it's not a public area; silver/red/black on the front of the building, keeping emphases on front, not on sides and rear.

Dan Erwin, Erwin Oil, owns property 1201 Laura Duncan Road, gas station, supports the rezone and site plan and thinks they will be good neighbors.

Bonnie Fischer, Apex Chamber supports Hendrick Automotive establishment off US64 Shopping Center; the rezone and site plan which will increase commercial business and redevelopment of a higher quality and increase in tax base.

Sarah Fowler, Laura Duncan Road, next to the electric plant; supports the rezone and site plan and rebuilding and encourages it to move closer her house.

Clare Owens, Olive Chapel Road, expressed this was great for the town; auto dealerships lights are bright, encourages lights be more direct shining down and less distracting. Mayor Weatherly responded the ordinance requires this.

No on spoke in opposition. Mayor Weatherly closed the public hearing at 9:40 p.m.

Council Member Jensen questioned the E Type Buffer along Laura Duncan Road item 5 of discussion on the site plan; E Type Buffer is ambiguous and suggesting the distance along the front from the north side to the south side be a minimum of a B Type Buffer equivalent to the US64 Auto Park, so people can see and still tone this down towards the neighborhoods. House had discussed this and they are exceeding the Type E, with attention having given some visibility but realizing the residential area; have a minimal amount of distance to achieve this buffer; Khin stated its semi-opaque and can do a B Type buffer in 10 feet. Applicant responded he could do a B Type buffer.

Council Member Schulze looked at the samples presented stating they look like sender block to him, and the color was different to him, asked why what staff had asked was so objectionable. House responded staff asked they come up with something that blends with the buildings; he drives by there weekly, there are slight variations in colors as far as brick and tone; he commends staff in trying to achieve some natural tone; elevations and significant grade changes were noted and what would be seen from Laura Duncan and US64; he understands staff preference is brick and was coming from staff; staff wants similar character with staff prefers red brick. Khin stated staff was not happy with samples they had brought.



Dave Eve understood staff wants the red brick or red color product. They are trying to find a half way line starting with a split face painted block; use of split face is better than sender block; discussed painted and non-painted, had started with painted split face block gives water protection, has to be maintained every five years, explained the process and costs, trying to find a compromise and integrated how it best fits with the architecture of the store. Concrete are natural materials with slight elevations; brick have natural tones. Khin had not seen these samples. and stated the language used by Counsel Grimes was fine.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to approve the rezone and site plan with a Type B buffer along Laura Duncan Road and Hendricks group working with staff on the architectural colors. Council Member Jones thinks it's an improvement with what's there, not liking anything sitting vacant, and will be a value to the business community. Council Member Jensen stated he was not big on car lots, however, felt they had done a good job and would be a big benefit to Apex. Motion carried unanimously.

End of Public Hearing #5

Public Hearing # 06 - Apex Mini Storage Major Site Plan

Review: Planning Board will review this site plan at their May 14, 2007 meeting; staff will report their recommendation at the May 15, 2007 Town Council meeting; staff recommends approval.

Public Hearing regarding Major Site Plan, Apex Investors, LLC., petitioner, seeking site plan approval for self service storage facility at 1538 E. Williams Street, containing 3.986 acres; possible motion regarding the same.

Presenter: Dianne Khin, Director of Planning presented the staff report which is attached and incorporated as a part of the minutes. This business has changed hands from the North State project and expired and now the current owners proposes a two story brick and EIFS building; applicant has complied with staff's request to build one large building with an office appearance rather than individual storage units; staff believes resulting building is far more aesthetically pleasing than the typical self service storage facility that provides interior storage units and no outside storage. Proposed site plan meets the UDO and RCA requirement of 25%. Property is located within a secondary watershed protection area but not located within a FEMA designated floodplain and is consistent with UDO stormwater requirements. Proposed will be served by town water and electric service; sewer will be provided with an on-site disposal system (reclaimed water) with a non-discharge permit from NCDENR's Engineering and Permitting Unit, water could be allowed back into toilets, however will be used for irrigation. Street Access: proposed one full service drive on NC55; no TIA was required as they do not have the 1000 trips per day and am and pm thresholds; will have five parking spaces including one handicapped space. Plan is consistent with current zoning but not the land use plan (land use plan was changed after the zoning had been obtained); have complied with office building and staff is satisfied. Plan is consistent with the Transportation Plan. Planning Board unanimously recommends approval. Staff recommends approval.

Pat Shillington, Engineer and Environmental Science Company stated there will be one large building looking like a class A office building; not require a lot of resources. Storm water is designed for post and predevelopment and may be able to get better wastewater retention not much difference in 10 vs 25 year storm event. He does not want to destroy the RCA area and may to get it to a 25 year storm event. Council Member Jensen asked if he would commit to a 25 year storm event; Shillington stated he would try but can't guarantee, and maybe could meet the pre and post for the 25 year storm; after reconsideration committed to the 25 year storm event.

No one spoke in opposition. Mayor Weatherly closed the hearing at 9:57 p.m. and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve. Motion carried unanimously.

End of Public Hearings



OLD BUSINESS

Old Business Item # 01 - Livestock and Domestic Fowl Ordinance

Review: Mayor and Council are inclined to limit livestock ban so it does not prohibit certain animals; public hearing was held at the May 1, 2007 Council Meeting.

Presenter: Mayor Keith Weatherly stated as discussed in previous meetings, the Council was inclined to limit livestock ban so that it does not prohibit certain animals. Attorney Fordham presented 2 options for consideration to amend the Livestock Ordinance and Version 2 being less restrictive allowing all fowl except roosters. Version 1 was more restrictive and after consideration of both options, Council agreed to version 2 of the livestock and domestic fowl ordinance and could consider changes as they see fit. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to amend the Ordinance that would take effect with Version 2. Council Member Jensen hates to do more than they have too; suggests anyone with one or two sheep per acre with setback of 100 feet hopes we could accept that and direct staff before we have the opportunity to change the ordinance as necessary; to him this is too restrictive but moving away from the other. Council Member Gossage added he thought this was more flexible. Mayor Weatherly added they could consider changes on a case by case basis. 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 Item # 01 – Madden Crossing Major Subdivision Plan

Review: Planning Board will review the proposed major subdivision plan at their May 14, 2007 meeting. Staff will report their recommendation to Town Council at the May 15, 2007 meeting; staff recommends approval.

A&B Properties of North Carolina, LLC requesting a Major Subdivision Plan for 15 single-family home lots on 6.16 acres located on Apex Barbecue Road, north of Kinship Lane and south of Olive Chapel Road; possible motion regarding the same.

Presenter: Brendie Vega Mkhwanzai, Senior Planner presented the staff report which is attached and incorporated as a part of the minutes. Existing conditions were noted; reasonable impacts could be expected; proposed subdivision plan is for 15 single family lots and 1.49 acres of RCA with a common area to the north; two parcels have one single family homes on a wooded area; A 30' Type E buffer is provided along Apex Barbeque Road; fee in lieu \$14,394 will be required for public recreation; Access point on Apex Barbeque Road; TIA was not required; no stub streets can be provided to the north is HOA property of Holland Crossing; street yard trees are one per lot and two per corner lot; additional landscape as provided by UDO; grading will be reviewed during construction plan; applicant proposes to leave tree protection fencing at rear setback line for majority of the lots except two at stormwater pond; no request has been made to select grade the site. Plan is consistent with medium residential and UDO: Planning Board recommends approval unanimously; staff recommends approval.

With no further discussion, Mayor Weatherly called for a motion. **Action:** Motion by Council Member Gossage and second by Council Member Schulze to approve the subdivision plan as presented. Motion carried.

End of New Business Item # 01



Mayor Weatherly stated the agenda was amended to move into closed session at 10:05 p.m. to receive advice from the Town Attorney before discussion of New Business Item # 02 (stated below), and calling for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to move into closed session as requested. Motion carried unanimously. Minutes of closed session are recorded separately.

Action: Motion by Council Member Gossage and second by Council Member Schulze to move back into regular session at 10:25 p.m. Motion carried unanimously.

Presenter: Council Member Gene Schulze and Council Member Bill Jensen

New Business Item # 02 – Possible Amendments to UDO and 2025 LUP

Open discussion regarding amendments to the Unified Development Ordinance regarding fees in lieu for recreational land purchases and consideration of amending the 2025 Land Use Plan. Mayor Weatherly called on Council Member Jensen

Action: Motion by Council Member Jensen to direct staff to incorporate the value of parkland into the Western Area Plan evaluation for purposes of establishing appropriate fee in lieu values. Second by Council Member Jones. Motion carried unanimously.

Mayor Weatherly then turned to Council Member Schulze.

Council Member Schulze stated for the second part of this item, in an attempt to resolve a problem they think they all agree they have the UDO that tells developers what they can and can't do, and try to give them the best advice as to what they can do with their development, and they go through the process, and when they get to Council and we don't like what we see, we shut them down for various reasons. In an attempt to give Planning more direction, he thinks they need to look at the UDO and the 2025 Land Use Plan and make sure it accurately represents what Council thinks it should. He gave Trackside as an example, where the Land Use Plan designates it at a higher density than what it came in as, and he would not have approved anything with the density that is allowed. His opinion is they need to look at all densities; he doesn't know the answer but should do something. He doesn't know how much they could do with the existing 2025 Land Use Plan, but with the ETJ coming on board, thinks they would want to take a closer look at this. Mayor Weatherly felt this would be a good time to do this. Council Member Jones agreed. Council Member Gossage added it goes through staff, Planning Board, Parks and Recreation Commission and it gets to us and we are asking more parkland, lower densities, and asking more buffers, more stormwater and volume control and above and beyond what the UDO says; maybe it's not a Council problem, but a UDO problem, with Council Member Jones adding or the Land Use Plan itself, a combination of issues. Council Member Jensen stated in cases where we want to allow cluster housing and higher density, the way it's set up, we say they can have high density on this property and then we get carpet housing; maybe we can have high density, but the average density has to be something else.

Council Member Schulze says he struggles with flexibility; too much of the same thing and not what he wants to see all across Apex; thinks in giving too much of the same thing, giving the apartments behind Kroger as an example. Mayor Weatherly stated there would be problems if you have one set of rules for everybody and applying different criteria to different developers. Council Member Jones wanted to make sure the majority of rules are what we want to be and recognizes they follow the Land Use Plan and UDO and have problems; he understands and respects that or other wise would not be here; if they meet Land Use Plan and UDO why have Council; thinks as far as general principals should give staff benefit of their opinions; as much time as we spend with this, these guys spend ten times as much. Council Member Gossage thinks they should be considering the paint color of every single building and roof color. Council Member Schulze wants to consider this prior to the ETJ coming on board; and would like to see something change now or we will still continue to have the problem we already have; he noted this is not a trivial effort, he recognizes the importance.

Mayor Weatherly thought the evolution had come towards PUDs, mixed use, having an integrated development rather than all subdivisions, all commercial; we have tracked in that direction decidedly with great forethought and great determination; he thought this is what we all want, integrated into one development and we have required it; that we like this better than cul-de-sac cookie cutter residential communities; we have gotten to mix use and now you are saying you don't like the mixed use because it allows mixed use. Council Member Schulze stated his opinion is it does not encourage larger scale houses.



Mayor Weatherly responded he was going to get the larger scale houses, the real expensive the guy that wants to come in and hit that niche Toll Brothers and LeHermitage, you'll get the half million to a million. Council Member Jones added \$140,000 for an acre of land to \$180,000; you're not going to get too many large lots. Council Member Jensen added there's a situation here where we say this will be high density and the land owner sees dollar signs because they know they can charge a high price and the developer comes along and wants to buy the property and they are forced into high density.

Council Member Jones added to some degree he was right but to a larger degree we said we wanted this closer downtown and where your land values are going to be up; you got frontage on Hunter Street and Laura Duncan and Salem Street, can ask for more than if you are out in the middle of Chatham County; that's where the big lots are. Council Member Schulze was willing to take Council's advice and if they don't think they should go down this road right now, he'll wait for the ETJ to come in and would be fine. Council Member Jones thinks as a Council if they have issues with UDO and LUP should get them out on the table, with Council Member Schulze thinking sooner than later. Council Member Jensen thought perhaps this could be discussed at a Worksession; his concern with PUDs is that he doesn't get mix he wants to see; he would like with high density where you are going to get your work places as much as possible and doesn't seem to be working that way; have a little here but we really have to work to get it. Mayor gave an example of a development in Durham County that had little "shot gun houses" ; Scotts Mill has some very similar; and were selling them as fast as they could sell them; some people want density, whether they be young singles or young married that don't want to maintain a large yard and thinks exterior maintenance is included in that kind of development, they were neat little houses, all just alike, pastel colors one after another, that market is quit hot right now, so there are people that want the density, and he doesn't know that we should tell the market place they can't build something that is obviously in very high demand and are not unattractive. Council Member Schulze stated he was not trying to say rule that out, he wants more mixture and seems we are getting the same thing over and over. Council Member Gossage clarified he was saying take a closer look at what's going in PUD's. Council Member Schulze stated he did not have the answer. Mayor Weatherly added one rule book for everybody was going to create problems. Council Member Gossage stated he was trying to figure out exactly what he was looking for here. Council Member Jensen thinks there should be more control of the mix. Council Member Jones thought a workshop was needed to review the 2025 LUP the minimum and maximum of each of the classifications. Council Member Schulze was satisfied.

End of New Business Item # 02

Council Member Jensen asked a review of Consent Agenda # 08

Amend Town of Apex Ordinance Sec. 14-31 Sound Emission Standards and Limitations Mike Couch, Electric Superintendent, Public Works presented this amendment having reviewed the Town's "Sound Emission Standards and Limitations, found them overly restrictive when compared to the standards of other communities and also found the limitations discourage energy management and cost savings available to customers through peak shaving generators. Noise levels are included in the attached report which indicated ambient noise levels are often above the current Apex standards, giving examples. Staff recommends amending this ordinance that would allow customers to use generators, comparing residential and industrial areas, and allow Apex to be more competitive. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jensen and second by Council Member Jones to adopt the Ordinance amendment. ORD # 07-0515-05. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session at 10:45 p.m. to discuss condemnation.

Action: With a motion by Council Member Jones Council moved into Closed Session. Minutes of Closed Session are recorded separately. Motion by Council Member Gossage to move back into regular session at 10:50 p.m. Motion carried.

End of Closed Session



ADJOURNMENT

With no further business to come before the Council Mayor Weatherly called for a motion to adjourn at 10:51 p.m.

Action: Motion by Council Member Jones to adjourn. Motion carried.

The minutes of the May 15, 2007 Council Meeting were submitted by the Town Clerk for approval by the Town Council on June 5, 2007.

Georgia A. Brunglist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes and General Account of the Tuesday, May 22, 2007 Town Council Worksession for the proposed FY 2007/08 Budget, held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Keith H. Weatherly presided over the Worksession with all Council Members present. Council Member Schulze arrived at 7:45 p.m.

Mayor:
Keith H. Weatherly



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

Web site: www.apexnc.org

Mayor Weatherly called the Worksession of the Council to order to review the proposed FY 2007/08 Budget and extended a welcome to those in attendance. Along with the Council, Town staff members were present to expand on the proposed budgets for their Departments. Apex Chamber of Commerce representatives were present to expand on their budget request. Mayor Weatherly called on Manager Bruce Radford for the review of the proposed budget.

Manager Radford expressed appreciation to staff for their efforts and presents proposed balanced budget; tax rate remains \$0.40 per \$100 valuation with an estimated tax base of \$2,917,525,750 which represents a one year growth rate of 5%, with a trend towards more modest growth than in earlier years and without an increase in user fees.

Budget Message highlights:

General Fund revenues increase 1/2 million dollars; budget reflects \$50,000 contribution from GF balance to GF. John Brown had proposed in his budget money for Seagroves Farm Park and is not included in the budget, however, will consider possibility of earmarking \$100,000 GF contribution towards design of Seagroves Park SR1010. Expenditures: reflect moderate inflation; increase in payroll, energy-related expenditures and expanded services programs, and critical staffing requirements; with limited increase in GF revenues available, only 10.75 of 34.5 requested positions are proposed and recommended by Personnel Committee.

Water/Sewer Fund: modest 2.8% increase in projected revenues based on slower sales; last years 7% increase was second of four projected rate increases every other year to fund the financing plan for construction of the \$70 million share of the Regional Water Reclamation Facility. Projected transfer to water/sewer capital reserve is \$2 million; attention will be given to projecting adjustment increases over the next four years to generate revenue sufficient to meet financing requirements of the planned regional facility; will consider before budget is adopted potential need to increase wastewater capacity fees to \$17 rather than \$15.

Electric Fund: projected 3.5% increase in revenues; expenditure side, a new point of delivery; continued system expansion and load growth are important to reducing wholesale costs and rate reductions with a small reduction in energy adjustment.

Personnel requests: 14.75 of total 39.5 requested positions are proposed and recommended by Personnel Committee. A 2.5% cost of living increase \$335,000 and merit program \$300,000 are proposed for eligible employees; there are no increases in employee benefit costs - health insurance costs decreased (HR Wellness Program and employee participation plays a big role in wellness of employees and reflective in premiums).

Reserve Fund for Retiree benefits: State Treasurer's Office has made it clear all local governments are not funding the actuarial study to enable us to be able to pay retiree benefits over the long haul; \$100,000 is be placed aside in order to be able to do this; this is significantly less than he believes the cost to be, but set the town in the right direction, and what can be afforded in the coming years to be able to reduce the actuarial imbalance of retiree benefits. Lee Smiley expanded on the requested amount of \$1 million; and the reason for the study by the State on behalf of all governments; this is a requirement of the governmental accounting standards board; will start making everyone put monies in their annual financial reports; state treasurer's office is adamant about getting this done; state's liability is around \$20 billion; money can only be invested in what the State allows; floating bills around the General Assembly would allow State office to take over this fund where they set up a system and money is turned over to them for investment as a part of the retirement system and run like the retirement system, but would not assume any liability; if they do this, the retirement system gets a greater return 8% a year and over 30 years this study covers makes a tremendous difference in liability you are looking at; Apex reduced from \$1 million a year to \$600,000 or \$700,000; this liability is for the health insurance benefits of retirees (OPEB).

Manager Radford gave a review of General Fund Revenues all Departments: 2.2% in General Fund revenues, property tax is up \$800,000 or 7.6%; sales taxes are up 14.8% and suppose to replace franchise fees; utilities franchise fees are down due to the lose of the Cable TV Franchise fees down by \$250,000; development fees are the same or trending down; interest earnings remain the same.

Dianne Khin gave the Apex Development Report: April 2007 (first quarter report)
Population estimate: 32,381; Growth rate 3.6%; 3.47 persons per acre (densities are down); corporate limits total 9,327.7 acres; 14.57 square miles; building permits first quarter: 69 Single Family, 62 Multi-family, 3 non-residential (about same); certificates of occupancy issued: 50 Single Family 363 Multi Family 11 non residential (ahead). Kent Jackson will recheck the CO's issued; reported on Home Improvement Holiday Permits: 176 permits issued, \$11,000 revenue, anticipated \$20,000 revenue at conclusion of the holiday period; he does not have the value on the report but tracks this. Manager Radford thinks the multi-family is a result of the Creekside Landing project that has been CO'd in the last 90 days. Jackson reported commercial development reflects light activity: Kohls is under construction; the shops remain empty; developer and staff are perplexed by this; extension of Beaver Creek Drive was part of the discussion; applicant has not been successful with NCDOT to complete the build out of the road; should have been on line a year ago; Phase 4 of Beaver Creek is subject to the road connection over to Kelly has been constructed; town has tried to help; written response from Secretary in March restates the street was suppose to be complete around May 2007, anticipating right of way acquisitions. Manager Radford stated the original deal was if the road were in place the TriEx would be built over it, and hasn't happened. Khin explained issued permits, are by building; CO's are issued by unit to do the populations and may be where the discrepancy is.

In review of the GF and proposed budgets for each department:

Governing Body: \$25,000 Election Expense; comparisons are being made for Mayor/Council benefits with other municipalities.

Administration: no significant changes; Professional services reflects the benchmark project.

Human Resources: no significant changes; increase in Wellness which reflects a direct benefit to overall premiums.

IT: significant budget decrease as result in reduction of Capital Outlay Equipment; New World project drove the budget upward last year.

Finance: flat budget proposal inclusive of new customer service position; reduction in Capital Outlay equipment.

Planning: budget decrease; expenditures are listed on page 12; recommendation from the now disorganized Appearance Commission for placement of a fountain on town campus that is not included in the budget.

Facility Services: no significant changes; expenditures are listed on page 14 noting contracted services and capital outlay improvements.

Police: noted significant costs with contracted services and capital outlay equipment; key goals are to expand community policing, enhance traffic safety, address identity theft, and implement a reserve officer program. Council Member Sutton approves the use of speed trailers and their effectiveness; another one will be purchased.

Fire Services: noted significant budget increase addressing personnel (1 per shift); capital outlay improvements and Equipment; fire services are being enhanced to extend staffing levels and upgrade overall training program; meeting the requirement of OSHA regulations and compliant with directive of the Federal Government. Chief Mark Haraway commented on the budget requests. Alternative structure maybe considered vs. renovation of the shell building located south on NC55 for a future station and to be determined, for a police and EMS facilities (EMS has cash on hand to contribute for this project).

Public Works: slight budget reduction
Streets: no significant increases

Powell Bill: has 4 employees; includes 1 heavy equipment operator; street resurfacing; and capital outlay equipment. Council Member Sutton asked about street resurfacing having received complaints about their conditions. Manager Radford responded noted all town streets will come need for maintenance at about the same time and will have to find funding; street life about 18 years before total overlay. Tim Donnelly addressed the issue and no reserves to do this; expressed earlier discussion initiative for Town take over some NCDOT streets that were in worse condition and have not been successful in getting DOT to maintain them; he noted there is no revenue source for signalization; transportation is one of the town's biggest problems. He addressed Apex Barbecue and Kelly Roads having the biggest problem and no signal.

Environmental Services: budget includes a stormwater engineer to comply with MPDES Phase 2 programs; noting more complaints with stormwater issues; solid waste contracts reflect increase of \$0.22 per household; and capital outlay equipment.

Fleet Services: budget is slightly down, and includes capital outlay improvements

Council Member Schulze arrived at 7:45 p.m.

Construction Management: budget reflects 2 new personnel: field services supervisor and construction inspector; isolated incidents indicate need for field service supervisor and roads continue to be constructed. Replacing and adding vehicles and office modifications and contracted services.

Recreation: reflects a 1% overall increase; 3 new personnel; level 4 use agreements with the school; contracted services have increased; capital outlay improvements and equipment; debt service on recreation bonds approximately \$900,000; project collection of \$460,000 in recreation fees; with approval of large projects and contribution of several acres of land projects this number will increase.

Special Appropriations: page 29

Kids Voting - \$1600 education to children; TRACS \$10,000 over \$4,000 last year; there's no report on the usage; Mayor Weatherly would like to have a report of the participants in relation to the contribution. Will come to the public hearing on June 5; Apex Chamber \$80,000 for Economic Development, mainly a fulltime Economic Development Position; Brenda Stein, Apex Chamber Director expanded on the need for this fulltime position at a cost of \$130,000, and the surrounding contributions other municipalities make to the their chambers; salary \$55,000 with another \$25,000 for marketing materials or \$80,000; marketing is online website costs money; she wants to expand on communication, education, a qualified person to compete with other towns and develop relations hoping for an impact; can't guarantee results but starts with the position. Mayor Weatherly would like accountability to the town, using public money should be accountability to the town; having town input in the hiring of this person and agreed upon for Manager and HR Director serving on the panel with this person acting as the town's representative; a position description has been done (council would like to see the description); Mayor Weatherly would like on a regular basis, monthly report with chance to ask and feel comfortable about what this person is doing for successful partnering for this position; Mayor Weatherly noted a competitive environment and should be a fulltime position. Council Member Jones agrees and is looking for an action plan. Stein asked for input from Council and that economic development was a collective effort a mini retreat to plan this strategy between the town and the Chamber; previous person stated there was no plan. Council Member noted the position challenging in getting industry to locate here - Apex hasn't have industrial park per say and thinks the position should be fulltime. Stein stated the Holshouser report talks about downtown and considered an asset and should promote it to residents and business; this person can promote this and apply for grants. Council Member Jensen suggested maybe a partnership with other towns; a turn-key position. Stein reported an upcoming Economic Development Summit set for September 6, Apex Community Center, inviting 1600 businesses to gather their ideas about economic development.

Contribution to Wake County Hospice \$10,000 for a total of \$50,000 in their efforts in completing a project in Cary for all County folks to treat terminally ill. Will attend June 5, 2007 public hearing. Mayor Weatherly would like a range of their total capital budget which was not available; be introduced to the project. Council Member Sutton questioned the contributing to non-profits and outside agencies, setting a precedent. Mayor Weatherly noted legal opinion in the past regarding public monies to outside agencies and what we can do under granted authorities. Manager Radford noted this has been deemed legal by Counsel.

Mayor Weatherly would like a list of contributions (other or special appropriations requests) Cary and Raleigh made by other municipalities; we may start a precedent with this and next year not know how to sort them out; there's no legitimate way to sort them out; would be very subjective; noting all may have excellent credentials however could fall down to a subjective deal. Council Member Sutton was not in favor of taking this out of the budget. Recall of various requests in the pass that had been denied for inclusion in the budgeted fund contributions. Mayor Weatherly noted the point about setting precedent was well taken and would be eye-opening to see what other municipalities are doing and the volume of giving, opening the door recalling issues with Cary's appropriations; all may have excellent credentials but once you go down that path, its hard to close the door. Council Member Sutton noted some objection to Hospice on religious lines.

Façade Grants for Downtown Merchants \$10,000; \$2500 for facades and \$7500 for advertising.

Electric Fund Revenues: projected 3.5% increase in revenues; small reduction in energy adjustment rider; decreases total revenue by one-quarter million dollars; there are no capital reserves and no fund balance; a new position request for an electrical engineer due to system growth and enabling to spend less money on consultants; money for construction activity and third point of delivery; proposed capital improvements \$1.3 million; purchase of new line truck and various equipment.

Council Member Sutton noted the quarter of a million dollars in the energy charge had been passed on to the customers asking if this was automatic or does Council make this decision. Manager Radford stated the decision would be made with the budget approval. Council Member Sutton felt it would be nice to reduce, but noted there is no electric fund balance; people are use to paying this and to divide it up, customers will not notice it too much one way or the other and encouraged the Manager to think about an Electric Fund Balance; the reduction would be \$250,000 or approximately \$2.00 a month per customer. Council Member Sutton felt sooner or later there would be a need for an electric fund balance and think about not passing it own. Manager Radford noted he had told Council that the Town could not absorb anymore increases. Council Member Gossage noted we had not always passed along the increases and didn't know that we were obligated to pass on the reduction to the customers. Council Member Schulze felt if there was an electric fund balance he would feel differently, however since we are down to zero, thinks we need to get fund balance up and give a cushion. Manager Radford stated he was seeing a consensus. Council Member Jones stated this is a one time reduction to drop down and then could go up again next year, with Manager Radford stating it could. Manager Radford stated with the Mayor's permission would change that number to reflect that would not pass on the rate reduction. Consensus of the Council all agreed not to pass the energy reduction down to the customers, noted the recent power outage, seeing the value in keeping the electric system strong.

Water/Sewer Revenues: projects 2.8% increase in revenues; no rate increases; 7% increase last year, may consider rate increases in sewer and possibly in water. Council Member Schulze questioned the financing plan for the sewer plant. Manager Radford stated any continual delay in the building of the plant will cost more money and want to get closer to the \$37 million dollars. Council Member Gossage asked if we have an estimated of the costs if the project is delayed. Tim Donnelly reported folks were working on design to not get behind on the deadline; if the site moves the work has to be redone; if we have to restart there's costs involved; Cary's engineering department is working those numbers now; Corp of Engineers has a Project Delivery Team that will determine site practicability and the process they will follow; we have to pay costs for hiring a consultant and time delays could cost Apex alone \$3 to \$4 million a year; he thinks the Corp will implement grant funding.

Water Treatment: no significant changes; reflects the water bonds.

Water Maintenance: new position for utility maintenance worker and capital improvements for meter replacement; and other improvements and associated capital outlay equipment.

Sewer Treatment: capital reserve contribution of \$2.05 million; capital reserve for Apex's share \$72 million for the Regional Water Reclamation Facility; contracted services \$352,000; Raleigh treatment charges \$250,000; debt service is on the sewer bonds only. Tim Donnelly expanded that they are doing all they can to not pump to Raleigh.

Sewer Maintenance: two personnel positions; capital improvements \$300,000 and can't afford to get behind; capital outlay equipment.

Manager Radford noted this was the end of End of general overview and opened the floor for questions or comments.

Council Member Sutton clarified the Manager was comparing Mayor/Council salaries and benefits packages within Wake County. Council Member Sutton asked if it were determined need for an adjustment, asked how he would bring this up. Manager Radford responded anyway they would like. Mayor Weatherly stated he had seen a preliminary draft, discussion had come up about salaries and particularly benefits, and surprised, not realizing any town was paying health benefits, and investments in the retirement plan; he thinks Apex per capita is the lowest paid and maybe a good thing but again, the gap widens as time continues, even with the cost of living adjustment. Mayor Weatherly asked if there were interest among the Council in having the Manager pursue this to see if there is something that should be addressed if not will save time in doing this. Manager Radford identified some of the other benefits packages for Mayors and Councils: health, vision, monthly travel, disability insurance, not received retirement information - HR Director reports Cary does not. Council Member Schulze feels Council deserves compensatory benefits, not to feather his own pocket, but considered a package to be in place with the next election. Council Member Jones feels the same but would be interested in seeing what others are doing around us. Council Member Schulze thinks if we come up with a fair package in comparison with other towns, could put it in place with the next election. Council Member Jensen stated he was not interested in a package this year. Council Member Sutton felt if any adjustment needs to be made, that they stay away from benefits, Dentist, vision care and stick to what they are paid; don't get into retirement and medical it messes up the whole plan. Council Member Jensen agreed with this.

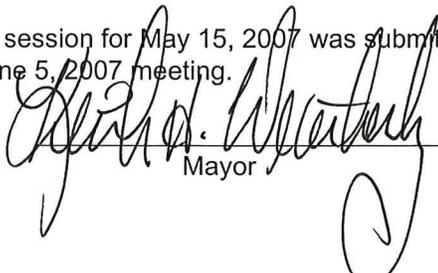
Mayor Weatherly stated the Public Hearing for the budget is scheduled for June 5, 2007 and sets up final ratify the budget.

Manager Radford proposed the July 3, 2007 meeting not be held as has been traditional for vacations and completion of the budget.

Mayor Weatherly called for the work session to adjourn at 8:30 p.m.

The above minutes and general account of the Council's work session for May 15, 2007 was submitted by the Town Clerk to the Town Council for approval at their June 5, 2007 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes and General Account for the Tuesday, June 5, 2007 Meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

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

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

PRESENTATIONS

Mayor Weatherly presented Proclamations recognizing Apex High School Varsity Women's Lacrosse Team and the Apex High School Lady Cougar's Varsity Squad Soccer Team - "State 4A Championships". Teams were present to receive the proclamations and were presented a photograph of the team.

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 separate consideration of CA # 14. Manager Radford asked within CA #10 the removal of the Agreement with Apex Elementary. Mayor Weatherly called for a motion to amend the consent agenda as requested and to approve the consent agenda as amended.

Action: Motion by Council Member Schulze and second by Council Member Jones to approve the consent agenda with the exception of CA # 14 moved to New Business and to remove from CA#10 the Agreement with Apex Elementary. Motion carried unanimously.

- 1) Minutes and General Account of May 15, 2007 Council meeting.
- 2) Minutes and General Account of the May 15, 2007 Council Closed Session (recorded separately).
- 3) Minutes and General Account of the May 22, 2007 Council Worksession.
- 4) Catherine Prince, 210 W. Moore Street requests transfer of Apex Cemetery Lot 267 Plots C & D to Cathy Sue and Daniel B. Harvey, 308 Hinton Street, Knightdale, NC.
- 5) Budget Ordinance and Capital Projects Ordinance Amendments: Public Works Building Expansion and NC55 Widening, and Peakway Bridget Design.
- 6) Findings of Fact and Conclusions of Law and Ordinance regarding Rezoning #07CZ04, Brad & Christina Zadel, petitioners, for property located 2417 Mt. Zion Church Road between Blazing Trail Drive and Snipe Court.
- 7) Findings of Fact and Conclusions of Law and Ordinance regarding Rezoning #07CZ05, Apex First Development, LLC and F. Brent Neal, Marion Hays McNair, and Douglas W. Duncan, Trustees of the Laura T. Duncan Family Trust, petitioners, for the property located at US Hwy 64 on the north, Hunter Street on the south, Laura Duncan Road on the east, and CSX Railroad on the west.



Minutes and General Account June 5, 2007 Meeting

Consent Agenda Items continued

- 8) Approve contract with Land Design to complete the Western Area Plan.
- 9) Resolution to amend the ETJ Extension request by excluding 712.6 acres annexed previously. **Res. No. 07-0605-09**
- 10) Resolution: Level 4 Use Agreements for School sites: A.V. Baucom Elementary, Apex Middle, and Lufkin Middle.
Res. No. 07-0605-10
- 11) Award construction contract for traffic signal installation "Half signal" at US64 and Kelly Road.
- 12) Award construction contract for Surry Meadows, Hughes Street, Moore Street Sidewalk project.
- 13) Award construction contract for NC55 Widening Project from South of Haddon Hall to Olive Chapel Road.
- 14) Award construction design contract: Apex Peakway – N. Salem Street to New Dover Road (**moved to New Business**).
- 15) Award construction contract: Water line projects: Salem Street (West Thompson Street to Hunter Street), and Hughes Street NC55 to Moore Street).
- 16) Approve one-stop absentee voting site; authorization for Manager to sign form.
- 17) 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. Council Member Jensen asked to include a closed session item to receive legal advice regarding the NCLM contract. Attorney Fordham asked to include closed session for land acquisition negotiations. **Action:** Motion by Council Member Jones and second by Council Member Jensen to set the regular meeting agenda as modified. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing # 01 – FY 2007-08 Annual Budget

Public Hearing regarding proposed FY 2007-08 Annual Budget.

Presenter: Mayor Weatherly. Manager Radford stated capacity fee increase of \$1 per gallon is included in the proposed budget. Manager Radford stated funding requests for Hospice and other outside agencies, Kids Voting, Chamber of Commerce, and TRACS are included in the proposed budget for adoption on June 19.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Tony Messler, Hospice of Wake County, Billy Dunlap, David Crabtree and James Carroll, requested funding \$10,000 over 5 years to build a care facility to serve residents of Wake County and to be located on Trinity & I-40.

Apex Chamber of Commerce President Brenda Steen requested \$80,000 to support the Economic Development position.

TRACS, a door to door transportation service has received \$5000 from the town in the past and requests continued support.

Mark Darvey, Kids Voting, asked continued support for \$3,200 to continue the education to students. Manager Radford noted the original letter of request was for \$1600.

Mayor Weatherly closed the public hearing at 7:40 p.m. and stated Council would consider the budget for adoption June 19.

End of Public Hearing # 01

Public Hearing # 02 – Annexation Petition # 415

Public Hearing and possible motion regarding Annexation Petition #415, Robert Alan and Amy McDevitt Rossi, owners/petitioners, petitioning to annex 2.438 acres including 0.349 acres of right of way into the Town's corporate limits, and located on Schieffelin Road (SR 1306).

Presenter: Dianne Khin, Director of Planning, oriented to the site location that joins existing property planned for expansion and currently zoned Light Industrial; staff recommends approval.

Mayor Weatherly opened the public hearing at 7:42 p.m. With no one addressing this annexation petition, closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve annexation petition # 415 adopting an ordinance to extend the corporate limits. Motion carried unanimously.

End of Public Hearings



OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Large groups are asked to select a representative to speak for the entire group.
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 – Appearance Commission

Presenter: Brenda Vega Mkhwanazi, Senior Planner stated the Appearance Commission had formally requested through a vote to disband themselves, and requested Town Council vote to disband the Commission and further made a recommendation the UDO be amended to remove the section regarding Appearance Commission. Reasons for this decision were due to low attendance, member resignations, lack of quorum, no chair, and not getting things done. Appearance Commission has also made one final request: the remainder of the money in their budget be used for a fountain in Town Campus Courtyard. \$10,000 remains in the budget for appearance commission projects however staff has contacted several retailers for installation and operation estimates; findings: approximate costs from \$40,000 to \$50,000. Khin stated staff will continue to partner with parks and recreation for the plant swap/Arbor Day. Sera Lewis has volunteered to assist in some projects.

Mayor Weatherly stated the Appearance Commission had been entrusted to beautify and enhance Town appearance and asked if these duties and responsibilities could become a part of the Planning Board. Khin responded they could take over these duties; previously staff had recommended projects to the Appearance Commission as it became difficult for the Appearance Commission to find places where they were allowed to do appearance work and had narrowed down to the Town Campus; Planning Department has a line item in their budget for Appearance type needs.

Council Member Schulze stated this was the first committee he served on and was sad to see it go. Council Member Jensen recalled fine monies were used for projects by the Appearance Commission. Khin advised budget funds are now their only source of funds. Council Member Jones recalled the Appearance Commission projects years ago were with signs, buffers and landscape and refined with the Unified Development Ordinance; and could understand their frustration, now having run out of things to do.

Mayor Weatherly stated more thought and detail could be given to a fountain later. Khin asked for guidance from Council, noting considerable more money was needed for a fountain project, and did not want to spend time pursuing this if Council was not interested. Council Member Sutton felt the area on campus needed something. Council Member Jones felt with respect to appearance, may want to look at something other than a fountain. Khin noted Trackside would be working with a clock, and perhaps a fountain was best. Mayor Weatherly asked staff to come back with a proposal and maybe options for the campus courtyard. Manager Radford advised Appearance Commission budget was \$2,000 reduced from \$12,000 last year, as they only spent \$1,000. Khin stated staff will advertise for the hearing to amend the UDO and bring options back to Council for consideration.

Consent Agenda Item # 18 (Request by Attorney Fordham to consider this item separate from the Consent Agenda)

Attorney Fordham recommended a change in the contract regarding the award for construction design contract: Apex Peakway – N. Salem Street to New Dover Road; Sec. 8.2, Sec. 8.3, Sec. 8.8, and Sec. 8.9 be removed as they pertain to indemnification and limitations on liability. He noted in the past contractors have not objected to the removal of these sections, being boiler plate type language and will typically wave it. Council Member Jones referenced Sec. 8.1 thinking the same. Attorney Fordham was fine to remove 8.1 as well and would be determined with negotiation of the agreement. Manager Radford asked that in the event the contractor chooses not to remove these sections, Council authorize him, Kent Jackson, Construction Management Director, and Attorney Fordham to continue negotiations to allow this project to get done as soon as possible.

Action: Motion by Council Member Jones and second by Council Member Gossage to award the design contract with the removal of the Sections 8.2, 8.3, 8.8, 8.9 recommended by the Attorney and 8.1 if determined to do so with negotiation of the agreement, and authorize the Town Manager, Town Attorney and Construction Management Director to work with the contractor to reach an agreement. Motion carried unanimously. **End of New Business**

**WORKSESSION****Work Session # 01 – Sewage Treatment Capacity and Sewage Collection Capacity Issues**

Presenter: Tim Donnelly, Director of Public Works addressed issues relating to limitations on future growth and wastewater treatment and collections. He noted 400 to 500 homes are built a year in Apex; and historical growth rates indicate existing capacity should last for several years, however development planned and sewage capacity commitments if all built out, would increase the town's population over the capacity limitation of 39,000 to approximately 56,000; as of May Apex currently has 1,000,000 gallons of flow available that will provide for approximately 3,000 homes or less. Occasionally Town pumps to Raleigh; soon this contract runs out and the Regional Plant may not be ready and should consider what would take place to bridge this gap. Due to delays in the approval of the State mandated Environmental Impact Statement for the Regional Plant, believes sewer treatment capacity and/or collection system capacity could be exhausted prior to completion of the 2011 Regional Facility, and becomes more difficult as time moves on. He explained the Corp of Engineers must consider and review all of the original 30 sites, hoping the site chosen and annexed will be the site for the regional plant. Manager Radford added it was said, they have never seen 30 associated sites for such projects, and hopes they focus on 4 or 5 to the south and west of the service areas. Donnelly continued as far as collections, the Kelly Road pump station is running out of capacity, noting subdivision build out would be too much for this station. He noted the proposed site for the high school on Humie Olive is far to the west and must pump to the regional plant. Current Ordinance allows commitment of capacity; with the Kelly Road basin, the capacity is being bought up faster than can be used. He noted it impractical for Trackside to buy capacity before lots are sold; other subdivisions that have interest in capacity should get their share; past history is first come first serve with only 5 or 6 electing to prepay. He suggested maybe no more than 30,000 gallons in a fiscal year for 100 homes, being more than efficient for a subdivision, however might be difficult for apartment complexes. He noted the bigger issue is the entire treatment plant, and the smaller issue being Kelly Road which needs action sooner. He saw no reason for more pumping stations, as the regional plant will take us to 56,000. He recommended limiting prepaid capacity fees to a certain number, so no one party can buy out capacity. Staff and Attorney have discussed these issues. Attorney Fordham advised the town's ordinance provides if there is no available capacity, the town could return the fees, but should avoid this. He continued statutory authority in 2005 has a provision regarding avoiding growth in certain areas, and if Kelly Road is a problem area, may think about not taking proposals in that basin. Public hearing would be held and any change would be handled like amending the UDO. Donnelly stated key stations limitations noted in the memo are not inclusive, he was making a point. Donnelly commented on the status of Williams Creek upgrade. Council Member Sutton asked if Haddon Hall were back on line would this help with Kelly, with Donnelly responding the station is destroyed, and no and expanded on his response concerning the pumping limitations. Council Member Jensen wanted to assure an amount of capacity was saved for businesses over homes with Donnelly responding on percentages for homes and businesses for business about 10%. Council Member Jensen asked if the Corp of Engineers approval criteria was similar to DENR, with Donnelly responding essentially the same; DENR didn't make a decision and had handed this over the Corp of Engineers for a decision. Donnelly responded to the Attorneys question in regard to the process of elimination of Kelly Road pumping station, in that as the Regional Plant is built, those key stations pumping to Kelly Road will come off line and then Kelly Road will come off line; that Beaver Creek pumping station can't be built until there's something to build too expanding on the time frame and process for building same. Council Member Gossage preferred staff bring options to the Council for consideration. Council Member Jones stated some subdivision approvals have reserve capacity and are on hold with nothing happening and may want to consider a reasonable time frame for using capacity when reserving capacity. Donnelly agreed this was a point well taken.

End of Worksession**CLOSED SESSION**

Mayor Weatherly called for a motion to move into closed session at 8:20 p.m. for the items stated.

Action: Motion by Council Member Jones and second by Council Member Schulze to move into Closed Session to discuss: possible park land acquisition on Apex Barbecue Road, easement acquisition/condemnation, land acquisition negotiations, and legal advice regarding contract with NCLM. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Gossage and second by Council Member Schulze to move back into regular session at 9:09 p.m. Motion carried unanimously.



ADJOURNMENT

With no further business to come before the Council a motion was made by Council Member Gossage and second by Council Member Jensen to adjourn at 9:10 p.m. Motion carried unanimously.

The minutes of the June 5, 2007 Council Meeting were submitted by the Town Clerk for approval by the Town Council on June 19, 2007.

Georgia A. Crougelist
Town Clerk

Keith W. Wearberly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes and General Account for the Tuesday, June 19, 2007 Meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

Council:
Mike Jones
Bryan Gossage
Bill Jensen
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.

PRESENTATIONS

Phil O'Bryan, Nuclear Regulatory Commission, Resident Inspector for Shearon Harris Nuclear Facility stated NRC was an independent federal agency and his fulltime responsibility is for the over site of routine inspections at the Facility in New Hill with the position in place since 1980. He reported Shearon Harris is a well performing plant and assured safety of the community.

Presenter: Mayor Weatherly

Presentation of FY 2007-08 Annual Budget Ordinance

Mayor Weatherly recognized Manager Radford who presented for a adoption the Budget Ordinance that would approve the FY 2007-08 Annual Budget which includes outside non-profit agency funding requests and recommended adoption.

Council Member Schulze stated he took no issue with Hospice, and noted the \$10,000 request over five years is \$50,000. He does take issue to giving taxpayer money to non-profit agencies vs. TRACS, a public service for residents, where Hospice is a different category; thinks Council should make these decisions and would like to see Hospice allocation removed from the proposed budget; it was not so much the amount even though significant but the principal.

Mayor Weatherly was concerned in getting into a long list of similar requests; noted Raleigh, Cary, and surrounding municipalities annually give to various groups; Hospice funding request was a capital campaign to build a facility and was not for an operating budget; Hospice serves our community by providing a unique service and currently working within peoples homes; he probably would be opposed if it were operating monies once the project is complete; he noted folks in this community and in proximity would use the facility; in talking with other jurisdiction mayors, they have requested Hospice funding in their budgets; he could be corrected but not all have included the full amount; Council may want to discuss the amount but hopes Apex would be in the project for some amount. Manager Radford spoke with other managers and understands they have included the amount requested in their budget with exception of one reducing the request by half.

Council Member Jensen agreed in respect to their capital budget request to construct the facility and noted this was not a five year commitment for \$50,000 but a one year commitment for \$10,000 and saw this as a necessary benefit and service to the community and benefit to families as they leave this world. Council Member Jones agreed with the service provided for the residents, noting it an unfortunate need, however is a short term funding request. Council Member Gossage shared concern for setting precedent and felt they were setting the bar of the need for operating costs and not for profit; if Council finds service provided a necessary one this may open the door for problems, further noting the legal aspect that may be a part of this. Council Member Sutton shared concern with setting precedent, noting the town has turned down others operating and capital needs. Mayor Weatherly noted this funding was for one year and stands on its own, asking if there was an offer for an amendment to the budget ordinance. Council Member Schulze did not see the support to make a motion to do so.



Council Member Schulze was a proponent of economic development and wanted to see this succeed and asked Brenda Steen, Apex Chamber to answer questions regarding the Chamber funding request. He asked what he would expect to see a year from now and what was expected to be achieved, what were their criteria and expectations. Steen responded they look for success and further guidance from town leaders in setting goals, development of a work plan and measures; she stated the goals were more those of the town and sees more active participation from Council. She stated they could not realistically compete in the market place and didn't feel this was the format to talk about incentives and continued the Economic Development Summit would be a starting point for such. She's not setting the goals and hopes the leaders will set them; she stated the reporting of the position's progress to Council would open dialogue. Council Member Schulze asked if this person would initiate the dialogue to develop a work plan and would be expected to drive the effort. Steen agreed it would with direction from her and Chamber Board and Council. She noted the economic development committee meetings are supposed to guide and held with invites extended to mayor, manager and director of planning; meetings are open to all Council and she values their input. She's not sure if it's operating this way not seeing evidence of it and researching this but the infrastructure is in place.

Mayor Weatherly responded they may discuss this more, but now is not the time, however, since she brought this up, if the Chamber's position is that success of the summit and success of the economic development director, that they are about to fund, will rise or fall with the offer of incentives from the Town they had better do some thinking about this whole process because he's afraid they will be at logger heads if they are set up for this being the linchpin of success or failure. Steen reiterated her comments that a company the size of Narvos, realistically would not come to Apex without incentives. Mayor Weatherly responded he thinks there is a very legitimate side of that, believing Narvos would come to that same site without those incentives; he thinks there's a reasonable argument to be made for that, maybe with the State and some of the County without Holly Springs. He's heard this said and that it comes from credible sources, so, they have a legitimate difference in opinion; he didn't want to continue this. Steen added she started her position February 26 and her background is force marketing, but Council is the expert. From what she had heard from Wake County Economic Development, who deems to be a viable source, is what she had been told, however, Council has been managing the Town a lot longer than a lot of people, so there's a need to share ideas. Mayor Weatherly added there is not a right answer to this and continued, do not put that as the scale upon which success or failure will be judged as how many taxpayer-funded incentives they are willing to dish out to the private sector; calling it corporate welfare. Steen understood and had heard the term. Council Member Sutton appreciated her candor and stated maybe some on the Council that expects the funding of this position to generate Narvos or something big like that and that she was being candid in saying that's not going to do it; funding of this position is not going to do it, and he thinks those that expected that from the Council or the public need to adjust that expectation and be realistic about this and he appreciates her being honest about it. Bonnie Fischer, Apex Chamber, stated the purpose here is for dialogue and working together, Town and Chamber, to come up with the appropriate targets and strategy and plans to get there, incentives or not, that's the key. Mayor Weatherly agreed and was why he thinks there's support for the town providing the bulk of the funding but the position being with the Chamber because it would be a true partnership but thinks the point is well taken; there needs to be goals and to see that the taxpayers money is being well spent.

Mayor Weatherly called for a motion to adopt the Budget Ordinance for FY2007-08.

Action: Motion by Council Member Jones and second by Council Member Schulze to adopt Budget Ordinance for FY 2007-08 as presented. Motion carried unanimously.

Mayor Weatherly expressed appreciation to town staff and thinks the job for maintaining the lowest tax rate in Wake County becomes more difficult with a tax base of almost \$3 billion which is an incredible number and are showing good progress in commercial growth which is growing in base some, but has tapered off some in the last few years, which makes maintaining the level of service the citizens expect with the same tax rate even though the revenues are increasing, that level of service that has been expected in the past and for public consumption, the lowest per capita number of employees working for the citizens of Apex of any town in North Carolina, and still remains the case, verifying that with the Manager. He continued staff doesn't like for them to talk about this because they have to work harder with less, having to provide more services with less resources, but thinks there is a fundamental belief on this Council that the tax rate should be low so each citizen pays the lowest rate, receives a good value in that for services, but the Manager is caught in the horns of that dilemma in making sure that in his budget that's provided for them balanced within that forty cents tax rate, they have asked him to maintain; he may not always be able to keep it like that, but has done a great job since he's been here and he wanted to say thank you for the blood and sweat he poured over this budget presented to them.

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.

Action: Motion by Council Member Jensen and second by Council Member Gossage to approve the consent agenda. Motion carried unanimously.

- 1) Minutes and General Account of June 5, 2007 Council meeting.
- 2) Minutes and General Account of the June 5, 2007 Council Closed Session (recorded separately).
- 3) Budget Ordinance Amendment and Capital projects ordinance Amendments for Electric Fund capital outlay and James and Chatham Streets rehab projects.
- 4) Authorize Fire Chief to sign contract between NCEM and Town of Apex for receipt of grant monies received for water rescue program.
- 5) Resolution Level 4 Use Agreement for School site: Apex Elementary. **Res. No. 07-0619-11**
- 6) Award construction contract for James Street & Chatham Street Rehab Project.
- 7) Adopt Resolution approving Agreement with NCDOT for reimbursements totaling \$250,000 for the Lufkin Road realignment project. **Res. No. 07-0619-13**
- 8) Resolution authorizing the Wake County Revenue Director to collect taxes on behalf of the Town of Apex. **Res. No. 07-0619-12**
- 9) 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. Manager Radford asked to add two items for consideration with New Business:

- 1) Cancellation of the July 3, 2007 Council meeting due to July 4 Holiday.
- 2) Request to approve a Parks and Recreation Trust Fund grant \$277,865 for Beaver Creek Greenway connection.

Mayor Weatherly added a closed session item to receive legal advice from Town Attorney on pending issue.

Mayor Weatherly called for a motion to set the regular meeting agenda with the amendments.

Action: Motion by Council Member Gossage and second by Council member Jones to set the regular meeting agenda with the amendments. Motion carried unanimously.

PUBLIC HEARINGS

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

Public hearing and possible motion to approve an Order Closing a portion of Forest Grove Drive as shown on enclosed map as a part of the Groves II – JVI Project. Mayor Weatherly called on Town Attorney Fordham to present this item. Attorney Fordham offered a substitute map sealed by the surveyor showing Area A and Area B for the portions of Forest Grove Drive no longer needed and a part of the street configuration in the Groves II development once the new plan is affected. In terms of the findings Council should make, he presented the Order to Close with the key findings 7 and 8: closing is not contrary to public interest and would not deprive any individual owning property in the vicinity of the area to be closed, reasonable means of ingress and egress to his or her property. He noted procedural findings in regards to notice, etc.



Attorney Fordham offered Russell Dalton, Town of Apex Transportation Engineer, would address the substitute road and if it would suffice for adequate access to the properties and was consistent with the site plan and shown on Exhibit A. Dalton stated the map as presented does appear to provide adequate access; map indicates Area A is existing right of way actually being shifted eastward, and Area B being closed and shows a new connection 40' public right of way, that would provide public access to the individual parcels and would be maintained. Mayor Weatherly asked if there were anything further before the public hearing. Attorney Fordham added the Town Clerk could comment on the publication was made as a part of the record. Town Clerk added the Resolution of Intent of the Town Council to consider closing a portion of Forest Grove Drive was properly advertised in accordance with the General Statute.

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

Greg Holder owns property on 1204 Rainsview Lane and backs to this portion of the property; noted developer has asked permission to close, and noted the road does not exist, it has been demolished, including the portion to the two residents; noted there is access to these folks and his property is directly behind those folks, asking if the revised plans for the developer is approved, and asked why he has torn up this portion of the road and if the road will be rebuilt or paved, curb and guttered as the developer has gone to considerable expense to pave and put curb in where the townhomes and residents will be. Attorney Fordham was not aware of the road demolition, not saying he has or hasn't but hasn't been on the grounds; if it has not been officially closed should not have been torn up.

Sean Dolle, Jones, Cnossen, and Dolle Engineering stated there were complications with the right of way with this project; yes the developer has removed portions of Forest Grove Drive and he understands the procedures tonight is the formality of closing the right of way and not necessarily associated with physical removal of the road, but closing of the right of way. Attorney Fordham disagreed it's not formality but a public hearing with conclusion to be determined by the Council. Dolle continued portions of Forest Grove Drive have been removed and a continual paved access point has been created for the two remaining residents residing there. Council Member Jones asked if what is being shown is consistent with the approved site plan for this development with Dolle responding yes. Council Member Sutton asked what would go there. Dolle responded the area shown on the map where right of way is removed will not be replaced roadway there; there will be townhomes on this particular side of the project; a six unit building in area B and 5 or 6 units in A. Council Member Sutton clarified no change in the number of buildings already approved, with Dolle responding correct the removal of the right of way and the buildings intended to be placed there are consistent with the approved subdivision plan, previously approved site plan and construction drawings. Holder stated the other part of his question was since the road was removed to the right of the residents will it be rebuilt and why it was removed. Dolle clarified the portion being addressed, stating it has been removed and intent with the approved plans are to either not reconstruct that portion of the road and that portion of the right of way will be petitioned to abandoned as well or the right of way will remain in place and used as a public alley way; these are the two options currently under consideration. Holder noted residents received the revised subdivision plans in May which had originally been single family and now changed to two more townhome buildings. Dolle responded this is correct and in keeping with the public alley way option. Dolle stated Council had not seen this plan which is currently in staff review, a revision to the plan currently being worked on and for the future section and not affecting the part of the two areas currently proposed to abandon.

Council Member Sutton asked how he knew it was not affected. Dolle responded the plan revisions currently in staff review – the only revisions to the plan occur on this portion of the tract – none of those revisions occurred on this ... with Council Member Sutton interjecting the lack of the road may affect the traffic flow if you close the road. Dolle responded the two residents that live there has a paved public right of way to Center Street which the developer put in place prior to removing any portion of Forest Grove Drive. Council Member Sutton would like to have had the revised plan to see what was being closed, and how it fits. Dolle responded the original intent in starting the process, having met several times with the Manager and the Town Attorney regarding this issue was to abandon the right of way since the developer controlled all of the property with the exception of those two as part of his project; when looking at the general statutes the procedure that is required in order to abandon the right of way, proposed complications for development of this project as they had it approved, so they are in process of working with staff to resolve the issue and believes the developer has met with the property owners or has contacted them that are adjacent to that right of way in an effort to talk with them about ways to resolve this.



Closing a Portion of Forest Grove Drive continued

Council Member Sutton asked if he had talked with Holder, Dolle had not; the developer had made contacts, not him. Holder responded he has not been contacted, no face to face meeting or called; the only thing he had received was the letter in regards to the proposed revision plan, with Dolle thinking that was the neighborhood meeting with Holder agreeing. Council Member Jensen confirmed the location of the Holder house which still has a street directly behind his house.

Council Member Schulze stated it sounded if the cart was before the horse, asking if they approved the plan to put buildings on the road before they decided to close the road. Manager Radford responded no; they had approved a plan to provide both single family and townhome development within the tract; we have approved a site plan/subdivision plan and shows where the buildings were to go. Council Member Jones stated it shows townhomes on Area B and doesn't show the street alignment as consistent with what they are seeing here; he asked does the site plan they approved show this street alignment, with Dolle responding yes, and Council Member Jones continuing minus the area A and area B. Council Member Schulze thought the mistake was at the time they approved the site plan to not close Area B. Council Member Jones stated approving a site plan doesn't formally close a right of way. Council Member Schulze thought they had approved buildings to go on area B and saying area B is going away. Council Member Jensen stated they couldn't approve the closing until there was access for those homes. Council Member Jones noted they had to build the road piece to give access to A and B as shown, the areas to be removed, before closing the rest of the street. Dolle stated he thought part of the complication was the original thought on the part of the developer was that since he controlled all the properties in that area, when the right of way was abandoned, all the underlying ground would be given back to him, and ran into complication because in accordance with the N.C. General Statutes, when the right of way is abandoned, half goes to each adjoining property owner and was discovered further along in the process.

Council Member Schulze felt they should have approved the site plan and it should have included a road closing if required, and handled all at one time. Council Member Jones stated site plans include new roads and Dolle felt it probably should have been addressed. Council Member Sutton noted the site plan approve is no longer the site plan and will be revised. Dolle responded they currently have submitted a revision to the site plan in an area, not affected by this, but an area further down as a result in the change in understanding what happens to the right of way once it's abandoned. Essentially the original plan which was approved anticipated all 50 foot of the right of way being given back to the developer once abandoned and that being part of his project; once discovered through discussions with the town and the town attorney, the right of way – only half is reverted back to the him and the other half by law the property of the residents in Surry Meadows that adjoins to it.

Council Member Jensen asked if the developer had looked into trying to purchase this. Dolle responded yes, he has talked with some of the residents, obviously not all of them, but he has reached agreements with some of them as he understands. Council Member Jones stated it sounded as if we are getting the cart before the horse in this discussion as this revision... with Dolle interjecting they had not seen this, it's at staff level and with Council Member Jones adding its not come to Council yet, with Dolle agreeing this was correct and has no affect on what they are looking at tonight. Council Member Jones stated the action tonight gives them authority to do what has already been approved, with Dolle agreeing this is correct. Council Member Sutton noted the Attorney was the presenter, with the Attorney responding he was the introducer, as he couldn't give testimony one way or the other or take a position whether it was a good or bad idea; he could only give legal advice.

With no others addressing this item, Mayor Weatherly closed the public hearing and referred the matter to Council and opened the floor for a motion.

Action: Motion by Council Member Schulze to approve the street closing as submitted and second by Council Member Jones. Mayor Weatherly stated a portion of Forest Grove Drive and asked if there were further comments. Attorney Fordham stated he would note a small section of public utility easement which is being reserved and allowed by the General Statute and is included in the Order and Council should vote to approve the Order. Mayor Weatherly stated the motion should then be that Council would adopt the Order, with Council Member Schulze and Council Member Jones agreeing to restated motion and to adopt the Order of Closing portions of Forest Grove Drive as noted in the documentation. With no further discussion the motion carried unanimously.

End of Public hearing # 01

**Public Hearing # 02 - Rezoning Case #07RZ10**

Review: Planning Board will consider this rezone at their June 18, 2007 Special Meeting; staff will report their recommendation at the Council meeting; staff recommends approval of the rezoning.

Public Hearing and possible motion regarding Rezoning Case # 07RZ10 - Town of Apex, petitioner, seeking to rezone 6.581 acres from Medium Density Residential to Conservation Buffer district classification the property located on Kelly Road between Olive Chapel Road and Beaver Trail (rezone will expand Town's park system and will ultimately include a section of the greenway).

Presenter: Amy Overfield, Planner oriented to the site and the location of the Kelly Road park and portion to rezone to conservation buffer and consistent with the surrounding land uses that most includes single family homes including the Greenbrier Subdivision, and consistent with the 2025 Land Use Plan and will contain a section of the greenway that will connect through Kelly Road Park. The staff report is attached and incorporated as a part of the minutes. Planning Board recommends approval.

Mayor Weatherly opened the public hearing at 7:50 p.m. and with no one addressing this rezone closed the public hearing and called for a motion.

Action: Motion by Council member Gossage and second by Council Member Jones to approve the rezoning.

Motion carried unanimously.

End of Public Hearing # 02

Public Hearing # 03 - Rezoning Case #07RZ11

Review: Planning Board will consider this rezone at their June 18, 2007 Special Meeting; staff will report their recommendation at the Council meeting; staff recommends approval of the rezoning.

Public Hearing and possible motion regarding Rezoning Case # 07RZ11 - Town of Apex, petitioner, seeking to rezone 3.94 acres from Medium Density Residential to Office & Institutional district classification the property located at 410 W. Williams Street.

Presenter: Amy Overfield, Planner, oriented to the site on Williams Street, noted the location of the public works facility and Sovereign Grace Church, and is for the public works expansion. Surrounding land uses are the Lake Ridge Apartments and Sovereign Grace Church and public works building, both are office and institutional, and consistent with surrounding uses and the 2025 Land Use Plan. The staff report is incorporated as a part of the minutes. Planning Board recommends approval.

Mayor Weatherly opened the public hearing at 7:51 p.m. Phil Sasser, Senior Pastor of Sovereign Grace Church spoke in support of this addition and improvement to the area would be significant. Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jones to approve the rezoning.

Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 04 - Rezoning Case #07RZ12

Review: Planning Board will consider this rezone at their June 18, 2007 Special Meeting; staff will report their recommendation at the Council meeting; staff recommends approval of the rezoning.

Public Hearing and possible motion regarding Rezoning Case # 07RZ12 - Joann Wardensky, petitioner, seeking to rezone 0.0687 acres located at 6518 Roosondall Court from Wake County R40-W zoning designation to Rural Residential district classification (rezoning of this portion of the larger parcel will enable consistent zoning on the parcel).

Presenter: Amy Overfield, Planner oriented to the site a cleanup of the driveway for the parcel split from a larger parcel for a single family dwelling in the future and consistent with surrounding land uses, residences and Sutton Place and consistent with the 2025 Land Use Plan. The staff report is attached and incorporated as a part of the minutes. Planning Board recommends approval.

Mayor Weatherly opened the public hearing at 7:54 p.m. and with no one addressing this rezone, closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the rezoning.

Motion carried unanimously.

End of Public Hearing # 04

**Public Hearing # 05- Rezoning Case #07CZ06 and Major Site Plan for Upchurch Commons PUD**

Review: Planning Board reviewed proposed rezone, Land Use Plan Amendment and Site Plan at their May 14, 2007 meeting (concerns traffic and density); Planning Board continued this item to their June 11, 2007 meeting; staff will report on Planning Board's recommendation at Council meeting; staff recommends approval of the PUD-CZ rezone; Land Use Plan Amendment and Site Plan for Upchurch Commons. Valid Protest Petition has been received and triggers three-fourths super-majority requirement for approving the rezone.

Public Hearing and possible motion regarding Rezoning Case # 07CZ06 – Major Site Plan and land use plan amendment, North Chanel Investments, LLC., applicant, seeking to amend four parcels, 3.28 total acres, on Upchurch Street near Hwy 55 from Light Industrial and Office and Institutional to Planned Unit Development Conditional Zoning. (Land Use Plan Amendment is requested to change form Office and Institutional to Mixed Use – Office and Institutional and Commercial. A Major Site Plan with four mixed use buildings is proposed).

Presenter: Brendie Vega Mkhwanazi, Principal Planner oriented to the site and noted a valid protest petition is on file. The staff report is attached and incorporated as a part of the minutes. Planning Board recommended approval unanimously major site plan and land use plan amendment. Request is for Planned Unit Development Conditional Zoning, mixed use office and Institutional and Commercial land uses. Surrounding land uses, O&I and Sovereign Grace Church, Beechridge Apartments, and single family residential and public works on the other side of Williams Street, and EMS facility; 4 contiguous parcels and 1 parcel with an occupied building on Upchurch; conditions of the PUD are in the PD – uses includes those compatible with office and limited commercial; 89,500 sq. ft. building maximum; majority of the development is anticipated to be used as office with retail on the first floor; maximum building height 48 feet from the street side of the building with a maximum of 4 stories; no RCA or buffers are required in the small town overlay district area; lot for building one on the west side is .7 acres in size, and will not require storm water management devices; the UDO requires more than two acres; building 2, 3, and 4 will meet the requirements of the UDO for storm water management. Phasing of the project begins with building 1, 2, 3, and 4 with a proposed completion date of August 2011. Materials consist of brick, stucco, steel and glass; each building has flat roof with 2 foot parapet wall; building design is in compliance with the small town character; 294 parking spaces are required for the total project; planning director approved request for 10% reduction in parking reducing parking to 264 spaces. 98 spaces will be provided on site, behind the buildings and on the street, 166 of those will be off site on Sovereign Grace Church. Staff has received a signed shared parking agreement. Applicant is making road improvements at West Williams and Upchurch Street. Proposed Upchurch Commons project meets the standards of the UDO. Staff recommends approval.

Council Member Gossage asked the Planning Board concerns. Senior Planner responded at their first meeting, this was continued due to traffic concerns and density; applicant did not make any changes and came back to the Planning Board and received unanimous approval. Council Member Jensen asked how the concerns were resolved by the developer. Senior Planner responded developer proposes to add another right turn lane onto NC55 south onto Upchurch and the traffic engineer for the project was there to answer questions as well as Town Traffic Engineer Dalton explained to the Planning Board that the light would not be installed until warranted by NCDOT. Council Member Sutton clarified the light would be installed by NCDOT when warranted. Council Member Schulze clarified developer would put a right turn lane in when headed south bound on NC55. Senior Planner stated there were a number of improvements.

Manager Radford directed a question to Town Traffic Engineer Russell Dalton asking what improvements if any were going to be made on the opposite side of Upchurch at the intersection at the construction office, the building owned by the Chamber. Dalton responded no improvements on Upchurch itself but on NC55 will be adding left turn lanes going north and south bound and adding right turn lanes southbound. Council Member Sutton commented it's a dangerous intersection and difficult to get out with Public Works traffic coming off of Upchurch onto NC55. Council Member Sutton felt it warrants a light now.

Council Member Jensen asked questions regarding Building 3 elevations, having looked at the topography that falls off to the creek to the south; the north elevation shows 4 stories and the south elevation shows 3 stories, asking if this should be reversed and shared concerns it would look like a canyon. Senior Planner advised it was 3 stories on Upchurch; back and rear entrance lower story. Another concern of Council Member Jensen was this backs to a residential area and ask to discuss the buffers to the south to protect the residents; he compared Hunter Valley with light concerns, and here are looking at 4 stories with lights in the building; the residential area will degrade. Senior Planner stated the maximum height is 48' currently zoned light industrial and Planning Department feels mixed use is a better fit for the residents. Council Member Jensen agrees stating concern going to 48' but it abuts residential development that's been there a long time and how would they mitigate the problems, for sure privacy.



Rezoning Case #07CZ06 and Major Site Plan for Upchurch Commons PUD

Senior Planner pointed to the nearest single family resident which was on Harward Street and no UDO requirement for buffers in the small town character overlay district, and with Dolle noting it some 50 or 60 foot from the building; buffer is not required of the applicant. Council Member Jones noted there are landscape requirements but not buffer requirements. Council Member Jensen felt with PUD there was more control; staff has asked for lighting house shields on the light poles in the back and submitted light plan shows full cut off. Council Member Jensen wants some sort of plant zone, loblolly pines or something that gets high enough so one looking from their chair 32 feet up does not see directly into some ones windows; looks is nice but unless something is done by the town and are suppose to there, the result is no protection of their privacy and hopes something is done.

Mayor Weatherly stated before comments, should open the public hearing and did so at 8:05 p.m.

Sean Dolle, Jones, Crossen and Dolle Engineering, spoke in favor of Upchurch Commons PUD, having worked with the owners on this project for some time in an attempt to develop an attractive well visited site that will be an asset to the community. Elevations prepared by the Architect shows upgraded building materials, above and beyond to create an esthetic appealing project and remain in compliance with the small town character overlay district requirements; believe the project will be a success, in a good location, property is currently zoned light industrial and when originally zoned, may have been a proper zoning for it however, given the growth around it and the development around it is better developed as a mixed use project similar to the proposed. Nearest resident is located on Harward Street; building 1, 2, and 3 visual scale is 120 to 140 foot from the rear property line; with a 50 foot buffer on each side of the creek line; proposes two bio-retention devices instead of stormwater ponds that will meet town stormwater requirements and designed to handle the 25 year storm and prepared to go above and beyond. Traffic on NC55: improvements during the first phase, left turn lanes north and south will be constructed; there is a note on the plans regarding the traffic signal; appreciates concerns and has spoken with several people at public works and having been employed for some time there, agrees it difficult to get out there especially the public works side; NCDOT will not allow a signal until warranted; if warranted developer will be responsible to install it; work on construction drawings for a lane, having complications by the location of the cemetery and EMS and right of way issues; having met with NCDOT, it was noted as one of the most complicated left turn designs they have seen; not required by the TIA, but the developer has agreed to install an exclusive right turn lane in south bound direction, hopefully to allow traffic continuing south bound to continue to flow while the traffic slows down in the deceleration lane for a right turn.

Council Member Jensen addressed the protest petition and lengthy letter included asking if they had addressed some items. Dolle had not seen this particular letter but had met with the petitioner two different occasions to discuss his concerns; he had a list of questions they addressed. He noted the petitioner was present and could speak to his concerns with the development and may have addressed several questions in the letter Council has as well.

Council Member Jensen addressed the stormwater addressing the Town Attorney, and in looking at the lot non-contiguous is less than two acres but comes as a PUD, a total item; even if the lot is non-contiguous, do they not consider this as a whole of the three acres vs. a satellite piece. Attorney Fordham addressed the map – building to the far left. Council Member Jensen noted it consisted of two acres and don't apply stormwater to it, but in the PUD coming as one unit, if a satellite piece of property, should it not be considered as part of PUD in considering calculations overall. Attorney Fordham responded he would need to look at the UDO provision, but his sense of it would be likely, yes, but would defer to some extent to the Planning Department to look at that issue and they have an interpretation but if this is all one plan integrated in other aspects with the total plan; he had not been listening to the detail but asked if in other aspects of the plan were they considered together for open space, RCA. Senior Planner responded the PUD plan is, Mike Deaton, Environmental Services made the determination and can't speak for him; Deaton was not present. Attorney Fordham would want to look specifically at the stormwater provision before giving his best opinion.

Dolle stated before starting the project had met with Deaton and essentially the determination was made that there is room to put a bio retention device and make it work, however, in order to do this, there is an existing amount of vegetation, well established trees and would have to remove that to put in the retention device, and their thinking was why destroy those trees to put in a bio-retention device. Council Member Jensen added that was not his suggestion; he continued that they are doing 25 year for the other three which may work out or 20% larger than a 10 year storm; he had talked with developer and suggested whatever is done on those three contiguous pieces is done to an extent to be able to incorporate the fourth piece which does not have protection in calculations and as a total project and that it meets the UDO as a minimum and did ask for the 25 year storm.



Dolle ran the calculation on the 25 year storm for the three buildings but did not run it to incorporate the fourth building; given the fact its about 20% more would guess for the 10 year storm could probably meet it for all 4 for the 3 could make it 25. Council Member Jensen thinks in decisions like this it should come from Attorney Fordham vs. Mike Deaton as to how these are suppose to happen. Dolle understood.

John Cleland was not protesting this development to hurt business, he gets along with all the neighbors, protest on behalf of community (handout Exhibit A breaks down stages) objective is to make money; method give tallest building on largest foot print with the smallest buffers possible and the most people in least amount of space – some have a problem with this, as its not within the keeping of the small town character area, but the planning department has made that decision; he noted other issues listed under method that will become problems; results: most relate to traffic and detrimental to 250 plus people living on Upchurch Street and community in general and people passing through Apex; potential for the intersection at Upchurch and Williams (NC55) to become the worst bottleneck from Durham to Fuquay with this many people on Upchurch Street; 300 cars off Upchurch, a dead-end, cul-de-sac at rush hour, imagine bumper to bumper both ways; they can hardly get out of Upchurch now almost any time of the day; there is no traffic control and a light is needed there now; left and right turn lanes will not solve the problem; the problem is not getting into Upchurch but getting out onto NC55 and no lanes will help that, the traffic signal is the most essential thing as far as moving traffic, otherwise will have long delays on NC55; two thirds of the parking for this development will be across the street at Sovereign Grace Church, new parking lot and most using these buildings will cross Upchurch Street to get where they are going including retail traffic; they only see two thirds of the necessary parking for this building is available using all they have; there is perpendicular parking on the street which is unusual for Apex and maybe unique for Apex, and means a lot of frequent backing of cars onto Upchurch Street, results for traffic issues with Upchurch, thinks a light needed essential turn lanes will not solve getting out and needs to look at this most closely and consider solutions.

Pastor Sasser, Sovereign Grace Church supports Upchurch Commons, an improvement to the area of community and feel from church perspective does have a have a traffic problem and experience this; his office is on the corner and often helps folks in distress; desperately needs a traffic light there and appeals for the signal there; thinks it will help economic prosperity of this area and feel of the area, economically will be beneficial to the property; heard no resistance other than Cleland; use better than industrial and in keeping with downtown area.

Russell McClelland, Beechridge Apartments has no problem with project but the traffic out of Upchurch on NC55 along with over 200 others; turning left especially evening you can forget it; he attended meetings of Planning Board and Beechridge and seems they have been forgotten as far as trying to get out 200 plus; children have to get bus at EMS; four car accidents occurred at this intersection and do not want kids to get hurt; sure they will have construction traffic, noting the trucks coming into their residential area during church renovation and doe not want this; and to get out on NC55 the solution is not to go to Harward and get out; its impossible anytime during day; does want to see traffic signal now if possible, not first and second phases.

Wayne Floyd, Beechridge Apartments stated residents don't have a problem with the project; it looks great and is a positive benefit to offer to community and would like to see it happen. In planning the problem is traffic concerns and it has not been addressed; NC55 North is four lane expansion to Lowes, through Apex creates a bottleneck at the bridge, and to expand four lanes to Holly Springs as Holly Springs and Fuquay expands traffic will increase and the bottleneck worsen and the residents are in the middle of the bottleneck; it's a quiet neighborhood and concern is with traffic at Upchurch and it makes it complicated; looked at NCDOT stats and there has been four accidents in two weeks. People avoid Salem coming out from Harward onto Upchurch to NC55 to avoid the intersection, noted the Rescue building, Public Works building on the other side, the Church, 200 Beechridge residents and it's a complicated intersection and already a problem; a stop light is needed now and turn lanes will not solve the problems, help get in but not out; as far as buses kids have to walk to EMS to be picked-up and will have to walk past the commercial buildings and with work traffic a child may be struck at some point; buses are a school issue but need to be factored into consideration with this intersection. Ask to think about the problems and find traffic solutions before someone is killed there; noted a car recently flipped over there.

Maureen Nelson, resident on Upchurch Street doesn't mind development, sounds like a great plan, but concern for the children; there is need for a light now with the Church, EMS, buses and ambulances, kids crossing the street to get bus next to cemetery; buses don't come down their street; traffic north and south on NC55 a light would help and hopes Council will consider it and help them out.



Public Hearing # 05

Rezoning Case #07CZ06 and Major Site Plan for Upchurch Commons PUD

Lyle Overcash is with the traffic engineering firm that did the traffic study; concerns noted Upchurch Street Level Service F both sides; does not warrant signalization as far as volume; Russell Dalton Traffic Engineer for Apex collected information that reveals 21 accidents in a 3 1/2 year period. He stated some of these could have been avoidable with a right turn lane on NC55; he disagrees turn lanes onto Upchurch would not be an asset; where folks turn left is where the accidents are happening and that person clogs the intersection with that one approach; with traffic pulled to the left the traffic can continue to flow on NC55 without interruption and should be more gap for folks on side street to turn; there is some comfort folks coming south on NC55 do turn right and make an immediate left onto Harward Street and a right turn lane should help with that situation; they recognize the need and did recommend the traffic signal in the report; will warrant signal with build out of the development; they talked with the traffic engineer about the time that a traffic signal could be in, and he said when it meets warrant for signalization based on traffic volume; or you can meet warrant based on the need of access; based on accidents there has to be five correctable accidents per year; based on Dalton's data, there were four over that time; majority of the accidents occur on NC55 rear ends and would be a great benefit for left turn lane at this location and based on statistics. Intersection will be monitored and at some point will be warranted and the developer has agreed to install the signal when warranted. Council Member Jensen addressed traffic on Upchurch Street to NC55 late afternoon left/right out of Upchurch will help majority traffic turn right and use Harward Street no reason not to use it; with improvements, the intersection would be a Level Service A in the a.m. and Level Service B in the p.m.; he restated traffic signal is not warranted until development is built out. Russell Dalton stated to see if the signal is warranted a study is marked to be done on the third phase prior to fourth phase; time line on completion of 3rd phase is based on occupancy the fall 2009 or spring of 2010. Dalton noted long term plan for Upchurch south, is not designated a residential street. Engineer reported NC55 is on the TIP for widening. Council Member Jensen finds Harward Street useless to get onto NC55. Engineer stated folks that take Harward take a right and to Salem; he noted some town improvements would be made to NC55 and Salem hopes will help; Upchurch gets a back up; any improvements downstream will clear up for more gaps in traffic. Council Member Gossage clarified there would be dedicated turn lanes on NC55 which is correct, and not those called suicide lanes. Council Member Jensen clarified the traffic lane improvements off Upchurch Street.

Mayor Weatherly closed the hearing at 8:45 p.m.

Council Member Sutton noted 250 residents in Beechridge and asked about the residential component; Dolle stated there is no residential component. Council Member Jones asked clarification on the building height next to the residential at Harward Street or Building 2 and 3 (150'); and 75 to 80 feet from the parking lot to the lot lines; there are no residents to the lots south. Senior Planner thought there were residential to the south; zoning map of the area behind there is zoned O&I and medium density residential. Council Member Jensen clarified the buffer of 50' on each side of the creek; Senior Planner reported 50' buffers and Dolle responded 50' on each side of the creek, and comprised of mixed of existing trees, pines, hardwoods and a 20' sewer easement.

Council Member Sutton confirmed turn lanes off Williams Street will be complete with the 1st issue of building permit; Dolle thought prior to the issuance of the first CO, but stood corrected by Council Member Sutton that it would be with issuance of the 1st building permit, and Dolle stated yes then. Council Member Gossage expressed some concern with the building height; interestingly enough the traffic situation will improve from a Service Level F to Service Level A & B, and once the signal is in place but will not be in place until the build out.

Council Member Schulze was also concerned with height, and if this could be mitigated with loblolly pines, or something, then he was ok with it. Dolle reported the architect could address the height, noted it a well designed building with the feel of the building in mind keeping with the historic buildings downtown, with his office there are 14' ceilings for a different affect. Council Member Schulze responded that maybe it's a landscape issue. Council Member Gossage weighed in on the look of the building, but was looking at the homes behind that. Dolle noted there would be existing vegetation and landscape, some well established along the stream buffers and scrub pines 15 or 20 feet, and was willing to work with the planning department to establish if there needs to be additional landscape to provide more opaque taller screening between the residential properties and this project. Council Member Jensen was recalling a provision in the UDO that development that butts against houses would see the line of site drawings and has not seen that, however if he sees that, it could resolve the questions. Dolle stated this was provided to staff showing the topography, and the height of the building and what they thought was the worse case and did not provide one for each building. Council Member Jensen concerned with height, 2 stories on Hunter, 3 stories here, not 4 stories.



Rezoning Case #07CZ06 and Major Site Plan for Upchurch Commons PUD

Dolle ask that he keep in mind the cost of the off site road improvements, he thinks there will be severe limitations by NCDOT, maybe night time construction because it's a busy road; it would be a mess daily not knowing what but dealing with the cemetery, EMS, existing stuff; it will be a very costly project dealing with all of the improvements and on top of that the cost of the signalization, all except the signal installation is absorbed in the first phase and absorbed in the project and becomes a cost benefit ratio. Manager Radford asked who would be responsible, with Dolle responding the developer.

Council Member Gossage questioned the parking agreement with the church; Dolle reported it's a recorded 30 year agreement. Council Member Jensen asked if the modifications were signed off by all parties and should any parking modifications be made should come back to Council. Dolle responded the intent is and he understood the church may expand again in the future, and should they add additional spaces and the agreement be amended, he had no problem in bringing any modifications back to the town; parking spaces will be beneficial to both. Council Member Gossage addressed construction traffic limitations. Dolle stated limitations are construction traffic can not go down Harward Street with the only other access would be Upchurch Street onto NC55. Council Member Gossage suggested perhaps construction traffic could be limited to a certain line, maybe turning into the parking lot and not going down to the residents.

Council Member Sutton addressed the objections by the Planning Board at first were traffic and density, asking Dolle how they would be addressed. Senior Planner stated they were discussed. Dolle responded density generated traffic and traffic was the concern and not isolated to density. Council Member Jensen addressed the density and the child safety not being resolved and if there would be a connection to occur as the property zoned O&I developed. Senior Planner does not anticipate that connection to occur with Engineer Dalton agreeing. There was some discussion on the flow of traffic related to construction; resident asked about the construction traffic not coming into the resident; Council Member Gossage commented on the limitation of the construction traffic to the residential area, with Dolle stating he felt this was a condition that they could agree too.

Council Member Schulze asked if Dolle felt comfortable working with staff on the landscape conditions. Senior Planner did not know if they could put additional landscape, and if they approve the plan, not knowing if trees could mature in the ten foot strip and was uncomfortable to answer, but could consult someone about the landscape. Council Member Jensen noted the stream that borders and the buffers and the stream flow, with Dolle responding it flows from right to left and to Beaver Creek; Manager Radford noted there were very huge trees there in the buffer; Council Member Jensen added then they shouldn't be touched. Dolle reported on the eastern lot and two different areas and his concern for the buffer next to the resident there; there is a planting strip there, a drive and retaining wall, the building will be a bit down into the site, and agrees it will be tall, but as far as the plantings will work with an arborist or landscape whatever they need to establish the right amount and right type of vegetation to provide as tall and as thick of a buffer as they can and obviously takes time to develop. Council Member Jensen wanted to see a cross section and the Senior Planner did not include this in the agenda packet.

Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve with conditions of the development, and including restricting construction traffic establishing a boundary to the western most property line across the street at that point, including more opaque buffers between the developed property and the residents with Dolle stating he was more than happy to work with Planning and Steve Yates, and to study the light benefit with Dalton willing to study it between the second and third phases of the development, with Dolle agreeing and stating the light is a benefit to them as well. Council Member Jensen doesn't like three stories and felt the higher they go should reduce the footprint. Council Member Schulze agreed with the light situation, there will be short term pain and long term gain benefit. Council Member Sutton stated there were some positives about the development in the neighborhood, felt with the traffic situation that already exists, it's much too dense, he could not support this. Council Member Jensen then agreed with Council Member Sutton.



Mayor Weatherly informed the Council with the valid protest petition a super majority vote is needed to pass this request and then turned to Dolle for him to address this at this point. Dolle expressed if there were less density, the likelihood would be the volume of traffic would not generate a signal; by reducing the density could make the traffic situation more dangerous and a traffic signal would not be warranted. Council Member Sutton understood the traffic signal was not entirely in his hands, he felt it's the town's traffic and the town's planners should be out front getting the light and needs to be done right away to help with the construction traffic and needs to be done upfront and the he knew he did not make that decision, but the town needs to do this, and it should be a priority and charged them to do something about that light. Dolle stated his willingness to work with the town and the developer had agreed to pay for the light. Council Member Sutton noted the amount of traffic and the density, the Service Level now is an F. Mayor Weatherly noted it could not be any worse. Dolle had asked Engineer Dalton if the town had any pull with NCDOT and could address this with them, noting the answer to the traffic issue and development and success was the light was a necessity and needed now; he asked that they not handcuff this project because of the lack of control they have with NCDOT. Council Member Sutton stated they could control how much they put there, with Dolle agreeing, but keeping in mind if they reduce the density and volume they may never get a traffic light. Council Member Sutton was willing to take this chance. Council Member Gossage asked Council Member Sutton if he had a problem with density or with the light. Council Member Sutton felt density made the traffic situation worse, that the Planning Board was right at first. Dolle explained again the way its looked at makes it better; the density in the long run would make the light happen there creating a better situation for everybody. Council Member Sutton expressed concern with fatalities at this location, and Dolle too did not want that, and wanted the light. Council Member Sutton did not understand the position being taken that density would generate a light; Dolle responded to his comment that he was talking about NCDOT and they way they look at it. Traffic Engineer Dalton stated if Council wanted the light sooner it should be action taken by Council and was not an engineering decision, they have talked with NCDOT and their response was they studied Bryan Drive for a signal warrant and it didn't warrant and it carries a lot more volume than this intersection, so they would consider a light in the future when it warrants and believes it will warrant but not right away; if they wanted to proceed in a future meeting to provide some kind of letter to NCDOT requesting a light and based on crash data, and development then would be the best way to do it. Council Member Gossage added this was the best option for now, or wait for accident rates to go up, or build out with density would warrant the light, or could wait for a fatality. Council Member Sutton still voiced his concern, noting the 45 mph speed limit there and the visibility problem, with Dalton responding the visibility would improve with the road improvements. Dolle reported he had been talking to the town about reduction of the speed and visibility will improve with the left turn lane as they would be cutting into the slope to provide the road improvement required by NCDOT would make this situation better; he understands existing conditions are not great out there, they are failing conditions, but the hope is that with all the road improvements, site distance improvements, left and right turn lanes, and eventually the signal, that all the traffic concerns would improve creating a better Level of Service to A and B.

Mayor Weatherly restated with the valid protest petition 4 votes were required to pass, and a motion was on the floor. Council Member Jones would like to see how the turn lanes would work on paper; a cross section of the topography in relation to the building and residents, and as far as reduction in density, stated this open ended reduction to what. He noted further there were unique issues with this project, putting it into and to meet the definition of small town character and different that what surrounds it and trying to reduce the impacts and recognizing the plan design is for the future; as far as density, was unfair to go through the process and meeting all the requirements of the UDO and specifies the window of density and willingness to meet all the expectations, and then when they get here to say to them you can't qualify, as far as meeting the UDO requirements, everything qualifies and say its too dense; can't do that; and in the first phase having to make all the infrastructure improvements and associated costs; here they meet all the UDO requirements and we have to make a business decision. Council Member Jensen also noted the land use plan amendment and once changed is locked in.

Action: Motion by Council Member Jones and second by Council Member Sutton to table this item to the first meeting in August, or August 7, 2007. Dolle stated this was acceptable; time would also allow the attorney to also look at the separate lot situation. Motion carried unanimously. Dolle will present the items council wishes to see.

End of Public hearing # 05



Public Forum continued

Public Hearing # 06– Unified Development Ordinance Amendment

Review: Planning Board will consider UDO amendments at their June 18, 2007 meeting; staff will report Planning Board recommendation at Council meeting; staff recommends approval of proposed UDO amendments.

Public hearing and possible motion regarding possible amendment to various sections of the Unified Development Ordinance. Proposed amendments include: Removal of section dealing with Apex Appearance Commission; adding Appearance Award recommendations to the Planning Board duties; definitions for pre-school and drop-in day care as permitted uses to existing districts; clarifications to Sign Ordinance.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the amendments per the staff report which is incorporated as a part of the minutes. Planning Board recommends the amendments. Mayor Weatherly opened the public hearing at 9:17 p.m. and with no one addressing the amendments, closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the amendments to the UDO as presented. Motion carried unanimously.

End of Public Hearing #06

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.

Veronica Rockwell addressed the Council regarding the rezoning at Hwy 55 and US1. Her comments are attached and address traffic concerns and development for proposed Wal-Mart and other retail businesses as well as residential units accessed by the Peakway and the impact on the bridge at US1, South Hughes, Perry Road, Peakway and NC55. She noted improvements and traffic patterns and design of US64 and NC55 should be incorporated for US 1 and NC55 for this proposed development with residents looking for a resolution, not dependent on the I-540, as this would impact their quality of life.

Deborah Lanuti congratulated the town on the lowest tax rate in Wake County and shared with removal of a portion of the road they did not know about asked are we properly staffed, perhaps needing more staff to be more proactive in the construction projects, as this was not found out until after the fact Manager Radford responded we are, and the road section was a part of the approved subdivision; he noted there were most stringent requirements of the UDO however could always use more help but not in this case, and noted the hiring of an additional construction engineer in the upcoming budget year.

End of Public Forum



NEW BUSINESS

New Business # 01 – Apex Parks Recreation and Cultural Resources Advisory Commission

Mayor Weatherly requested Council's consideration for re-appointments to the Apex Parks Recreation and Cultural Resources Advisory Commission and called for a motion. Council Member Jones, Liaison to the Commission offered the following for reappointment: Reappointment of Angela Reinke and Bill Chamberlain for a 3 year term expiring May 31, 2010; Reappointment of Angela Reinke as Chair for 1 year term expiring May 31, 2008; Reappointment of Greg Coley as Co-Chair for 1 year term expiring May 31, 2008.

Action: Motion by Council Member Jones and second by Council Member Schulze to approve the Mayors recommendations. Motion carried unanimously.

End of New Business Item #01

New Business # 02 – July 3, 2007 Council Meeting

Manager Radford asked for Council's approval to cancel the July 3, 2007 Council Meeting due to the July 4 Holiday and vacation schedules. Mayor Weatherly called for a motion.

Action: Motion by Council Member Jones and second by Council Member Sutton to cancel the July 3, 2007 Council Meeting. Motion carried unanimously.

End of New Business Item #02

New Business # 03 – Beaver Creek Greenway

Manager Radford asked for approval of the Parks and Recreation Trust Fund Grant contracts for \$277,865 for Phase 1B of the Beaver Creek Greenway and authorization for the Mayor to sign. This grant will enable the town to precede with Phase 1B of the Beaver Creek Greenway which will connect to the trail from Pearson farms through Ashley Downs and out to Kelly Road park. This phase of the project will also involve the encroachment agreement with NCDOT to go under the future I-540. We are still awaiting word on \$75,000 grant request from the State Recreational Trial Program and should hear back soon; once we know about this particular grant request, will be ready to start construction sometime in August. This information has been reviewed by the Town Attorney and found no problems with the contracts. Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the contracts and authorize the Mayor to sign them. Motion carried unanimously.

End of New Business Item #03

WORKSESSION

There were No Worksession items to be discussed.

**CLOSED SESSION****Closed Session**

Mayor Weatherly called for a motion to move into Closed Session to receive legal advice from the Town Attorney. Motion by Council Member Gossage and second by Council Member Jensen to move into Closed Session at 9:40 p.m. Motion carried unanimously. Minutes of Closed Session are recorded separately. Motion by Council Member Gossage and second by Council Member Jensen to move back into regular session at 9:54 p.m. Motion carried unanimously.

With Council having returned to regular session there was a consensus to retain the present nonpartisan plurality election system administered by the Wake County Board of Elections and not participate in the instant runoff pilot program, as there is no present run-off requirement.

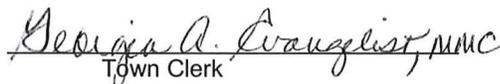
End of Regular Session

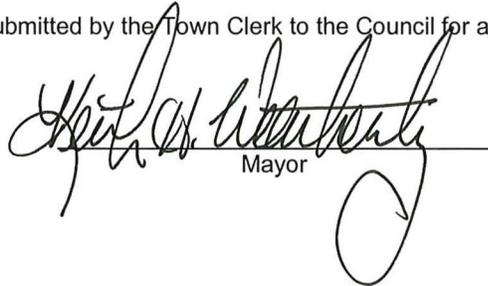
NOTE: The Parks and Recreational Facilities Grounds Maintenance Agreement is updated to include the School User Agreements approved by Council at their June 5, 2007 and June 19, 2007 meetings. This formal agreement was entered into May 16, 2006 and reflects action for contract period July 1, 2007 and ending June 30, 2008. This Agreement has been filed with the June 19, 2007 Council minutes and was not presented as a part of the Council's packet.

ADJOURNMENT

With no further business to come before the Council, there was a motion by Council Member Gossage and second by Council Member Jensen to move back into regular session at 9:54 p.m. Motion carried unanimously.

The minutes of the July 19, 2007 Council meeting were submitted by the Town Clerk to the Council for approval at their meeting on July 17, 2007.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes of Tuesday, July 17, 2007 held at 7:00 p.m.
in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

Mayor Pro tempore Mike Jones presided over the meeting in Mayor Weatherly's absence.
Council Members Gossage and Sutton were present.
Council Members Jensen and Schulze were absent.

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Pro tempore Mike Jones called the meeting to order, led the Pledge of Allegiance, and extended a welcome to those in attendance. Council Member Gossage led the Invocation.

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 Pro tempore Jones presented the consent agenda to be set prior to taking action to approve.

Action: Motion by Council Member Gossage and second by Council Member Sutton to approve the consent agenda. Motion carried unanimously.

- 1) Minutes and General Account of June 19, 2007 Council meeting.
- 2) Minutes and General Account of the June 19, 2007 Council Closed Session (recorded separately).
- 3) Minutes and General Account of the June 26, 2007 Finance Committee meeting.
- 4) Minutes and General Account of the June 27, 2007 Personnel Committee meeting.
- 5) Budget Ordinance Amendment and Capital Projects Ordinance Amendment for regional wastewater treatment plant.
- 6) Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #07CZ07, Clayton Howze for Hendrick Automotive Group, petitioners, for property located at 1913 and 2300 Laura Duncan Road.
- 7) Ordinance regarding rezoning #07RZ10, Town of Apex, petitioners, for the property located on Kelly Road between Olive Chapel Road and Beaver Trail.
- 8) Ordinance regarding rezoning #07RZ11, Town of Apex, petitioners, for the property located at 410 W. Williams Street.
- 9) Ordinance regarding rezoning #07RZ12, Joann Wardensky, petitioner, for the property located at 6518 Rosendall Court.
- 10) Personnel Committee recommendation approving a new position of Zoning Compliance Officer for the Planning Department effective immediately.
- 11) Reimbursement Agreement for the US64 Phase 2A Study (NCDOT WBS35920 TIP PROJECT: R-4469)

End of Consent Agenda Section



REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the Regular Meeting Agenda to be set prior to taking action on the following items. Manager Radford asked to add a new business item to consider a request by the Apex Arts Council for a street closing for Salem Street on October 6, 2007 for a street festival.

Action: Motion by Council Member Gossage and second by Council Member Sutton to set the regular meeting agenda with the amendment requested by the Manager. Mayor Pro tempore Jones stated he could vote, however, could not make a motion. Motion carried unanimously.

Mayor Pro tempore Jones turned to the Town Attorney to give legal advice regarding the ability to vote on ordinance changes with three in attendance. Attorney Fordham stated given the shortness in number, have to take into account GS 160A-75, a provision not talked about much, but requires that on the first reading or first introduction of any matter that has an affect of an ordinance, or is an ordinance, has to be adopted by two-thirds of the membership of the board, and refers to total members on the board, absences and vacancies. This basically means you have to have four people to vote for something the first time it's voted upon. Introduction according to the statute means by the first time something is voted upon. Unfortunately the three public hearings and also New Business item # 1 are ordinances, or have affect of ordinances, so they can not be adopted.

Mayor Pro tempore Jones noted some were here to speak specifically and make a presentation and speak specifically to the items on the agenda for public hearing, so he proposed unless there was objection to hold the public hearings and of course continue those to the next meeting or subsequent meeting depending on what the motion is at the conclusion of each of the public hearings if that's ok with the Council. Council Member Gossage offered maybe it best the public hearings be held with a full membership of the council. Mayor Pro tempore Jones responded he understood that, but had been practice if someone had come, expecting a public hearing should open it to at least hear from them, may hear the same thing again next time, but does not want to limit participation if somebody can't be here at the subsequent meeting that came here specifically for that reason.

Mayor Pro tempore Jones presented the public hearings as follows:

PUBLIC HEARINGS

Presenter: June Cowles, Senior Planner

Public Hearing # 01 - Rezoning Case #07CZ16

Review: Planning Board reviewed this item on July 9, 2007; staff will report Planning Board recommendations.

Public hearing and possible motion regarding Groves II Conditional Zoning # 07CZ16, Rezone Amendment, Subdivision and Site plan; site is 10.70 acres and located north of Center Street and South of Surrey Meadows Subdivision.

Dianne Khin Director of Planning, on behalf of Planner June Cowles, stated the applicant had requested the public hearing for The Groves II be continued to the August 7, 2007 Council meeting. Letter of request from the owner for the project, who was unable to attend the meeting, is attached. Council Member Sutton questioned the number of revisions he noted as 7 for this rezoning; Khin responded those revisions were those made during the technical review process.

Action: Motion by Council Member Gossage and second by Council Member Sutton to continue this hearing to the August 7, 2007 Council meeting as requested. Motion carried unanimously to continue the hearing for Rezoning Case #07CZ16 to the August 7, 2007 Council meeting.

Public Hearing for Public Hearing #01 for Rezoning Case # 07CZ16 continued to August 7, 2007



Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 02 - Rezoning Case #07CZ01

Review: Planning Board reviewed this item on July 9, 2007; staff will report Planning Board recommendations.

Public hearing and possible motion regarding rezoning case #07CZ01 Trinity PUD-CZ Rezoning and 2025 Land Use Plan Amendment of 1,071 acres generally bound by future I-540, US-1 and NC55; applicant seeks rezoning to PUD-CZ for a mixed-use development.

Presenter: Brendie Vega Mkhwanazi, Principal Planner made a brief presentation from the staff report which is attached and incorporated as a part of the minutes. Highlights: Trinity is a 1071 acre large-scale mixed use development that proposes maximum up to 4000 residential units with maximum built upon areas for all development proposed to be 70%; proposes residential densities, proposes minimums for 2.2 million square feet of commercial space, and 500,000 square feet of office space, proposes maximum heights, and in addition public facilities such as school sites, parks and greenways; applicant asks that Council grant a 2% reduction in RCA; applicant proposes a dedication based upon 2150 units and a fee-in-lieu for any units above 2150 and have received a recommendation by the Parks, Recreation, and Cultural Resources Advisory Commission; applicant has reserved 20 acres for potential school sites, with Wake County Public Schools and town staff discussing need of approximately 70 acres to be reserved for school sites to serve the estimated 4000 residences; she noted the hearing would be heard at a later council meeting, however the applicant was prepared for a presentation. Staff recommends approval of the Trinity PUD Plan, rezone and Land Use Plan Amendment. Planning Board met July 9, 2007 and recommended approval as well.

Manager Radford noted the slide for the requested schools are based on maximums per unit and provided by the Wake County School System, and stated the schools are happy with this proposal.

Mayor Pro tempore Jones was willing to hear the presentation by the applicant and opened the public hearing at 7:15 p.m.

Sal Masarra, Kimley Horn and Associates, 3001 Weston Parkway, Cary, NC, applicant for Trinity Apex Investments, LLC, presented the proposed Trinity Planned Unit Development Application which is attached and incorporated as a part of the minutes. Trinity PUD project site will be generally bound by future I-540, US1 and NC55; development concept of a large mixed use project that would benefit the town long term; plan noted product types in a planned community setting tied together with new roadway network, pedestrian paths, and resource conservation areas, and unique shopping and entertainment environments, allowing flexibility for developers to bring creativity in response to market conditions and town's vision for development and growth in Apex, opening new infrastructure in relation to the new wastewater facility, and meeting town standards of the UDO and Land Use Plan. Application provides a formula tied to the number of COs for the 4000 residential units, and provides for dedication of land for public recreation facilities in combination with payment of fee in lieu and provides for ability to move the site if need be (62 acre park, 2.7 miles of greenway and potential schools sites (middle and elementary) based on Wake County School criteria for 4000 residences); applicant requests a 2% reduction in RCA. Key discussion points were building heights and residential densities; applicant proposes mixed use minimums, residential densities, and maximum heights – examples were given and the presentation ended.

Mike Horn, Kimley Horn & Associates commented on the extensive phasing plan and responded to Council Member Sutton that yes, the 540 was essential to this project, as roadway improvements are tied to the traffic and unless the thresholds are met, Trinity can't be built without 540; also proposes new half-clover design interchange on US1 Access and phasing plan and proposed improvements are included in the PUD Plan and traffic summary which is attached and reveals: 1) interchange on US1 before exceeding COs totaling 10,000 daily trips or 15% of build-out and 2) completion of I-540 to NC55 Bypass and Apex Town Square Boulevard from US1 to NC55 Bypass before exceeding COs totaling 50,000 daily trips or 70% of build-out.)

Greg Holder, 1204 Rainsview Lane questioned the height restrictions. Director of Planning Khin noted there were no height restrictions for the proposed.

With no further comments, Mayor Pro tempore Jones called for a motion for the continuance of this public hearing to the August 7, 2007 Council meeting.

Action: Motion by Council Member Sutton and second by Council Member Gossage to continue the hearing as stated. Motion carried unanimously to continue the hearing for Rezoning Case # 07CZ01 to August 7, 2007 Council meeting.

Public hearing # 02 for Rezoning Case #07CZ 01 continued to August 7, 2007 Council meeting



Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 03– Unified Development Ordinance Amendment

Review: Planning Board reviewed this item on July 9, 2007; staff will report Planning Board recommendations.

Public hearing and possible motion regarding possible amendment to various sections of the Unified Development Ordinance; proposed amendments include the removal of criminal penalties from the UDO; a correction to a diagram showing setbacks for corner lot; clarification of Planning Director and TRC duties; a change to the size and number of real estate signs permitted; a change to the requirements for published public notification; and a replacement of all references to PUD, MEC, and TND to PUD-CZ, MEC-CZ, and TND-CZ respectively.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the proposed amendments as stated in the staff report which is attached and incorporated as a part of the minutes. Staff recommends the proposed amendments as well as the Planning Board having met July 9, 2007.

Mayor Pro tempore Jones asked if anyone were present to address the proposed amendments and with no one commenting, stated he would not open the public hearing and asked for a motion to continue this hearing to the August 7, 2007 Council meeting.

Action: Motion by Council Member Gossage and second by Council Member Sutton to continue this hearing as stated. Motion carried unanimously to continue this hearing to the August 7, 2007 Council meeting.

Public hearing # 03 UDO Amendments continued to August 7, 2007 Council meeting

End of Public Hearing Section

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.

Jeanne Whittlesey resides outside the town limits for 20+ years and addressed the Beaver Creek Road Extension and as planned would dissect her pasture; stated this was wrong and asked Council to stop the road. She reviewed pass activity having received letters from the attorney, surveyors were on her property, NCDOT was not allowing the roadway, however now surveying again for the roadway and if built out would destroy her pasture, her riding ring, her barn. She noted a house bill in session that would prohibit eminent domain of property for economic development by Local Governments; she noted the shopping center was paying for the roadway. Mayor Pro tempore Jones responded there would be more discussion on this issue.

End of Public Forum



NEW BUSINESS

New Business # 01 – Water Conservation Ordinance

Presenter: Mike Deaton Environmental Services presented proposed revision of the Town of Apex's Water Conservation Ordinance: Chapter 12, Division 5.

Public Works staff recommends mandatory odd/even watering year round to avoid confusion for town customers and reduce daily peak demands on town's water distribution system, effective October 1, 2007. Revision would be comparable to City of Raleigh and Town of Cary and other municipalities, having adopted mandatory odd/even watering schedules year round. New landscape jobs would be allowed to get a permit for watering new plantings up to 45 days. Violations, enforcement and penalties are addressed. Public notification is proposed.

Mayor Pro tempore Jones felt consistency is important and would also be easier to set automatic watering systems. Council Member Sutton also agrees with the mandatory year round odd/even watering.

Mayor Pro tempore Jones stated no action was necessary and this proposed ordinance revision would be heard again and would be continued to the August 7, 2007 Council meeting.

Continued to August 7, 2007 Council meeting

New Business # 02 – Add On – Apex Arts Council

Tina Mallet, Apex Arts Council, requested consideration of the closing of Salem Street from Chatham to Center, 7:00 a.m. to 5:00 p.m. to allow for the Salem Street Arts Festival (Nurturing the arts in our growing community), October 6, 2007 (festival 9:00 a.m. to 4:00 p.m.); requested approval for banners/signage to be displayed on Salem Street from September 22, 2007 through October 8, 2007 and in accordance with temporary sign restrictions from the planning department. Festival is to help promote the pre-grand opening of the Performing Arts Theater. Apex Arts Council hopes to make this a yearly event to serve the community and artists with coordination efforts of the Downtown Business Association. Manager Radford stated staff had no problem with the festival and would take the place of the fall festival held in the past.

Mayor Pro tempore Jones called for a motion.

Action: Motion by Council Member Sutton and second by Council Member Gossage to approve the closing of Salem Street for the Apex Arts Council Street Festival. Motion carried unanimously.

End of New Business Section

WORKSESSION

There were No Worksession items to be discussed.

CLOSED SESSION

There were no Closed Session items to be discussed.

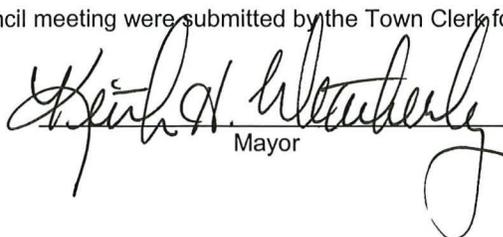
ADJOURNMENT

With no further business to come before Council, Mayor Pro tempore Jones called for a motion to adjourn.

Action: Motion by Council Member Gossage and second by Council Member Sutton to adjourn at 7:55 p.m. Motion carried unanimously.

The minutes and general account of the July 17, 2007 Council meeting were submitted by the Town Clerk for approval by Council on the 7th day of August, 2007.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Minutes and General Account for the Tuesday, August 7, 2007 Meeting held at 7:00 p.m. in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

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.

RECOGNITIONS

Council Member Jones presented Parks, Recreation and Cultural Resources Department's 2006 Volunteers of the Year Awards: Athletic Programs Award: Bryan DeLoatch and Non-Athletic Programs Award: Molly Weston.

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 Schulze made the motion to approve the consent agenda. Council Member Sutton made the second to the motion. Motion carried unanimously.

- 1) Minutes and General Account of July 17, 2007 Council meeting.
- 2) Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #06CU11, Apex First Development, LLC., petitioners, 35.1 acres located at Apex Peakway/Old Raleigh Road and Center Street (PD Plan for Old Mill Village - rezone from PUD-CU to PUD-CU district).
- 3) Budget Ordinance Amendment and Capital Projects Ordinance Amendment for regional wastewater treatment plant (transfers \$2 million from water/sewer reserve to continue funding of Town's portion of costs).
- 4) Budget Ordinance Amendment for grants to Fire Department (receipt of two grants from NC Department of Crime Control and Public Safety for search and rescue equipment).
- 5) Minor changes to PRCR policies regarding use of Arts/Crafts Room and non-resident use of Community Center/Open Gym Program.
- 6) Resolution No. 07-0807-15 regarding N.C. Governor's Highway Safety Program, Grant Form GHSP-02-A Highway Safety Project contract (Federal Funding \$59,527 – Town's contribution \$35,722).
- 7) Resolution No. 07-0807-16 authorizing Agents for Town of Apex to enter upon lands along Beaver Creek for purposes of designing, surveying, evaluating, mapping, and acquiring easements or fee simple property for future Beaver Creek gravity sewer and Town of Apex greenway.
- 8) Allow placement of Harris Plant siren on Town property located on Apex Barbecue Road; Progress Energy requests approval of an easement to place siren and located within the property designated for the future Nature park but will have no adverse impact on the development of the park



Consent Agenda continued

- 9) Amendment No. 1 dated June 11, 2007 to professional services contract between Town of Apex and Kimley-Horn and Associates related to design work for the Lufkin Road Realignment; original contract \$112,850 dated September 7, 2006; amendment \$22,000 authorizes additional services for design and agency approval for a traffic signal at Lufkin Road, Ten-Ten Road and US1 NB Ramp and environmental permitting activities with pertinent state and federal agencies (amendment contract total \$134,850).
- 10) Wake County Tax Report for Town of Apex approved by the Wake County Board of Commissioners and accepted in their regular session on July 9, 2007.
- 11) Consideration to decrease area of land previously discussed to lease in Trakside for recreation fields (Villages of Apex – potential for five year lease of 6.3 acres of land on the south side of proposed Peakway for outdoor recreational space; a private alternate use has been discussed with developer and reduces acreage intended for lease by Town to 2.3 acres.)

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

Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 01 - Rezoning Case #07CZ01

Review: Public hearing was opened on July 17, 2007 and continued to August 7; Planning Board unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding Conditional Zoning Case #07CZ01, Trinity PUD-CZ Rezoning and 2025 Land Use Plan Amendment of 1,071 acres generally bound by future I-540, US-1 and NC55; applicant seeks rezoning to PUD-CZ for a mixed-use development.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. Conceptual master plan identifies the areas within the plan for 2.2 million square feet of commercial space, 500,000 square feet of office space, and maximum of 4000 residential units; permitted uses were stated: staff noted uses are subject to change based on market conditions; proposed minimums, residential densities and maximum building heights are proposed; height amendments would require approval by Council. Public facilities include a minimum 63 acres of contiguous parks and recreation land required for the first 2,150 residential units and a fee-in-lieu for any units above this; a minimum of one quarter acre open space will be set aside for every 250 residential units; designated school sites with a five year reservation and based on a formula found in attached PD Plan. Attached: Summary of Traffic Impacts and Proposed Roadway improvements: proposed interchange along US1; Jessie Drive; Apex Town Square, and Old Holly Springs-Apex Road; applicant reserves ROW for I-540 for 25 years; expands greenways; applicant seeks a 2% reduction in RCA from 25% to 23%. Planning Board unanimously recommended approval; staff recommends approval.

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

Sal Masarra, Kimley-Horn and Associates, Inc. presented a concept of a unique mixed use residential and non-residential community that would benefit town with new infrastructure, parks dedication based on number of units developed, up to three school sites with a five year window and related to the number of residential units; an increase in tax base; roadway improvements including ROW for I-540 for 25 years, pedestrian paths and RCA. Project creates a live-work community, reducing pressure on roadways and creating unique shopping and entertainment environments. Provides a land use plan with a long term view and flexible for developers to bring creativity in response to market conditions and town's vision for development and growth in Apex that would compliment and enhance the Town; project examples were shown: commitment to maximum building heights were viewed as reasonable and taller projects would need Council approval giving examples of such development.



Council Member Jones asked how the five year window for schools relates to number of units approved. Masarra responded thresholds are tied with CO's which identifies a school site and five years for schools to decide from this point.

Council Member Jensen suggested reserve price of school properties based on raw land vs. purchase of land at an inflated price with infrastructure as land would get more valuable in time and schools would help the development in sell of houses. Mayor Weatherly hopes school system would take advantage of these opportunities and noted continued pressure upon the schools insisting schools be built; another bond would be needed for more construction.

Manager Radford noted infrastructure costs to the property for provision of sewer near \$15 million; not to mention roads and water and would have to commensurate with cost to provide service to school sites. Mayor Weatherly had rather the option to purchase raw land and lock in price now; not wanting government to dictate price in market place but school system is paying top dollar in Cary; noted this a good point.

Mike Horn, Kimley-Horn and Associates, Inc. addressed Council Member Sutton's concerns with road improvements having committed for construction of US1 interchange and at Old US1: noted build-out of US1 interchange before exceeding CO's totaling 10,000 daily trips or 15% of build-out and could not exceed 70% of build-out without completion of I-540 to NC55 bypass.

Greg Holder, 1204 Rainsview Lane was not necessarily opposed; addressed building heights from town center and character of Apex. Staff noted areas for higher rises; stated there are no set height limitations for PUD, Council can approve or deny a project based on heights; applicant has set height limitations; PUD depends on location, the mix of uses, etc. and reason for asking applicant for height limitations.

Jim Clontz, 1023 North Wellonsburg Place, questioned a \$15 million bond issue for water/sewer. Manager Radford noted this was the developers cost to improve the property. Clontz asked if greenways were included in the amount of land; seemed small for such a high density area; heard nothing for senior citizens or people his age. Mayor Weatherly noted this was to rezone property and establish uses and dedications and a private project. Clontz questioned the density: 100 units per acre, and apartments would attract a younger or older; thinks this area is attracting a great number of seniors to retire here from north and south and questioned if there were any plans for this.

Council Member Jensen commented on apartments, vertical having less ground impact and concern with 12 story heights. Masarra shared staff asked them for set height limitations and had done so based on what they are seeing in the market place, typical vertical residential product within mixed use; example: 100 units per acre and 4 or 5 story tall with most being comfortable with this type mixed use product; will probably see some assisted living and age targeted development; could see a 12 story product down the road leaving more area on the ground for public space; and may see on these type products some underground parking. Mayor Weatherly commented on the newer section of North Hills and heights within the project. Horn stated this was in debate while seeking financing and maybe downsized without financing.

Council Member Jensen noted 4000 homes would be on the opposite side of RTP and would worsen traffic to RTP; would like to see a project within the development that would generate jobs with reasonable salaries, currently seeing more homes than job generations and like to see high-end homes; Council Member Schulze noted the importance of this as well. Masarra responded there is ability for this and commitment in place for a designed work-live community with a mix of housing that could accommodate all levels of income and handle a variety of uses. Council Member Jensen would like RCA held at 25%, 25 year storm water management, and concerned with a fee-in-lieu vs. parkland.

Council Member Sutton believes 70% of the project rests on NC55 causing more traffic congestion and would prefer limitations of 50% build out or less until I-540 is in place; RTP travel time would be reduced with I-540 to approximately 10 minutes. Horn noted development will bring fruition; noted associated costs and with first threshold at 15% to build the interchange that can accommodate up to 70% without I-540. He noted with 1000 acres infrastructure could be built and noted people want buy homes if they can't get there.



Mayor Weatherly closed the public hearing at 8:00 p.m. and called for a motion.

Action: Council Member Sutton made the motion to approve. Council Member Jones made the second to the motion. Comments from Council:

Council Member Gossage was shocked to find himself a minority that 20 story buildings would be acceptable to Council; in talking with citizens their number one priority is small town character; noted good aspects of the project, things that are impressive, but thinks it's a great project for Raleigh; 4000 units, 100 units a acre, 20 story buildings never thought he would see the day Council would approve such for Apex.

Council Member Jones stated they would review this at site plan and with concern for 20 story building, would look very cautiously but this is a rezone with 20 story buildings allowed and that the land use plan allows. Council Member Sutton thought distance was far enough from downtown that it would not destroy the downtown character, not wanting it destroyed, with Council Member Gossage adding small town character of Apex is not limited to the downtown.

Mayor Weatherly stated this is the most significant development for Apex they would see in a lifetime; petitioner put together a plan assemblage of a 1000 acres under the UDO the most progressive anywhere, and made sure the acreage is the most developed integrated into our system, and could have developed as ten-one hundred acre tracts of a hodge-podge of stuff over a period of years with no symmetry; we can rezone and look at the site plan and assure those uses are consistent with the town's vision for the future, but is fascinated the town has an opportunity to make sure this 1000 acres is integrated into a quality mixed use and put together the way we want it to be rather than a hodge-podge of things over the next 20 years under the UDO.

Council Member Gossage stated this could be a benefit but looks at the allowances of this project and gives him heartburn; we've seen things from rezoning and approved it, and easier passed at site plan due to approval at rezoning, and regret that they may not have spoken up because we said that we would deal with it site plan; the numbers are here at rezoning before site plan and this gives him too much heartburn to move forward with an affirmative vote with the numbers he's looking at.

Mayor Weatherly was not willing to give a cart-blanch to any style of development in this; stating they had alluded to the costs of the infrastructure and free enterprise system is driven by profit and to extract any profit, densities have to be up there; we are not going to have single unit developments and put in infrastructure being talked about, and one thing to address the developer with 50% dedication of project up to 50% of the land mass is freebies; putting in infrastructure sewer and roads starts in a huge hole to ever come out of; and expecting anyone to do this with what we expect for these improvements is a pipe dream if we are not going to have a vision out there that's not there now as far as densities.

Council Member Gossage stated this confirmed his point that they will push for the maximum heights. Council Member Jensen agreed and maybe would like to see it pared down and maybe not; to know better needs a cross section with view lines; this was misleading. Council Member Jones noted they get these items at site plan and not the rezone. Council Member Jones noted until laid out on the 1000 acre site, there was no way you could establish this.

Mayor Weatherly noted these were maximum heights, and don't have to approve maximum in the site plan. Council Member Jones didn't see this as an allowance as much as a restriction. Council Member Gossage responded based on free market enterprise should take off the restrictions; there shouldn't be... and 12 and 20 gives him too much heartburn, with Mayor Weatherly stating those are imposed by the petitioner and the ordinance does not restrict. Horn stated they had worked with staff, and Planning Board gave unanimous approval and one of those things was these thresholds they wanted to see.



Council Member Jones stated when looking at 1000 acres development which he agrees with the Mayor, has a lot of advantages from a planning standpoint, asking how many times they said we wish we knew what was going to happen with ten acres next to a property so we could plan the infrastructure when looking at one acreage, it was a great opportunity. He continued from planning view, you want to have the flexibility at this point in process, so when site plan comes in whenever, how tall buildings can be; obviously from a developers standpoint. Council Member Gossage agrees there are benefits to the project, the way it's proposed and what's proposed, but asking too much flexibility.

Mayor Weatherly asked what if they had not addressed height at all. Khin stated staff wanted height restrictions and asked for examples of buildings done in other places in terms of densities and heights and staff was comfortable given this particular location; if you don't let tall buildings go here, will never have tall buildings ever in 100 years because there is no where else for them to go; this is where you are going to have major employment and high rise mixed use buildings and if you don't approve it here, there's no where else for it to go. Council Member Jones stated if you want a 5000 square foot office building, it will not be in a three story building; a bunch of three story buildings.

Council Member Jensen was agreeing with Council Member Gossage, knowing they can't say where the building will go, but could put them in several spots and get a feel for the impact on anything around there; he would like to know how it fits visually and suspects it may fit nicely, but doesn't know.

Attorney Fordham gave advice to Council regarding the debate: At the rezone stage Council has the authority to exercise legislative discretion; once a property is rezoned, when a site plan comes in, if its consistent with the zoning and conditions placed on it, is consistent with the PUD plan, and consistent with the UDO, you don't have discretion to impose legislative policy judgments at that time. He doesn't say this because of his feelings one way or the other about the discussion, but need to know what discretion they have now and what discretion have later. This particular condition sets a maximum height and proposed to the maximum would comply with the zoning in the PUD, with Khin adding provided it still meets the density requirement.

Council Member Gossage stated then they completely loose their ability to say 20 stories are too tall, and why he wants to deal with this now. Masarra stated they came with low much more comfortable heights, and get language could go higher with Council approval. He stated Attorney Fordham had pointed out the legal mechanism wasn't there for that language to be written in this document. Discussion, we need to put some limits; these are arbitrary, but based on real images they think, staff thought, and planning commission thought were very much in keeping with this location; he thinks they could draw sections, but no meaning and value at this point, its too big and impossible to say at this point. He gave examples of building in Raleigh and the topography couldn't see the top of the building; you look at all these at site plan stage and thinks the images are in keeping with the character and don't expect towers coming in, but at this point impossible to say where they will go and what sightline, but wants to keep them low, and hopefully approve something higher, but impossible, and were asked to set limits and thought reasonable with support of the Planning staff and Planning Commission; market dictates, and they had to land somewhere, and will limit getting the quality of development they may want. 20 story building is approximately 120 feet. Council Member Jensen prefers a sight line feel and maybe would be delighted, this is a big site. Horn stated they didn't know how to do this, as they don't know the product and are trying to have flexibility for market to bring a quality development and would have to prove themselves along the way and back with site plan and for a vote. Council Member Jensen stated they commit tonight and that he doesn't agree they can't do it, but a 120 foot building three or four places would give the feel of what this is, and would be more comfortable. Horn couldn't tell them what the market will be, but gave Glenwood as an example, were asked to set these limits and did; will bring a great product, asking faith and trust.

Council Member Jensen wants it in writing as memories fail. Council Member Schulze asked if the site line was offices looking into residential, with Council Member Jensen stating it was, and what the visual will be from NC55, a mile away from downtown center and can understand this too, and also what Council Member Gossage is saying; thinking a better feel to see something.



**Public Hearing # 01 continued
Rezoning Case #07CZ01**

Council Member Schulze thought the opposite; having waited for a project like this to come to Apex for a long time and finally here, and it's such a large project 1000 acres, affords a lot of opportunities and take one step at a time; excited about employment opportunities, real office space, and thinks one frustration has been the one's or two's approvals and nice to have, but need something major and substantial and this project gives this to us; he has high hopes for the project, a long one and will come before Council for various site plans and excited about site plans; this is an opportunity of a lifetime; as far as high rises, has no problem with that and is an appropriate place in the commercial center and I-540 and US1; will attract employers from all over and people want have to go to RTP and is many opportunities and looks forward to the future of it and has his full support.

Council Member Jensen agrees with what was said and thinks this has potential for a great project, a long term project that will last and biggest seen in Apex and thinks they should take time to make certain exactly what they are looking at and would not want to vote no on this, but at same time wants to get a better feel for what they are looking at. He would want to see how this phasing goes with respect to housing and see job aspect as soon as he can vs. the housing because he doesn't want to see cars going NC55 along with folks from Holly Springs and driving the quality of life down in Apex.

Mayor noted these issues can't be resolved during rezoning. Jensen thinks height can be resolved and agrees with mayor maybe difficulty in putting how phasing would be and say we are putting in so much commercial, research and development and generates a certain number of jobs or could move ahead with 500 houses, until there are more jobs here; he wants the jobs and housing and would like to put this off two weeks for this information.

Mayor Weatherly responded he's not sure government ever brings jobs and houses in a ratio, it's the market that drives that, and this rezone want attract the high quality research firms that we hope to attract, but build it and they will come with infrastructure and the style of development thinks proposed, have a good shot at getting what we envision. He hopes we get a branch of the Wake Community college in this site, and what an asset for Apex, this is the ideal site in our town for this, and if we don't do it here, we lost that opportunity. He's willing to and hopes we will take this step and then approach the tough issues in the site plan, and get down to some of those details later, but until we rezone we want, get to those issues, the thinks most of them are talking about.

Council Member Gossage fines himself in agreement with what he said except for 100% in favor of the project, but he's right in what he said, it's the building height , potential of having 200 foot towers in Apex that gives him heartburn, to walk that path, he can't do it tonight.

Council Member Sutton called for the question.

Council Member Jensen asked how we can get a program to see before we see a site plan as how this phase with jobs and housing; height bothers him, heartburn is jobs. Masarra doesn't have a mechanism to do this and the value as it is market driven issue and not sure how to do this. Mayor Weatherly had not heard jobs before houses anywhere.

Mayor Weatherly stated Council Member Sutton had called for a vote on the motion which is to approve. Vote on the motion was four in favor and one opposed with Council Member Gossage casting the opposing vote. Motion carried.

End of Public hearing #1



Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 02 – Rezoning Case #07CZ06

Review: Continued from June 19, 2007 Council meeting; Public hearing was opened and closed; Valid Protest Petition triggers three-fourths super-majority requirement for approving the rezone; Planning Board unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding Conditional Zoning Case # 07CZ06, Upchurch Commons, Major Site Plan and Land Use Plan amendment, North Chanel Investments, LLC.; seeking to rezone four parcels, 3.28 total acres, located on Upchurch Street near Hwy 55 from Light Industrial and Office and Institutional to Planned Unit Development Conditional Zoning. A land use plan amendment is requested to change from Office and Institutional to Mixed Use – Office and Institutional and Commercial. A Major Site plan with four mixed use buildings is proposed.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. Council had asked staff to address concerns with 1) traffic signal at Upchurch and NC55 and possible warrant at second phase; 2) buffering of adjacent properties; 3) light cross section plan. Zoning Enforcement Officer Yates and Principal Planner met with applicant on site and looked at vegetation for possible planting in buffer and determined lob lolly pines would not be a suitable screen as it would be too close to structures and not desirable, however noted some rug cedar and some variations would be more appropriate screenings.

Mayor Weatherly stated the public hearing had been closed however will reopen the public hearing at 8:25 p.m.

Beechridge resident has no major disagreement with the project; would like to see site remain wooded, however would not happen; asked to encourage NCDOT for light as soon as possible to avoid fatalities; any barriers between the housing complex would greatly be appreciated; many wish the fourth building were not being planned; would like schools to make better arrangements for pick-up due to the construction; asked stipulation that construction vehicles keep out of Beechridge Apartments; majority of residents have no objection.

John Cleland still objects to the project and stated getting out onto the highway from this area can't be solved by adding turn lanes; proposes the light at Williams/Upchurch before the large buildings, opposing the maximum building heights, and with problems in parking and traffic.

Sean Dolle presented the following Exhibits and noted this opportunity to build an asset to the town as a whole.

Exhibit A is site drawings and line of site for Upchurch Commons.

Exhibit B is the NC55 Additional Asphalt Concept Plan and Concept Striping Plan.

Exhibit C is the Lighting Profile.

Exhibit D is an email from Steve Johnson NCDOT states a signal light is not warranted at this time.

It was noted the church expansion was a high quality development and this land had been overlooked. He presents a good pedestrian friendly development in a high quality location, provides opportunity to combine business and residents cutting back on traffic a bit; architect has gone above and beyond the town's minimum requirements to design a project that repeats the town's character and defines downtown Apex; believes new high quality businesses will come to this project; there will be shared parking with the church, an option that reduces need of large paved parking areas not fully used; developer wants to bring a high quality project that will be an amenity to this area of town; architecture with a good balance and scale more appropriate than light industrial uses allowed under the current zoning. Conditions: there will be no construction traffic into the apartments; commitment to address 25 year storm retention vs. town's 10 year storm requirement; additional storm water development behind Building 1; not required but providing landscape buffers within the project and have met with staff to discuss appropriate landscape materials and agreed to those; not required to provide amenities however are providing bike racks and benches; removed bars and nightclubs from the uses; agreed deliveries will not be allowed from 11:00 p.m. to 6:00 a.m.; met with NCDOT and staff and have provided improvements to NC55; and this high quality development will attract high quality businesses.



Dolle addressed the UDO specifies specific uses and larger scales are not a good fit; general retail sales is a catch all category; most retail will be on street level and have easy access. Council Member Sutton questioned the retail included, seeing retail and commercial at nodes and major intersections and O&I between, thinking it was not appropriate for neighborhoods of affordable housing and lower income; retail would exacerbate the traffic problems.

Director of Planning noted the current zoning calls for Light Industrial and Office and Institutional and noted environmental problems and concerns with the related block grant area, and that retail is allowed in O&I and acceptable; gave example of The Green at Scotts Mill, providing coffee shops and antique shops and not a lot of traffic. Dolle continued this is not strip retail but high quality retail and perhaps in the first building at the corner parcel on NC55; is in keeping with the small town character with the vast majority being O&I and not a high volume of vehicle traffic allowing walking traffic. It was noted Walgreens would not be allowed at this site and if this were to pull out, would have to rezone to do something different; the project was viewed as a high urban pedestrian friendly development. Dolle addressed the foot print of the building and potential retail uses that would serve residents on street level and allowing flexibility on these uses in O&I; this was the right development and right location for the proposed.

Council Member Jensen felt a B Type Buffer along the southwest corner parking lot and would tone down the view from NC55. Dolle noted the off-site property improvements at the church and the proposed landscape on the church site around the parking lot area a line of elms and hollies, and didn't understand the reasons for want to screen the buildings from the street, giving examples of Duncan Commons, Peak City Grill, and Liberty Station, all high quality developments with the Architect going above and beyond to produce a high quality product with a different feel. The project owner, Mark O'Brian stated the examples given were a product that the architect had spent a good deal of time and energy in making this a high quality product and didn't see any reason to hide the project.

John Cleland stated this had been called a pedestrian development and does not view this as a pedestrian type operation, but noted there were no sidewalks along NC55, and was not a neighborhood that would visit a coffee shop, and without a signal light there is no pedestrian access there. Khin noted sidewalks along Harward to Salem Street designed as part of the Community Development Block Grant program. She noted the greenway at the church connects to the Jaycee Park and promotes a pedestrian oriented development and more improvements are on the way. Russ Dalton, Transportation Engineer, noted the Harward Street connection was not shown on the transportation plan. Council Member Jensen noted the gully through the property, with Khin noting it only a short walk to not have to cross the gully.

The Transportation Engineer for the project stated turn lane improvements would solve lots of problems, and would study the traffic after each phase of the development, noting the NCDOT District Engineers email response to the traffic signal; applicant was in agreement to revisit the traffic after each building.

Mayor Weatherly closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve. Council Member Schulze made the second to the motion. Comments by Council: Council Member Jones felt unless the project was approved, would not get a signal light at this location and even with pressure on NCDOT still may not get the light, unless the town did it themselves. Council Member Gossage commented on the warranting of the signal light with Council Member Jensen commenting on the project bringing jobs to Apex. Motion carried unanimously.

End of Public Hearing # 02



Presenter: Amy Overfield, Planner

Public Hearing # 03 - Rezoning Case #07RZ13

Review: Planning Board met July 9, 2007 and unanimously recommended approval; a protest petition was submitted and determined not to be a valid protest petition by the Assistant Town Attorney as this is the initial zoning of the subject property added to the territorial coverage of the Unified Development Ordinance as a result of annexation.

Public hearing and possible motion regarding Rezoning Case #07RZ13, Ruchdeschel property, Spaulding & Norris, petitioner, requesting to rezone 3.02 acres from R-40W (Wake County zoning designation) to Medium Density classification for the property located at 1509 Olive Chapel Road. A residential master subdivision plan showing 15 single family lots has been received and is currently being reviewed by the Technical Review Committee.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. Staff recommends approval based on proposed use of the land and compatibility of the surrounding land uses and consistency with the 2025 Land Use Plan which designates the area as medium density. Planning Board unanimously recommends approval. A Protest Petition was submitted to the Town Clerk and was determined not valid by the Assistant Town Attorney based on the conclusion this is the initial zoning of the subject property adding to the territorial coverage of the Unified Development Ordinance as a result of annexation. Protest petitions can be used only to object to changes in zoning and may not be filed to protest the initial zoning of an area.

It was noted the plan proposes 15 single family lots with 6 units per area and smaller than the surrounding lots.

Mayor Weatherly opened the public hearing at 9:15 p.m.

Tom Spaulding, Spaulding and Norris, stated the current zoning for the Wake County designation is slated for medium density and compatible with the surrounding property zoned medium density and felt this was appropriate with the adjacent subdivision. Proposed 15 lots are smaller due to required RCA and roads, and cul-de-sacs, and price of land; craftsman houses are meant to be placed on smaller lots and appropriate for the abutting lots. He stated they were continually working on the drainage situations.

Speaking in opposition, residents of the Ashley Downs Subdivision and listed on the protest petition:

Devaraj Kothandaraman, 1502 Ashley Downs Drive, addressed the proposed would sit up on a hill and there would be no privacy; noted the hill had collapse and continually has drainage issues; noted zoning and site plan issues; addressed medium density, storm water retention and streets and how this affects their property values. She noted it would take heavy equipment to fill in the hill after construction and asked who would be responsible if something happens. She asked once the property is rezoned, do they have any say.

Rana Dayal, 1504 Ashley Downs Drive, lives on the lot adjacent to the one being developed, and noted most lots are larger than the ones proposed; addressed medium density designation, stating they should cut down the number of lots from 15, it should be synonymous and symmetrical; he noted common areas and the roads. He shared changes on NC55 that had impacts on the Haddon Hall subdivision, townhomes and condos, Becketts Crossing now high density, and other examples of Abbingdon now with apartments. He asked Council do what was right and not repeat these mistakes. Mayor Weatherly responded these were all rezoned at the same time.

Wendy Moravec, 1003 Double Spring Court, addressed serious concerns regarding the hill and looking upward to the property, with no buffer because they are considered like properties. Her property has been rebuilt twice due to drainage and soil erosion from this hill. She stated people had not looked at the hill including Spaulding, Mike Deaton and that the tree roots are all that's holding the hill and once they are destroyed, asked who's responsible when this happens; most are not aware the hill has problems.

Another resident stated concerns regarding soil erosion, drainage issues at a cost of \$4000, property values, and if there are planned \$250,000 to \$400,000 homes then he had no problems, but below this value would affect his property value and would be opposed.



Spaulding stated no RCA was required of Ashley Downs, he understands the issues of the hill, and was the way the developer had left it, was hiring an engineer to address this issue; noted buffer along the south lines, goal strip back and front and shield the homes; he noted there was no connection into Ashley Downs.

Attorney Fordham stated it was not permissible to add a condition if not a part of the rezone and to add a condition would have to start over. Mayor Weatherly stated medium density was the same as the surrounding properties. Director of Planning stated the subdivision plan would come back to Council for consideration.

Mayor Weatherly closed the public hearing at 9:30 p.m. and called for a motion.

Action: Council Member Schulze made the motion to approve due to its consistency with the surrounding medium density area. Council Member Jones made the second to the motion due to its consistency with the 2025 Land Use Plan however 15 units on 3 acres did concern him. Council Member Jensen too agrees the minimum lot size should be no smaller than the smallest lot abutting them. Council Member Jones tends to agree, however the RCA requirement will affect the layout, and making a commitment of the same size is different. Motion carried unanimously.

End of Public Hearing # 03

Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 04 - Rezoning Case #07CZ14

Review: Planning Board met July 9, and unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding Conditional Zoning Case #07CZ14, Poe property, Jones & Crossen & Dolle Engineering, PLLC, applicant, seeking to rezone from Residential Agricultural district classification to Medium Density Conditional Zoning of 11.91 acres located at 6280 (portion) and 6400 Apex Barbecue Road.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. Applicant proposes to permit all uses allowed in medium density except: accessory apartments, recycling collection station, and modular homes. Applicant included the following condition: extension of existing Churchwood Drive shall not provide direct access to Apex Barbecue Road. Planning Board unanimously recommended approval and staff recommends approval.

Mayor Weatherly opened the public hearing at 9:35 p.m.

Pete Crossen, Jones, Crossen and Dolle Engineering, includes in exclusion uses, no duplexes. A neighborhood meeting was held and there were no objections. He stated conditions would be addressed at the subdivision approval, naming: existing Churchwood Drive shall have no direct access to Apex Barbecue Road, a safety measure; development shall have another access point to Apex Barbecue Road, buffers will be added, comparable lot sizes, similar architectural features.

Speaking:

Marjorie Tingen Britt, 6260 Apex Barbecue Road, lives adjacent to the Poe property in a 1943 home, noting changes they have accepted and will continue to accept. She requests a 30 foot buffer noting a 30 foot buffer noted on the Poe property plans. She stated the residents in Whitehall does not understand what an undisturbed buffer means; they have cut down pines, and encroached on her property 15 feet, and have cut into her property up to 30 feet; fences are placed on the property lines, and most have cleared to the property lines; they have indicated its in the home owners covenants, but do not honor the undisturbed buffers and do not acknowledge property lines, she is requesting a 30 foot undisturbed buffer and asked town let these folks know what this means. Crossen noted the 30 foot buffer is shown on the plans and drawings, but doesn't stop residents the way it's suppose to, however, are doing all they can do and the plans does show the 30 foot requested undisturbed buffers as required.

Mayor Weatherly closed the public hearing at 9:40 p.m. and called for a motion.

Action: Council Member Jensen made the motion to approve. Council Member Gossage made the second to the motion. The motion carried unanimously.

End of Public Hearing # 04



Presenter: June Cowles, Senior Planner

Public Hearing # 05 - Rezoning Case #07CZ16

Review: Continued from July 17, 2007 Council meeting; Planning Board unanimously recommends approval; staff recommends approval.

Public hearing and possible motion regarding Groves II Conditional Zoning # 07CZ16, Rezone Amendment, Subdivision and Site plan. Site is 10.70 acres and located North of Center Street and South of Surrey Meadows Subdivision.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. The Groves II Plan was approved June 2006. During Forest Grove Drive right of way closing process owner learned half of the right of way would be granted to the properties to the north which created complications that would be damaging to the approved PUD Plan, subdivision and site plan. A portion of Forest Grove Drive has been abandoned. Applicant requests amendment to allow part of Forest Grove Drive to remain as public right of way but as an alley access for proposed townhomes; with an increase in density to 8 units per acre from 7 units per acre; right of way decreased the gross acreage from last year's PUD Plan and additional townhomes have been added to the plan, therefore density has increased to 7.1 units per acre or 76 homes on 10.70 acres from 12 acres. Two of the existing single family properties remain and would have access from the public right of way. Neighborhood meeting discussion was concerns with existing berm on adjacent property owner's properties. RCA and architectural standards will not change. Staff recommends approval of the amendment, subdivision and site plan as it is consistent with the Apex Transportation Plan. Planning Board unanimously recommends approval.

Mayor Weatherly opened the public hearing at 9:50 p.m.

Sean Dolle, Jones, Cnossen, and Dolle Engineering addressed a waterline discrepancy that they were continuing to remedy when direction is determined, running from Forest Grove Drive to Rainsview, and had cut out a different lot and were revising the plan as the waterline was in the right of way.

Greg Holder, Rainsview Lane, addressed the revised plan, where a section of highway had been removed and fire hydrants asking if this would be replaced; asked for more communication with the developer; noted the berm on Rainsview with some substantial moving with new trees and plantings, noting their requirement to maintain the berm, however, the developer has not been on his property. He received letters May 11 on May 23 regarding the revised plan. Attorney Fordham stated the roadway is abandoned after a public hearing of the council and adoption of a resolution of intent to do so, and had abandoned a portion of Forest Grove Drive.

Council Member Jones stated the approved site plan shows the road not there, having been removed, but has not abandoned the right of way. Attorney Fordham advised this does to have any bearing on the rezoning at this point. Staff noted this hearing was a PUD amendment to allow increase in density to 8 units per acre from 7 units per acre, adding up to 3 additional units (increased to 7.1 units per acre or 76 homes on 10.70 acres) with rear loaded garages. Recreation site and sidewalks were noted.

Sandy Nance, Rainsview, addressed the abandonment of the right of way, noting the far end being an issue, and the right of way reverting to the property owners; since the road had been removed it's difficult to find property points and asked to get the lines defined back into the property. Applicant had no problem with this request as irons should be in the ground, and doesn't see this as an issue. Attorney Fordham stated this is on the applicant's property and the abandonment of the pavement is not relevant to the changes in the plan.

Taylor Misshoe, Surry Meadows, expressed concern with not know where the property lines are, and lots of the neighbors had not received letters regarding the meeting, and she moved the zoning sign so it could more easy be seen as you couldn't get down to the sign and felt the communication had dropped. She stated you could not get to the berm since it was torn up to address the landscape, noting mounds of dirt and gravel.

Mayor Weatherly closed the public hearing at 10:05 and called for a motion.

Action: Council Member Gossage made the motion to approve with the conditions regarding the staking to define the property. Council Member Schulze made the second to the motion.



Public Hearing #05
Rezoning Case #07CZ16

Council Member Sutton asked if this were the final plan with Dolle responding yes. Attorney Fordham addressed the property lines and curious where some would be, and those there were not adjacent will be shown as is. Dolle stated irons will be replaced in the ground to reflect the current property lines, and stake property liens reflecting additional 25 feet beyond that to work with the property owners. Motion carried unanimously.

End of Public Hearing # 05

Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 06– Unified Development Ordinance Amendment

Review: Continued from July 17, 2007 Council Meeting.

Public hearing and possible motion regarding possible amendment to various sections of the Unified Development Ordinance; proposed amendments include the removal of criminal penalties from the UDO; a correction to a diagram showing setbacks for corner lot; clarification of Planning Director and TRC duties; a change to the size and number of real estate signs permitted; a change to the requirements for published public notification; and a replacement of all references to PUD, MEC, and TND to PUD-CZ, MEC-CZ, and TND-CZ respectively.

Staff presented the staff report which is incorporated as a part of the minutes, are recommending the amendments for adoption. Planning Board recommended approval. It was explained criminal penalties are being removed keeping civil penalties where moneys will remain with Town; Ordinance amendments are noted above.

Mayor Weatherly opened the public hearing at 10:12 p.m.

Jim Oxford, US64 West shared concern with amendment for Public Notification; expressed there should be more publication rather than just electronic notice on website; shared he had no representation on Council and action could affect his property and would like to know; had no teeth on Planning Board but needs representation and wants notices published in newspapers. After a brief discussion about notices and publications, the Manager noted the electronic notice would meet the notice of publication.

Mayor Weatherly closed the public hearing and called for a motion.

Action: Council Member Jones made the motion to approve the amendments to the UDO. Council Member Schulze made the second to the motion. The motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Presenter: Mike Deaton Environmental Services

New Business # 01 – Water Conservation Ordinance

Review: Continued from August 7, 2007 Council meeting

Staff presented possible revisions to Apex's Water Conservation Ordinance requiring mandatory odd/even watering schedules year-round; avoids confusion for customers; reduces daily peak demands on town's water distribution system effective October 1, 2007. Property owners may obtain new landscape permit from Public Works for purpose of establishing new plants and effective from time of request and expires 45 days later. Council Member Gossage would like time extended to 60 days. Handheld watering is permissible; surrounding municipalities have comparable water conservation ordinances and mandatory restrictions year round. Notification will be made to the customers. Council Member Jones agreed. Council Member Schulze didn't see it necessary to have restrictions as there were steps in place to detail this. Mayor Weatherly expressed treated water was too expensive for irrigation and more expensive to replace and one inch a week is all grass needs. Mayor Weatherly called for a motion.

Action: Council Member Jones made the motion to approve effective October 1, 2007. Council Member Sutton made the second to motion. Council Member Gossage amended the motion to amend the time for new landscape permits to 60 days. Council Member Jensen made the second to the amendment. Vote on the amendment was unanimous. Vote on the original motion was 4 in favor and 1 opposed with Council Member Schulze opposing. Motion carried.

End of Old Business # 01



Presenter: Tim Donnelly, Director of Public Works

New Business # 02 – Policies: Prepayment of Sewer Capacity Fees & Flows to Kelly Road Pumping Station

Possible motion to limit prepayment of sewage capacity fees in order to preserve remaining capacity and limit flows to the Kelly Road pumping station.

Staff presented for adoption the following policies:

Effective upon adoption prepayment of sewer capacity fees shall be limited to not more than 30,000 gpd in any twelve month period for any given subdivision or development. The twelve month period shall renew on the anniversary date of the Council's approval of the subdivision or site development plan.

Staff shall reserve 75,000 gpd in sewer capacity for future unspecified projects.

Additional flows to the Kelly Road pumping station for new subdivisions or developments greater than 5,000 gpd of flow shall not be approved other than the proposed 43 lot Poe Property and the flows created by the proposed Williams Creek pumping station, the Apex Barbecue school/park pumping station, the Beckwith pumping station and the Hollands Crossing pumping station upgrade. Memo of recommendations for managing remaining sewer capacity is attached.

Attorney Fordham advised on the reservation was to account for contingencies, if build out uses more than thought, rather than to pick/choose properties; they might reapply. Council Member Jones is hoping this would be short-term and felt 30,000 was fair, with Donnelly being comfortable with the 75,000 gpd, and expressing the need of the regional plant. He noted the council had approved the Trinity rezone and stated there was not enough sewer capacity to serve them. He stated Trakside had purchased all the sewer capacity they needed \$2.4 million.

Council Member Sutton was not comfortable with this information, noting Trinity was a big project, but build out would be over ten years, and felt this is notice down line. Donnelly noted this action can't hurt any particular project tonight, but expressed Trinity does have a problem, and was upfront with them in his letter to them a year ago, but could get up to 60,000 gpd of sewer capacity or may not be there. Donnelly expressed the town would run out of sewer capacity if development continues. Council Member Sutton asked if there were legal ramifications in approving the projects. Attorney Fordham advised it was not, town had no obligation guaranteeing sewer by approving the rezoning. Letter from Planning Department says they can prepay, some come forward, some choose not.

Mayor Weatherly called for a motion.

Action: Town Attorney Fordham suggested he state the motion because of its complexity and Council action would be to amend the ordinance, and there is no written ordinance for adoption; if the minutes accurately reflect the correct language than would be ok.

Be it Ordained by the Town Council of the Town of Apex that the Town Code of Ordinances be amended as follows:

Upon adoption of this Ordinance the prepayment of sewer capacity fees shall be limited to not more than 30,000 gpd in any twelve month period for any given subdivision or development. The twelve month period shall renew on the anniversary date of the Council's approval of the subdivision or site development plan.

There shall be reserved 75,000 gpd in sewer capacity to cover contingencies related to the use of capacity in the sewer treatment facility.

Additional flows to the Kelly Road pumping station for new subdivisions or developments greater than 5,000 gpd of flow shall not be approved other than the flows created by the proposed Williams Creek pumping station, the Apex Barbecue school/park pumping station, the Beckwith pumping station and the Hollands Crossing pumping station upgrade.

Digression and end of digression: (after discussion with Tim Donnelly regarding any additional properties in question added the following) And projects rezoned in the last 12 months that require more than 5000 gpd.



New Business # 02

**Policies: Prepayment of Sewer Capacity Fees
& Flows to Kelly Road Pumping Station continued**

Next Section of the Ordinance: If any portion of this ordinance is held to be unlawful by any Court than the ordinance is intended to be devisable to preserve those portions that are not unlawful.

Next Section of the Ordinance: This Ordinance is effective upon enactment.

Motion by Council Member Jones that the motion be what was stated by the Town Attorney. Council Member Sutton made the second to the motion. *Discussion:* Date specific August 1, 2006 with Attorney Fordham agreeing. Motion carried unanimously. Attorney Fordham will draft the Ordinance in final form for execution.

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.

Jeanne Whittlesey lives outside the city and not in the ETJ; addressed the Beaver Creek Road Extension and as planned would dissect her farm on Kelly Road, her two acre pasture loosing her barn and riding ring; and stated she was hit blind sighted by this. She reviewed pass activity having received letters from the attorney; surveyors had been on her property; Mr. Harper had been on her property with a poor example of a map showing the road extension and stated the road would be constructed as soon as possible; she asked how she would be compensated for the 60 foot section of road. She noted various wildlife that lives on her property. She encouraged more consideration to land owners by the Town and Turnpike Authority. Manager Radford will try to get an accurate map showing the property and with the lines drawn. Mayor Weatherly was sympathetic to her situation, expressing this was an example of the landowner's rights vs. projects of huge magnitude.

End of Public Forum

NEW BUSINESS

Presenter: Mayor Weatherly

New Business # 01 –America Supporting Americans

Mayor Weatherly presented for possible adoption of a Resolution approving an Adoption Agreement for participation in America Supporting Americans (ASA) Adopt-a-Unit Program pledging the community's commitment interacting with a selected military unit.

Action: Council Member Sutton made the motion to adopt the Resolution supporting the troop. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly may address assistance from the schools.

End of New Business #01

Presenter: Mayor Weatherly

New Business # 02 –Neighborhood Tree Planting Program

Mayor Weatherly introduced the institution of a Neighborhood Tree Planting Program, explaining how City of Raleigh does this, and may solicit homeowners for donated tree planting and nurturing, with limited costs; maybe even soliciting from the home builders, and maybe the Chamber of Commerce. Council Member Schulze suggest past monies designed by the vacated appearance commission be applied towards the trees. Council Member Jensen suggested assistance by the scouts. Mayor Weatherly called for a motion.

Action: Council Member Jensen made the motion for approval. Council Member Jones made the second to the motion. Motion carried unanimously.

End of New Business #02



Presenter: Manager Radford

New Business # 03 – Relocate Water and Sewer Lines

Manager Radford offered for consideration possible approval to relocate 50 plus feet of water and sewer lines in conjunction with the developments on Salem Street and the Cultural and Performance Art Center. A motion to approve a Capital Projects Ordinance Amendment was in order if approved for \$160,000. This is an opportunity to have store fronts with parking in rear of the buildings within this block of rehabilitation connecting people space by moving the infrastructure away from the buildings. Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to approve and adopt the Capital Projects Ordinance amendment. Council member Schulze made the second to the motion. Motion carried unanimously.

End of New Business #03

Presenter: Manager Radford

New Business # 04– Utility Bill Inserts

Manager Radford led the discussion regarding Utility Bill Inserts for Energy Conservation Devices having received some complaints that private advertising in public utility bills should not be allowed, and not wanting additional junk mail. He had explained the reasoning behind this regarding potential savings to customers. Mayor Weatherly recommended the Manager come up with a disclaimer and explaining this and couldn't imagine why, not having seen a flooded market due to low costs of advertising. Manager will continue to monitor this. Council Member Schulze expressed concern with policy of mixing business with government may be too much. Council gave approval of the Mayor's recommendation by consensus.

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. Receive legal advice concerning condemnation actions.
2. Discuss real property acquisition and receive legal advice about the acquisition.
3. Discuss potential litigation and legal advice about a variance request.
4. Receive legal advice from the Town Attorney.

Action: Council Member Gossage made the motion to move into closed session as requested. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. Council Member Gossage made the motion to move back into regular session. 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 Sutton made a motion to authorize the Town Manager to terminate a contract to purchase on the Russell property. Motion carried unanimously.

Action: Council Member Jones made a motion to waive conflict of interest in regard to Consent to Representation requested by the Town's Attorney. Motion carried unanimously.

ADJOURNMENT

With no further business to come before Council, Council Member Gossage made the motion to adjourn at 11:50 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of August 7, 2007 were submitted by the Town Clerk for approval by the Town Council on the 21st day of August 2007.

Georgia D. Wanzel
Town Clerk

Stephen A. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, August 21, 2007 held at 7:00 p.m.
in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

Mayor: Keith H. Weatherly



Web site: www.apexnc.org

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

Mayor Weatherly called the meeting to order. Invocation was given by Council Member Schulze. Scout Troop 222 led the Pledge of Allegiance. 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. There were no amendments to the Consent Agenda and was set as presented. **Action:** Motion by Council Member Gossage and second by Council Member Jensen to approve the consent agenda. Motion carried unanimously.

1. Minutes and General Account of August 7, 2007 Council meeting.
2. Minutes and General Account of August 7, 2007 Council's Closed Session (minutes are recorded separately).
3. Budget Ordinance Amendment: Police Dept. Grant and payment of two transportation development fee credits.
4. Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning #07CZ01, Kimley-Horn and Associates for Trinity Apex Investments, LLC, petitioners, for property generally bound by future I-540, US1, and NC55.
5. Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning #07CZ06, North Channel Investments, LLC, petitioners, for property located on Upchurch Street at Harwood Street, west of W. Williams Street.
6. Ordinance regarding Rezoning #07RZ13, Spaulding & Norris, petitioners, for property located at 1509 Olive Chapel Road.
7. Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning #07CZ14, Jones, Cnossen & Dolle Engineering, PLLC, petitioners, for property located at 6280 & 6400 Apex Barbecue Road.
8. Findings of Fact, Conclusions of Law and Ordinance regarding Rezoning #07CZ16, JVI Construction, Inc. Petitioners, for property located at Center Street and Forest Grove Drive.
9. Resolution # 07-0821- _18_ supporting Fire Department application for funding through the Staffing for Adequate Fire and Emergency Response Grant (SAFER).
10. Revisions to Sewer Use Ordinance dictated by changes in Federal and State guidelines.
Ordinance No. 07-0821- _10_
11. Enact Ordinance related to prepayment of capacity fees, to reserve a contingency amount of capacity and to limit the flows to the Kelly Road Lift Station. **Ordinance No. 07-0821- _11_**
12. Revisions to Soil Erosion & Sedimentation Control Ordinance dictated by changes in Federal and State guidelines and reduction in sedimentation. **Ordinance No. 07-0821- _12_**
13. 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. Mayor Weatherly asked for a motion to include Closed Session items stated in the motion.

Action: Council Member Sutton made a motion to amend the Regular Meeting Agenda to include Closed Session for the following: 1) Receive legal advice from the Town Attorney 2) Discussion regarding two condemnation matters, and 3) Personnel matter. Council Member Jones made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Presenter: Brendie Vega Mkhwanazi, Principal Planner

Public Hearing # 01 – Major Site Plan Peakway @NC55

Review: Planning Board recommended approval with conditions; staff recommends approval with conditions.

Public Hearing and possible motion regarding major site plan for the Peakway@NC55 located near US1, applicant Kimley-Horn and Associates; site plan includes a major retail/grocery anchor, in-line retail and small retail shops on the 58 acre project site and four out lots for future retail/commercial development.

Staff oriented to the site and presented the staff report which is attached and incorporated as a part of the minutes. Applicant proposes to build a Wal-Mart Super Center, in-line retail and small retail shops. A neighborhood meeting held June 7, 2007 noted the following concerns: delivery trucks and their routes, no sidewalks on adjacent streets, traffic in the neighborhoods, property maintenance, safety and security during the evening hours, timing of construction and transportation improvements. Applicant has included delivery truck routes on the plan and also provided staging and phasing plan outlines for off-site improvements. Architectural materials were shown and noted on page 2 of the staff report. TIA upgrades have been reviewed by staff and are consistent with conditions of the conditional rezoning. Parking: 988 parking spaces are required and applicant proposes 1378 parking spaces; applicant has shared parking agreement to serve the shops. Staff requested applicant modify layout of parking lot for better internal circulation and landscape. Applicant agrees to work with staff on this item during construction plan review. Proposed project is consistent with the 2025 Land Use Plan and meets the standards of the UDO with an exception: applicant seeks Town Council approval of a phasing sequence as shown on Sheet SP4 of the site plan. Town Council has authority to approve such a request per Section 7.5.9(C)(1)(a) of the UDO.

The Planning Board recommended approval of the major site plan at their meeting on August 13, 2007 with the following conditions:

1. The temporary construction access road should be paved to prevent dust and erosion problems during construction.
2. There shall be a signage plan to keep construction traffic to a fixed route and out of the neighboring residential areas.
3. The lighting plan shall be revised to meet the standards of the Unified Development Ordinance.
4. The applicant shall limit deliveries and trash pick-up to the route shown on the attached Truck Route Map.
5. The Wal-Mart elevations include the following revisions: Windows (faux or real) to the center of the store under the three awnings (main wall). Returns shall be added to all of the parapet walls.
6. Any reduction to the street yard buffer along the Shops/ Apex Peakway will require an upgrade from a Type E to a Type A buffer.
7. One of the following three egress options is completed:
 - a. A ramp providing a right-out to S. Hughes Street from the Wal-Mart parking lot;
 - b. A public route through the residential piece to the north onto S. Hughes; or
 - c. Participation in the extension of the Apex Peakway to Tingen Rd
(Town acquires ROW and the applicant builds the Peakway).



Staff recommends approval of the major site plan with the conditions recommended by the Planning Board and the addition of the following condition:

8. Town Council approval of the phasing sequence as shown on Sheet SP4 of the Site Plan, per Section 7.s.9(C)(1)(a) of the UDO.

Staff recommends applicant continue with option 7.a. (A ramp providing a right-out to S. Hughes Street from the Wal-Mart parking lot) listed from the Planning Board conditions since it's the only one of the three options both Fire Marshall Karl Huegerich and Transportation Engineer Russ Dalton recommended during TRC review; this egress option would cause a reduction in the buffer. Staff agrees with the Planning Board there are not enough exits for the retail area, particularly from the Wal-Mart parking lot.

Staff would like to have the Peakway extended to Tingen Road; but there are complications with that including purchasing all the right-of-way from a church cemetery. Issues with that are most likely too involved to be practically done during the applicant's anticipated schedule. Also, the public road connection through the residential is a great idea, but staff is not sure it really helps the project in terms of another way out. Staff would rather leave that issue to consider upon submittal of the residential site plan and not be depending on that during review of this site plan. A traffic summary for the Peakway @ NC55 is included in the report.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Clyde Holt, Attorney, Smith, Moore Law Firm, represented the property owner, Kite Realty Group and presented the project summary for Peakway @ NC55, a mixed-use development shown in attached Exhibit A.

Beginning of presentation: The property was rezoned March 6, 2007 and known as the Jean Hack property located off NC55 and US1; the house is to remain as a historic site. Proposed land uses include: residential, retail, and Office/Medical.

Transitional & Complementary Land Use Concept: transitions land use intensity by providing a buffer to existing neighborhoods; provides pedestrian connections to surrounding neighborhoods; provides opportunity to live and work and shop within the project boundaries; provides retail adjacent to major highway, keeps shoppers in Apex instead of going to Cary; provides office adjacent to medical/assisted living facility and multi-family residential; provides hotel adjacent to major highway, and significant buffering of project from highway.

Infrastructure and Other contributions: contributes to construction of critical leg of Apex Peakway; adds signals, turn lanes and other improvements to minimize traffic impact; installs connection to future regional sewer solution; protects environment sensitive areas through substantial RCA; keeps historic Rogers-Hack House as part of the development. Project will be of quality architectural designs and materials; Wal-Mart Super Center Anchor and retail Junior Anchors/Special Stores will front the Peakway and meet shopper's needs. Conceptual master plan of the mixed use development was shown; Elevations of the Wal-Mart Building, Retail Building, and Peakway/South Hughes Building were shown.

Proposed Roadway Improvements: will be completed in the initial phase and completed before the certificate of occupancy of the first building; noted improvements at US1 (Eastbound) at NC55; US1 / Hughes Street at NC55; Apex Peakway at NC55; Apex Peakway at Hughes Street.

Project contributes to the tax base with a total value of \$131.7 million with annual payment to general fund at \$0.40 or \$526,800; annual payment to Wake County fund at \$0.678 or \$892,926; 288-unit multi-family; 155 unit townhouse/row-house/quad; non-residential: hotel/office/retail/out parcels.

Other fees: transportation impact fees (on and off-site) total \$887,000; permit and connection fees total \$1,990,000; water and sewer impact fees total \$350,000 with an estimated total fees for Apex \$3,227,000. It was noted with a revaluation is forthcoming and they may have underestimated these figures.



Public Hearing # 01 continued
Major Site Plan Peakway @NC55

Neighborhood meetings totaled six with a good interchange of ideas and opinions from the neighbors; concerns were not necessarily related to their project, but related to Apex community problems related to traffic, sidewalks, and schools. Biggest concern was Hughes Street traffic and while sympathetic to the concerns, noted they are contributing funds by way of taxes and impact fees to address improvements; sidewalks are not a part of the off-site improvements for this project. There are continued problems with traffic from the industrial park and Perry Road to Williams Street (NC55). A direct improvement to connect the Peakway will improve the problem from Williams Street into the industrial park as well as traffic signalization.

Staff recommended the Conditions of Approval:

Temporary construction access road should be paved with an all weather surface to prevent dust and erosion, any problems which occur during construction shall be promptly remedied by the developer; submit to NCDOT review and approval, the developer shall post signage prohibiting construction traffic from using South Hughes Street north of the Apex Peakway (will work with staff and NCDOT to assure it does not); lighting plan shall be revised to meet the standards of the UDO; agrees deliveries and trash pick-up during the hours of 11p.m. to 6.a.m. shall be restricted to the route illustrated on the attachment (US1 to Williams Street to Peakway to enter center, and exit via Peakway to South Hughes or Williams Streets and back to US1); Wal-Mart elevations to include following revisions: noted substantial building fronts are unique - agree with condition more windows across the front (faux or real) to the center of the store under the three awnings (main wall); any outdoor storage areas (that are attached to the main structure) are enclosed with ornamental fencing that is consistent throughout the store's design with the ornamental fencing shown at the Garden Center; any reduction to the street-yard buffer along the shops Apex Peakway will require an upgrade from a Type E to a Type A buffer; to address potential traffic tie-ups in the event of an accident at the intersection of Williams Street and the Peakway, an additional exit route for vehicles desiring to exit the shopping center shall be provided. Developer shall provide at its option one of the following entryways for the parking noting the three options and due to no direct access to South Hughes Street, possible traffic accident, and bottle-up: 1) a drive be provided exiting the center parking lot directly to South Hughes Street, noting this a State regulated street and may be difficult; 2) an access drive be provided connecting the Center's main entrance to Hughes Street through the residential development approved as part of the PUD-CZ zoning (Trammel Crow Town Houses to N. Hughes Street; noted Kite Realty Group owns this; he could not promise a public street, but would work with Town staff if other two options were not practical); 3) Developer work with Town to pave missing link in Peakway to provide connection to Tingen Road (Peakway off-site to Industrial Park); Town will be responsible for all right of way acquisition and design; in that each of these alternatives require co-operation of others, which developer may or may not be able to secure in a timely fashion, the developer will be allowed to secure occupancy permits upon the posting of a bond with the Town securing its financial obligation to complete the improvements. Holt noted one of the three will be achieved.

He noted the esthetic goal of screening the parking area: there are proposed 15,000 square feet of retail shops and transit stop and the already planned screening of Wal-Mart parking lot. Island will be rearranged for a better interior circulation and will add as a condition, the addition of two additional islands with a benefit of trees and esthetic screening from the Peakway. End of presentation.

Council Member Jensen asked how long it would take to acquire property for the Peakway. Manager Radford responded approximately 60 days and was willing to commit to the Town acquiring the property if Council so chose to do so. The Peakway will be four lane divided and landscaped median with left turn lane and extending into the industrial park where tapering will begin to coincide with existing off-site roadway.

Council Member Jones asked for clarification of the approval of the phasing sequence as shown on Sheet SP4 of the Site Plan, per Section 7.s.9(C)(1)(a) of the UDO.

Mike Horn, Kimley Horn explained proposed roadway improvements will be completed in the initial phase and completed before the certificate of occupancy for the first building: widening of Peakway to four lanes with divided median and turn lane and continuing to the industrial park and narrowing to two lanes, and sidewalks on South Hughes, and traffic signal at Peakway and NC55; improvements at US1 (Eastbound) at NC55 noted cutting into the existing island for three lanes of traffic giving more time to the ramp, and a dual left off NC55 north.



Public Hearing # 01 continued
Major Site Plan Peakway @NC55

Horn noted \$1 million worth of roadway improvements and proposes that construction for the road improvements and development occur at the same time, which is typical process of any development; this would allow retail to get up to speed with the CO to open. Horn expects and anticipates the signal light at NC55 and the Peakway with no problem, and the signal proposed at Hughes and Peakway when warranted; will post estimated installation costs with the Town and a signal agreement with NCDOT and will be held accountable at some time.

Herman Jaffee asked if consideration had been given to placing electric photo cells on the roof to provide solar equipped energy during the day. Attorney Holt stated, they have not contemplated this and plans to purchase power from the Town of Apex. Council Member Jensen commented BJ's had done so on some of their buildings.

Bob Holt asked why not access US1. Russ Dalton Transportation Engineer stated the Federal Highway doesn't allow this type access and was not possible.

Carolyn Brock, South Hughes and James Street noted there would be increased traffic on the two existing lanes and use of the back way to get into the proposed project. She noted with a four lane highway, would create a bigger problem for the residents; agrees with the proposal of the Peakway to be extended to Tingen Road to offer another access to US1 and a way to divert traffic.

Louise Gray, Hughes Street and Perry Road, addressed pedestrians walking and asked to discourage traffic down Hughes Street to Perry Road, asking speed limit be lowered, and consideration given to the investments residents have made.

Beth Worst noted previous "No Truck" signage on Perry Road, no longer there; asked for sidewalks along James Street and Perry Farms down to NC55; noted danger of increased traffic to the middle school. It was noted the developer was not responsible for off-site sidewalks and asked town's plans, noting previous conversations, and asking if sidewalks could be placed down to the Exxon Station at NC55. Dalton explained approximately \$75,000 is left over money from previous project that could be applied if Council chose to do so. Manager Radford stated if Council so chose could do a budget amendment to complete sidewalks. Dalton noted there would be two crosswalks South Hughes and Perry Road, and South Hughes and James Street that would help increase visibility especially at night. Request to place "no truck" signage back on Perry Road. Manager Radford stated Council did not endorse the "no truck" signage on Perry Road. Dalton explained trucks could be shifted to other routes however difficult to enforce and there would be other consequences from this action; once the Peakway is open they may revert on their own. Council Member Jensen understood the "no truck" signage was a mistake and understood Perry Road was not built to handle larger trucks and could call this to the town's attention if it continues.

Resident _____ Shaw addressed traffic concerns with South Hughes and Perry Road, noting a natural speed bump that deters some traffic; speed humps were not considered as this was not a residential road, suggesting however citizens could help put them in; noted traffic from the northwest part of town comes down Williams Street and onto the Peakway, and understands the historic bridge does not allow for the widening of NC55 and noted the time it took to get from Perry onto Williams and to the stop light; he was not supportive of the new residents, new development with Wal-Mart and shops. He noted location of Apex Elementary School and bus traffic, if South Hughes remains two lanes, the bridge is not widened, and no access on US1, even with the road improvements included, there will still be congestion, burdens, and with the apartments there will be more pedestrian traffic and more car traffic.

Andrew Hashish, Dual Parks Road, resides back to the Peakway beyond the Industrial Park, and spoke against the development, having only one entrance off the Peakway will be over burdened with traffic and back-up. He noted with rapid growth and I-540 dwindling away would worsen traffic; realignment of Holly Springs Schools would congest the intersection even more; he noted the Peakway would be two lanes through the residential development and not a good route. He asked for sidewalks, "no through truck" signs, "no through traffic" signs and speed humps. He asked the US1 improvements be funded by the developer; he noted the roads were not engineered to carry such traffic and even the proposed improvements would not work.



Deborah Lanuti addressed the revenues asking clarification and expressed concerns with the school situations, the traffic and the impact the development would impose on existing businesses.

Amber Droan, Bradley Terrace, wanted to continue the good living in Apex and was pleased with the applicant's willingness to work with the neighbors and asked continued efforts to get the signal at Hughes Street; asked the Peakway be extended to Tingen Road and felt Apex should take responsibility for this; asked for the US1 access to give another entrance back to Wal-Mart for circulation and providing another route out, showing it could take a back route around Wal-Mart; noted the Peakway needs four lanes; should take into consideration the growth of Apex and be responsible for it; look at the benefit of taking funds and tie them with this project to extend the Peakway; noted Trackage would use Hughes Street and felt it should be a collaborated effort; noted the elementary school on Tingen Road; asked about the lighting that would spill over into the residential area, with Khin explaining the UDO requirement that would not glare.

Amy Kerr, Perry Farms, noted difficulty in turning left off South Hughes headed north to the RTP; noted the cut through traffic; need of a traffic light to allow one side to go then the other. Noted schools and location of Perry Farms III and increased traffic.

Veronica Rockwell, Turret Summit Lane addressed traffic issues, and summarized what had been previously said; noted the cooperative efforts from the neighborhood meetings, not being against the Wal-mart but concerned with issues related to traffic, cut-through traffic, and buses and schools; was enthusiastic about the Peakway extension to Tingen Road providing an alternate route; expressed concerns with the warranting of the signal at Hughes Street, and that US1 was not being considered, not widening the bridge and agreeing with Planning Board Member Calhoun in that he desires to have three exit options, and agreeing that the extension of the Peakway to Tingen was one of the best options; asked consideration at looking into the other two options offered and working with the developer and the homeowners. She asked Town support the project in putting funds up front to address these problems.

James Handy, Perry Farms III, addressed traffic, more egress exits should an accident occur, putting up a barrier to block views not wanting to see the roof top of Wal-Mart, urging there be more trees and consideration of solar panels. Staff stated the building would be 35' tall and he would not see the roof tops, as roof was 20' higher covering those things on top of the building.

Lisa Oldham, 1018 Dual Park, addressed related noise from the proposed development that would impact the neighbors.

Council Member Jensen asked questions regarding the South Hughes NC55 improvements. Horn addressed the proposed statement by Amber Droan and stated an intersection on an intersection is not allowed, there are grade problems, and topography issues. Horn noted the proposed improvements will add flow and movement with a third southbound lane on NC55 and to US1 southbound ramps and the returning dual left turn on to the Peakway from NC55. Horn offered there was a way out, and with the three options: option one will not work, and with option two would have to work with the residential properties, and with the third option if the town will find the right of way, they will build the road, with option three being given as the most wanted option. Council Member Jones addressed the concern of an egress from the larger parking lot, and with Fire Marshall Karl Hugerich explaining his reasoning supporting this option. Manager Radford stated as far as the concern with getting the Peakway extended to Tingen and as of now dead ends in the industrial park, the concern is settled, "yes".

Mayor Weatherly closed the public hearing at 8:30 p.m. Council Member Gossage stated his family owns stock with Wal-Mart and asked he be excused from participation and voting due to potential conflict of interest. **Action:** Council Member Schulze made the motion to excuse Council Member Gossage with the second to the motion by Council Member Jensen. Motion carried unanimously.

Council Member Schulze question the TIA and questioning the inclusion of the residential area. Horn stated the master analysis took into consideration the entire mixed use development and entire roadway improvements, with Attorney Holt adding the TIA did include residential, that the site plans will adhere to the document with plans to move ahead, and would not see another TIA.



Director of Planning Khin asked clarification regarding the deliveries to specific truck routes. Attorney Holt understood the Planning Board truck restrictions was from 11:00 p.m. to 6:00 a.m. however willing to comply with Planning Board and staff recommendations that trucks would 24 hours a day follow specific routes.

Council Member Jensen and Council Member Jones agreed there should be a priority for sidewalks on James and S. Hughes Streets with Mayor Weatherly stating this could be placed on the next meeting agenda for consideration. Dalton stated the estimated cost at \$80,000 to \$90,000 for right of way for the Peakway extension to Tingen Road – it was the stated intent that the Town of Apex would pay for the right of way. Discussion followed regarding another direct egress point from the parking lot and retail shops to the thoroughfare street; Transportation Engineer Dalton would like consideration for an egress midway between the Peakway and NC55. Attorney Holt stated the traffic analysis had been approved by Town staff, and does not show it reasonably necessary; he noted the Planning Board discussion estimates from \$150,000 now to \$160,000 and recalls to do design work and construction work increases the estimate; his position as understood was the Town would acquire the right of way and town purchases to provide the right of way and remains their position indicating they have gone above and beyond.

Council Member Sutton concurs with the request for an egress and seems they could adjust to get one and would be willing to do that and to extend the Peakway to Tingen Road. Horn again stated their offer for one of the three options and expanded on the 17 foot difference in grade for an out on Hughes Street on the first option, and the access though on the second option and connection of the Peakway if something were to happen could get out there. Council Member Sutton wanted to see another way out as there could be problems and nightmares, and should do all they can do to help with this. Horn stated he had heard differences in opinions in that such improvements could create more problems if Hughes Street were made accessible, there would be more traffic and their thinking was how do they not impact the neighbors. Council Member Jones made reference to the 1378 parking spaces and how they would get disbursed and that access for 1300 cars, that there does need to be another way out, giving consideration for a right-in and right-out at Hughes Street. Council Member Sutton agreed with this, and wants another access. Director of Planning Khin stated as far as option two, a public street was not an option as far as staff was concerned; had asked for a right-out of Hughes Street for traffic headed south to US1; as far as the section of the Peakway extended to Tingen Road, if not done by the developer, should be done by the Town in a short time and may not get done if not part of this approval. Council Member Jensen saw the right-out as a value to the Town with Director of Planning Khin noted traffic headed south to US1 would definitely use this access as circulation would feed into this right-out, noting the right out at Pet-Smart. Council Member Jensen felt the right-out would protect Perry Farms on a day to day basis. Dalton does not see this making a significant difference, but reducing delays at the Peakway. Horn stated with this access, it would take away the volume needed for the warranting of the signal. Horn stated they have no power over condemnation, with Council Member Sutton adding the Town does and wanted the Peakway extended out to Tingen Road. Horn stated there were problems related with Hughes Street option and would look at all three options, and taking the less expensive of the three options, stating number one would be a huge impact; straight up would loose parking up to 50 spaces and would be unacceptable to Wal-Mart and the shops; option two would need grade up 17 feet and turn into Hughes Street, and harder to get NCDOT to approve; would loose landscape and buffers with this road, parking going out would be a concern to NCDOT and can't say NCDOT will give even a right-out angle at Hughes Street, with Dalton agreeing it would be difficult. Horn stated his willingness to bring one option of the three options. He stated Wal-Mart would not be supportive of this and did not want to run so much traffic in front of Wal-Mart and tried to get away from that.

Action: Council Member Sutton made a motion to approve the site plan with all conditions referenced by the Planning Board and the Peakway extension to Tingen Road, and the Town obtains the right of way and the developer pay for the right of way and also with the right-out to Hughes Street subject to NCDOT approval. Horn asked what if NCDOT says no to the access. Council Member Sutton thinks he could get the right-out. The second to the motion was made by Council Member Jones. Khin clarified for the motion for the inclusion of the additional conditions, the conditions recommended by the Planning Board, the phasing sequence and the two parking lot islands. Attorney Holt stated they would do their best regarding the right out on Hughes Street assuming approval by NCDOT, and not wanting this as a condition if it were not approved by NCDOT. Council Member Sutton stated for inclusion into the motion, subject to approval by NCDOT. Horn continued the discussion regarding angle/grade for road improvement at Hughes Street that may not be achieved as an alternative of leaving the parking lot and parallel to Hughes Street and subject to NCDOT approval; and



stated the Peakway extension to Tingen Road was not required as part of the traffic study and not necessary from public safety standpoint; due to the developer bearing the design costs, they are willing to build the Peakway extension, with the Town of Apex bearing responsibility to acquire right of way and including the portion for the purchase to be at the Town's expense; noted the taxes and impact fees being paid, and with staff estimation, noted the developer is paying 75% of the total costs, and as this is a joint venture thinks this is more than fair, not having been identified by staff and not related from the public safety standpoint.

Action: Council Member Jones withdrew the second to the previous motion. His reasons were that developer is paying 75% of the total costs and is above and beyond what needs to happen and the Town plans are to build the Peakway and felt Town should acquire the property as the developer is paying the other expenses. Mayor Weatherly noted with the withdrawal of the second, the motion fails due to the lack of a second. Attorney Fordham asked Council to consider moving into Closed Session to receive legal advice. Mayor Weatherly called for a motion to do so.

Action: Council Member Jensen made a motion to move from the public hearing into Closed Session at 9:05 p.m. to receive legal advice from the Town Attorney, with a second to the motion by Council Member Schulze. Motion carried unanimously. After having received legal advice from the Town Attorney Council Member Jensen made the motion to move back into the public hearing at 9:10 p.m. with a second to the motion by Council Member Jones. Motion carried unanimously. Mayor Weatherly stated the previous motion had failed due to lack of a second, and asked if there were another motion to be made.

Action: Council Member Sutton made a motion to approve the major site plan for the Peakway @ NC55 with the conditions for approval by the Planning Board, and the additional conditions as stated by Director of Planning, and with a right-out to Hughes Street subject to NCDOT permission, and with the extension of the Peakway to Tingen Road with the Town of Apex acquiring the right of way. Second to the motion by Council Member Jones.

Action: Council Member Jensen made a motion to amend the motion, as he doesn't think the right-out will function and doesn't see a value to the neighborhood as it cuts out the buffer and doesn't think it will work. There was no second to the amendment. Motion fails. Council Member Jones understood the concerns of the loss in landscape, however if something were to happen on the Peakway, there was no other way in and out, and the right-out to S. Hughes Street is the only other way. Mayor Weatherly called for the vote on the motion which received a 4 and 0 vote, with Council Member Gossage having been excused. Motion carried unanimously. Attorney Holt stated to obtain approval by NCDOT, he would apply his best efforts, however maybe time consuming and did not want to hold up permits and construction; would keep staff informed working with Engineer Dalton and would continue the efforts to get the improvements until time the store opens. Council agreed as long as there is a reasonable effort being made.

End of public hearing

Presenters: Candace Davis, Transportation Planner and Russell Dalton, Transportation Engineer

Public Hearing # 02 – Thoroughfare and Collector Street Plan

Review: Planning Board unanimously recommends approval; staff recommends approval.

Public Hearing and possible motion for approval of the Transportation Plan amendments pertaining to the following roads: Pristine Water Drive, Burma Drive and Production Drive. Staff oriented to the locations of the proposed and presented staff report which is attached and incorporated as a part of the minutes.

Amendments ensure the thoroughfare and collector street system is adequate for the Town's future growth and planned land uses and pertains to the following roads: Pristine Water Drive, Burma Drive and Production Drive. Proposed changes to Burma Drive Extension/Jessie Drive connector would better serve land uses in the area north of future Jessie Drive and east of NC55 with environmentally sensitive alignments that accomplish similar connectivity. Planning Board unanimously recommended approval of the proposed updates. Staff recommends approval of the amendments as described and shown on the attached map. Mayor Weatherly opened the public hearing at 9:25 p.m. and with no one addressing the amendments, closed the public hearing and called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Jensen to approve the amendments to the Thoroughfare and Collector Street Plan as presented. Motion carried unanimously.

End of Public Hearing # 02



Public Hearing # 01 continued
Major Site Plan Peakway @NC55

Public Hearing # 03 – Unified Development Ordinance Amendments

Review: Planning Board unanimously recommended approval; Staff recommends approval.

Public Hearing and possible motion regarding amendment to various sections of the Unified Development ordinance; amendments include: the option to have a shared driveway in detached Townhome district; adding Assembly Hall for profit as a Special Use to the MORR district; requiring installation of sidewalks in all residential districts at 95% of COs; and correcting a reference to a Table in the signs section.

Staff presented the staff report for the proposed amendments which are attached and incorporated as a part of the minutes. Planning Board unanimously recommends approval; staff recommends approval.

Mayor Weatherly opened the public hearing at 9:27 p.m. and with no one addressing the amendments, closed the public hearing and called for a motion.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve the UDO amendments as stated. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council.

Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Large groups are asked to select a representative to speak for the entire group.

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

No one spoke during public forum.

NEW BUSINESS

Presenter: Dianne Khin, Director of Planning

New Business # 01 – Consideration of Request by Crown Builders

Review: Staff recommends approval

Crown Builders and Developers, petitioner, seeking to gain approval for 20' lot width (at the public' street) for property located at 2509 Walden Woods Drive (Lot 83) containing 0.37 acres; possible motion regarding the same.

Staff presented the request from Crown Builders regarding Lots 82 and 83 in Walden Creek, noting a shared driveway, and stating UDO allows reduction of the lot width to a minimum of 20 feet from 30 feet where topographical conditions permit the design and construction of an adequate driveway and drainage with that width. The request is that the 10' on Lot 83 be recombined into Lot 82, giving Lot 82 its own driveway with Lot 83 having a minimum 20' of frontage and allowing an adequate driveway with adequate drainage to be constructed. Both lots are 1/3 acre; lot line will move.

With no discussion, Mayor Weatherly called for a motion.

Action: Council Member Gossage made the motion for approval with Council Member Jensen making the second to the motion. Motion carried unanimously.

End of New Business



WORKSESSION

There were no Work Session items to be discussed.

CLOSED SESSION

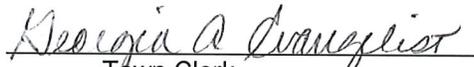
Mayor Weatherly called for a motion to move into Closed Session for discussion of the following: 1) Receive legal advice from the Town Attorney 2) Discussion regarding two condemnation matters, and 3) Personnel matter. **Action:** Council Member Gossage made the motion to move into closed session for the reasons stated. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. With no further business to discuss in Closed Session, Council Member Gossage made the motion to move back into Regular Session at 10:59 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

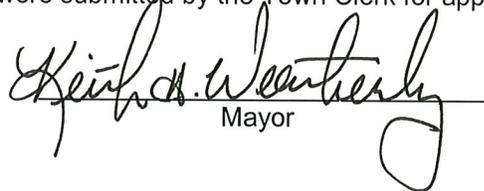
ADJOURNMENT

Mayor Weatherly called for a motion to adjourn at 11:00 p.m.

Action: Council Member Jones made the motion to adjourn with a second to the motion by Council Member Schulze. Motion carried unanimously.

The minutes of the August 21, 2007 Council Meeting were submitted by the Town Clerk for approval by the Council at their September 4, 2007 Council Meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Town Council Meeting Minutes for Tuesday, September 4, 2007 held at 7:00 p.m.
in the Council Chambers on the 2nd Floor, Town Hall and Town Campus, 73 Hunter Street

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

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. With no amendments to the consent agenda: **Action:** Council Member Gossage made the motion to approve the consent agenda. Council Member Jones made the second to the motion. The motion carried unanimously to approve the consent agenda.

1. Minutes and General Account of August 21, 2007 Council meeting.
2. Minutes and General Account of August 21, 2007 Council Closed Session (recorded separately).
3. Minutes and General Account of August 21, 2007 Council Closed Session (recorded separately).
4. Minutes of August 14, 2007 Planning Committee meeting.
5. Minutes of August 20, 2007 Finance Committee meeting.
6. Annexation Petition # 416, JVI Development, II, Inc. and Resolution of Intent for Town of Apex, owners/petitioners, petitioning to annex 3.177 acres into the Town's corporate limits and located off Center Street (N.C.S.R. No. 1010); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set a Public Hearing for September 18, 2007.
7. Annexation Petition # 417, William T. Wilson, Sr., owner/petitioner, petitioning to annex 7.740 acres and including a 30 foot private easement into the Town's corporate limits and located off Evans Road (N.C.S.R. No. 1147); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set a Public Hearing for September 18, 2007.
8. Annexation Petition # 418, KCLC Development, LLC., Dovie Stewart Heirs, William Thomas Wilson, Jr., Delores Curtis and Gaynell Bullett, owners/petitioners, petitioning to annex 22.019 acres and including public right of way, into the Town's corporate limits and located on Evans Road (N.C.S.R. No. 1147); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set a Public Hearing for September 18, 2007.

CONSENT AGENDA CONTINUED ON PAGE 2

**Consent Agenda continued**

9. Annexation Petition # 419, New Freedom Ventures II, LLC Properties, owners/petitioners, petitioning to annex 33.21 acres and including public right of way into the Town's corporate limits and located off James Street; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency by Clerk; 3) Resolution to set a Public Hearing for September 18, 2007.
10. Proposal: Duncan and Associates to perform comparative study of Town's existing fee-in-lieu and land dedication ordinance for public parkland and to authorize Manager to execute same.
11. Annual Fire Conditions Report as submitted by Local Firemen's Relief Fund.
12. Award Construction Contract for Lake Pine, Old Raleigh Road, US64 Intersection Project; and Salem, NC55 Intersection Project.
13. Budget Ordinance Amendment and Capital Projects Ordinance Amendment for street and sidewalk projects related to S. Salem Street and NC55 and Lake Pine Drive and US64; and for estimated costs of construction of sidewalks along James Street and South Hughes Street in conjunction with the development proposed by Kite Realty.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items.

PUBLIC HEARINGS

Presenter: Planning Director Dianne Khin

Public Hearing # 01 – 2025 Land Use Plan Amendment and Rezoning Case # 07CZ19

Review: Planning Board met August 13, 2007 and voted unanimously to approve; staff recommends approval.

Public hearing and possible motion regarding 2025 Land Use Plan Amendment and Conditional Zoning # 07CZ19, Cotton Contracting, petitioner, seeking to rezone from PUD-CU to Mixed Office Residential Retail Conditional Zoning (MORR-CZ) located at 1617 Ten-Ten Road (Center Street) and containing 0.86 acres.

Staff presented the Planning report which is attached and incorporated as a part of the minutes and includes the rezone request of the property from PUD-CU (current zoning for the entirety of the Seagroves Farm tract) to Mixed Office Residential Retail Conditional Zoning and amend 2025 Land Use Plan to Mixed Use: Medium Density Residential, Office and Institutional and Commercial and consistent; includes the background information, adjacent zoning and land uses, proposed uses and conditions, and mixed uses in the vicinity. Property identified on map was dedicated by Seagroves Farm as RCA with a historic structure on site along with the character of the grounds (house will be restored and occupied, Ten-Ten Road was widened and makes the house less suitable for residential occupancy and more suited for office and retail uses, character of grounds will be maintained). The Seagroves Historic Farm House is owned by Capital Area Preservation. Planning Board met August 13, 2007 and unanimously recommended approval. Staff recommends approval.

Public hearing opened at 7:07 p.m. speaking in favor: Bill Cotton, Cotton Contracting, Inc., purchaser of property, spoke in favor of the request, that the house was more suitable for office and preservation of historic character of the site, and more easily achieved by allowing a mix of uses. Plans are to start renovation and restoration as soon as permits are obtained. Gary Roth, Capital Area Preservation expressed excitement to find a purchaser for the house and Agreement will assure retaining of the rural look of the farmstead as well as preservation of the historic house and site. No one spoke in opposition. Public hearing closed at 7:09 p.m.

Action: Council Member Gossage made the motion to approve the request. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

**Public Hearings continued**

Presenter: Planning Director Dianne Khin

Public Hearing # 02 – Rezoning Case # 07RZ20

Review: Planning Board met August 13, 2007 and voted unanimously to approve; staff recommends approval

Public hearing and possible motion regarding case # 07CZ20, Town of Cary, petitioner, seeking to rezone from Wake County R-30 to Residential Agricultural (RA) located at Old US1 Highway and US1 Highway between New Hill Holleman Road and Shearon Harris Road and containing 207.28 acres.

Staff presented the Planning report which is attached and incorporated as a part of the minutes. This is an initial zoning from Wake County R-30 to the Apex Residential Agricultural of a recently annexed site and is the planned site of Western Wake Partners Regional Water Reclamation Facility in New Hill and a permitted use in RA district; rezoning is consistent with 2025 Land Use Plan designating area as low density residential. Planning Board met August 13, 2007 and unanimously recommended approval. Staff recommends approval. It was noted the Historic District is not included in this rezone and impacts to the HD was not considered. Location to the Apex ETJ Expansion area was noted on the map.

Public hearing opened at 7:15 p.m. Speaking in favor: Ricky Barker, Assistant Planning Director Town of Cary, representing Partners requested approval of recently annexed property; noted state law requires property be rezoned by a time certain after annexation (Council Member Suttons concern was to rezone prior to DENR approval); a site plan is forth coming. Attorney Fordham noted the time to zone property after annexation was within 60 days, and if were not rezoned, would be un-zoned and could be problematic as law requires a comprehensive zoning plan for the entire jurisdiction; an initial zoning has to conform to Town's zoning plan. Speaking in opposition: Wallace Womble, representing New Hill Baptist Church, 2700 Old US Hwy 1, New Hill stated Church opposes this zoning to allow the sewer plant as its not appropriate or acceptable due to its proximity to the Historic District made up of fifteen properties and 1888 Historic Church site. Church may experience offensive odors as wind drives from the site in the direction of the Church. Also spoke against any additional power poles and lines; asked for underground utilities; more lines and poles would be in direct conflict with what the Town said they would do. Public hearing closed at 7:40 p.m.

Action: Council Member Gossage made the motion to approve the rezone. Council Member Schulze made the second to the motion. Discussion: Council Member Jensen was opposed to the site location for the sewer plant. Council Member Jones noted this was the proper zoning for the property, with Council Member Jensen agreeing, but not agreeing with the 60 day time frame, as it related to Council Member Sutton's concern for a rezone prior to DENR approval. Mayor Weatherly stated the plant would be the most modern plant built and the footprint of the plant location would minimize impacts using only approximately ten percent or so of the 200 plus acres, and with newer technology felt odor would not be an issue. Town of Cary Engineer Steve Brown noted 50 acres would be utilized including buildings and roads. Womble referenced a plant owned by Cary off SR1010 that has odor. Council Member Sutton addressed mitigation benefits without impact fees, and asked if the Church was included. Cary Engineer Brown felt this was a decision to be made by the Town with Manager Radford responding, this was a decision to be made by the Partners. Mayor Weatherly added this could be looked into. Vote on the motion was 4 in favor and 1 opposed with Council Member Jensen voting in opposition. Motion carried.

End of Public Hearing # 02

Presenter: Principal Planner Brendie Vega Mkhwanazi

Public Hearing # 03 – Rezoning Case # 07RZ21

Review: Planning Board met July 9, 2007 and voted unanimously to approve; staff recommends approval

Public hearing and possible motion regarding case # 07CZ21 (Germaine Street), KCI Associates of NC, PA, petitioner, seeking to rezone from Residential Agricultural (RA) to Medium Density located in the Small Town Character (STC) Overlay District and containing 1.36 acres.



Public Hearing # 03 continued

Staff presented the Planning report which is attached and incorporated as a part of the minutes and includes background information for the location of Germaine Street (between Herbert Street and Germaine Street), the adjacent zoning and land uses, allowing all permitted uses within the Small Town Character Overlay District, and consistent with 2025 Land Use Plan designation of Medium Density. Planning Board met July 9, 2007 and unanimously recommended approval. Staff recommends approval. Public hearing opened at 7:30 p.m. Speaking in favor: Craig Lang, CBL Property Group; Fred Rash applicant KCI was present: Lang stated there are two parcels with one currently zoned medium density and this would bring the other from RA to medium density; site plan application currently in review proposes subdivision showing access with a cul-de-sac off Germaine Street. No one spoke in opposition. Public hearing closed at 7:33 p.m.

Action: Council Member Schulze made the motion to approve. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

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

Herman Jaffee made reference receipt bill inserts articles pertaining to water restrictions and shred days and asked town to consider insert for reduction of electric use shaving energy and money, such as changing out condescend bulbs to new CSL bulbs, reducing energy by 25% reducing need for Cole and nuclear power plants. Asked to require building code to outlaw condescend bulbs and switch to CFL bulbs, and require all new construction to use these. Council Member Jensen informed him Town could only enforce what State law requires.

NEW BUSINESS

Presenter: Town Manager Bruce Radford

New Business # 01 – Saunders Street Parking Lot

Manager Radford stated millions of dollars had been spent towards the private buildings for usable retail and restaurant space, to the buildings adjoining the Cultural Arts Center. Property owners of 219, 221, and 225 N. Salem Street have applied for a minor site plan and there is a need to reconfigure the alley behind these buildings with access through the town's parking lot; requested approval of changes to the access and parking at the Town's Saunders Street Parking Lot, having recently approved the relocation of the water lines, in conjunction with these improvements made to the Cultural Arts Center, the Foresta Building, the Meckes Building, and the Helm Builders Building and associated properties.

Stuart Jones, Jones, Cnossen and Dolle Engineering, was present. Site plan has been reviewed by the Technical Review Committee and has been found sufficient for approval provided Council approves the reconfiguration.



Particular issues to consider are listed with one being that of a potential sell or lease of a piece of Town property for location of the Foresta building dumpster. Attorney Fordham asked the Council's guidance considering whether to sell or lease the property and noted the part may not surplus if it was in government use; lease would require public notice and meeting, and if lease was over ten years could be treated as a sale and further consideration for lease if there were a monetary value or not; granting of an easement was discussed and whether this could constitute a trade.

Mayor Weatherly expressed if leased, would like certain conditions regarding maintenance and would hope the business would be there forever and options included should a change of ownership occur; Code requires the owner enclose the dumpster site. Mayor Weatherly noted people would be walking by this to the Arts Center and wanted to ensure tight control over this and down the road if there were a change or a breach in contract would be up to our standards. Manager Radford stated Mr. Foresta was in favor of a lease. Attorney Fordham assured with the Director of Planning there would be no problems associated with zoning, should the lease take place and that he doesn't think Mr. Foresta would object. Director of Planning Khin responded she saw no problems. Manager Radford stated he and the Town Attorney would work out the details for a lease agreement and bring back to Council for approval, however asked Council for approval of the minor site plan as is.

Associated costs with the reconfiguration were discussed, with Council Member Schulze asking for consideration of a sidewalk at the corner of the parking lot. Khin responded no sidewalk was proposed in an effort to save the trees from being damaged. Council Member Jones noted site construction plans are required to be submitted to TRC for final approval before construction can begin.

Action: Motion by Council Member Jones and second by Council Member Gossage to approve changes required as requested and to authorize the Town Manager and Town Attorney to negotiate a lease agreement regarding the Foresta dumpster enclosure. Discussion: Council Member Jensen was opposed to issue # 3: removal of existing tree island (no tree planted there yet) to be replaced by two smaller islands that can only support groundcovers due to sight triangle issues. He stated if they are going to remove the trees, he would not vote for this. Khin noted the location of the proposed islands on the drawings, and noted the view for vehicles would have been blocked, and was a site distance issue. Staff thought ground cover would be better and with redesign of the island would loose three spaces vs. two. Council Member Jensen saw a gain of nine spaces and wanted to save the island. Khin responded they can move the island, with Council Member Jensen noted a gain of seven spaces and would help keep the rural look. Attorney Fordham noted this was a policy matter. Khin addressed the cross access and joint use of the parking areas, and thinks it's necessary and should have the Town Attorney draft an agreement for this.

Action: Council Member Jensen made an amendment to the motion to keep the tree island and relocated it elsewhere in the parking lot. Council Member Jones made the second to the amendment. Motion carried unanimously. Motion carried on the original motion.

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 at 8:00 p.m. for the reasons stated.

Action: Motion by Council Member Jones and second by Council Member Gossage to move into Closed Session for the following: 1) To receive legal advice concerning giving notice to property owners of intent to enter property for purposes of survey and/or investigation of property associated with the Peakway to Tingen Road, and 2) Personnel Matter. Motion carried unanimously. Closed Session minutes are recorded separately.

Action: Motion by Council Member Jones and second by Council Member Schulze to move back into Regular Session at 8:21 p.m. Motion carried unanimously.

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

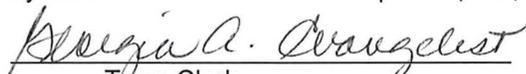
Action: Council Member Sutton made the motion to adopt a Resolution authorizing notice to property owners of intent to enter property for purposes of survey and/or investigation of property associated with the Peakway to Tingen Road. Council Member Gossage made the second to the motion. Motion carried unanimously.

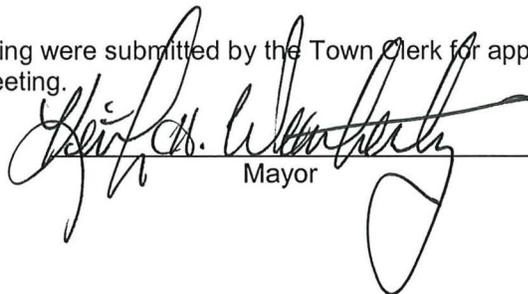
Action: Council Member Sutton made a motion to increase the Town Manager's salary by 5% and re-authorize another three weeks annual leave for the Town Manager. Council Member Jones made the second to the motion. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, Council Member Gossage made the motion to adjourn at 8:22 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously to adjourn.

The minutes of the September 4, 2007 Council Meeting were submitted by the Town Clerk for approval by the Town Council at their September 18, 2007 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Minutes of the Apex Town Council meeting held Tuesday, September 18, 2007,
7:00 p.m., in 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

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

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.

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, asking item 5 be considered separately, calling for a motion to consider this with the new business items after the public hearing regarding the ETJ; further a motion to approve the consent agenda as amended.

Action: Council Member Sutton made a motion to consider item # 5 in new business after the ETJ Public hearing. 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 amended. Council Member Jones made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of September 4, 2007 Council meeting.
2. Minutes and General Account of September 4, 2007 Council Closed Session (recorded separately).
3. Budget Ordinance Amendment No. 5 and Capital Project Ordinance Amendment to initiate proposed Town of Apex third Point of Delivery.
4. Approve Amendment No. 2 to Water Intake Service Agreement between Towns of Cary, Apex, and Chatham County.
5. Approve Interlocal Agreement with Wake County for building inspection services related to Town of Apex ETJ (**considered with new business items**).
6. Wake County Tax Report for Town of Apex.
7. Authorize acceptance of a grant from Fireman's Fund Insurance Company for \$9,769.00 to purchase inflatable boat for swift water rescue team; to be presented at the October 2, 2007 Council meeting.

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 add a closed session item regarding condemnation.

Action: Council Member Gossage made the motion to add the closed session as requested regarding condemnation. Council member Jones made the second to the motion. Motion carried unanimously.

The meeting agenda was set as amended with the consent agenda item # 5 being added to New Business and the addition of Closed Session.

PUBLIC HEARINGS

Presenter: Director of Planning Dianne Khin

Public Hearing # 01 - Town of Apex ETJ Extension

Public hearing and possible motion regarding extension of Extra Territorial Jurisdiction (ETJ) by 8,937 acres, 2025 Land Use Plan amendment and Initial Zoning # 07ETJ24, Town of Apex, petitioner, seeking to extend the ETJ, amend the 2025 Land Use Plan and zone from Wake County zoning districts to Town of Apex zoning districts for 8,937 acres in the ETJ Extension Area.

Staff presented the Planning report which is attached and incorporated as a part of the minutes. The Wake County Board of Commissioners granted an extension of Extraterritorial Jurisdiction (ET J) to the Town of Apex on August 6, 2007 for 8,937 acres surrounding the existing Apex corporate limits and existing ET J. The Town of Apex has 60 days to exercise jurisdiction in the area and zone the property to Apex zoning districts. The effect of the adoption of the ordinance extending the ET J shall be that all planning, zoning, and building inspection services shall no longer be provided by Wake County, but shall be provided by the Town of Apex. The Planning Board considered the 2025 Land Use Plan amendment and initial zoning for the ET J extension area at their September 10, 2007 meeting and voted unanimously to approve the 2025 Land Use Plan amendment and initial zoning. Staff recommends approval of the ET J extension, 2025 Land Use Plan amendment, and initial zoning for the ET J extension area. An ordinance to extend the ETJ is attached. A map showing the proposed ETJ Extension and Initial Zoning is attached. Applicant proposes to rezone the ETJ extension area properties from WC to Apex Rural Residential (RR – 1 unit per acre density), except for properties listed within the staff report on pages one and two which are to be changed on the 2025 Land Use Plan and zoned based on current legally established land uses and/or current Wake County non-residential zoning within the ETJ extension area. Inclusion in the land uses: Briarwoods Farm Mobile Home Park, consistent with the land use plan, and appropriate for the mobile home park designation.

Mayor Weatherly noted this a momentous occasion, being the largest ETJ extension in history of the County, and planning for orderly growth in the future and allowing property owners to request zoning changes without annexation. He noted this Council believes in voluntary annexations, and the property owner's request to do so, and never have believed in forced annexations; noted this strictly a planning issue; and opened the public hearing at 7:10 p.m.

Resident at Sunset Lake Road and Stephens Road had heard rumors of forced annexation and asked would he be forced to mandatory water hook-up. Mayor Weatherly responded he would not be forced to connect to town water and a well and septic tank that was working properly is fine and rumor of forced annexation is not true.

Mike Copland, 2636 Hwy 64 noted the location of his property and called attention to the red dot designation for Planned Commercial, asking if his property would be zoned commercial and affirming he would not have to tie to water/sewer; asked if public safety would be served by Wake County; asked if he would stay with his electric provider. Mayor Weatherly responded he would pay no town taxes, receive no city services, this is strictly a planning issue. Manager Radford added major intersections were zoned commercial and were designated for general business. As far as the red dot for Planned Commercial, it was determined this was not his property but property located at 1144 Kelly Road. It was explained the properties lying within the ETJ would covert from County zoning designations to Apex zoning designations; he would stay with his current electric provider.



Toni Santitoro, Pleasant Plains Road asked the reasoning behind the ETJ extension as there would be no additional taxes; further noted the growth had not been uncontrolled. Mayor Weatherly responded this was strictly a planning issue, building and zoning in the Apex jurisdiction. Santitoro asked if annexation would always be voluntary. Mayor Weatherly responded this would be an issue to be considered by future boards and the Town had not forced annexation on anyone in the past 30 years. However, neighboring town south of him could satellite annex property. Santitoro commented on the reputation of town inspectors. Mayor Weatherly responded he had not heard complaints in years regarding the inspections department.

Jim Oxford, 2532 Hwy 64 West disagreed with the ETJ extension, because there had not been enough information received, thinking this is a done deal, with folks not knowing what this means. He noted as far as representation for the ETJ on the Planning Board, there was only one person; he asked who would hear those in the ETJ from the Council; he noted the State does not provide for this representation; asked for better enhancements for input and more representation. He noted the ETJ area would be governed by the Unified Development Ordinance and Town had hired additional staff to enforce this. He noted Town had taken steps to publish notices on the Town's website vs newspaper, with many not having computers, and felt there should be more information provided to do these things. He asked who pays for the water and sewer when it becomes available, these folks or the developers. Manager Radford responded there's a combination of both. Oxford noted an issue regarding cutting of Kudzu and costs associated with the cutting and sees no reason for extending the ETJ. Mayor Weatherly commented on the fact that cutting of the Kudzu was more involved then Oxford had led to believe and gave more detail regarding reservation of buffers, etc.

Resident next to Santitoro asked if restrictions apply to existing subdivision covenants. Khin responded the subdivision covenants are private and the ordinance applies to one who would want to subdivide property, and as far as the zoning for the properties would be Rural Residential, and would have to meet setback requirements for additions, fences, etc. in the future.

Bill McLaurin, 1204 Holt Road, lives on the Apex side of the line between Apex and Cary and assumes he will be treated fairly, with response that he would be.

Mark Beech addressed the US64 property where Wal-mart had once been slated for possible building, asked the zoning designations. Khin explained the designations, with all residential being zoned residential agricultural and the Town has sixty days to zone after acceptance of the ETJ extension of the properties. Mayor Weatherly added the Ordinance for the proposed ETJ Extension would be considered at Council's October 2, 2007 meeting.

Paul _____ addressed an upcoming reassessment and if taxes would increase. Mayor Weatherly responded this is a Wake County issue and due for an eight year evaluation; the ETJ does not affect them in that with no annexation of properties, would not pay Apex taxes and only subject to Wake County taxes.

Jill Turner, 8008 Smith Road has plans to subdivide her property in the future and addressed restrictions as far as standards and costs. Khin responded that to subdivide depends on the proposal and would be looking at proposals on a case by case basis and she could contact her to discuss this further.

Jenny Copeland, 2636 Hwy 64 West asked the Town's vision and plans for US64, noting dramatic changes had taken place and was torn about the extension and rules, having heard negativity. She asked if there were a planned shopping center would she have to move, and if rezoned she would be stuck. Khin stated there would be a study involved – the Western Area Plan, where folks could participate in this study of this area, and would include everything west of I-540 corridor and gave her phone number for those who wanted to participate.

Dianne Moon, 8009 Clarice Lane, noted the property behind her had been sold and understood home construction would begin soon and water and sewer would come there and rumors are that if they don't tie in when offered, would be ten times more expensive to do so at a later date and would not be able to use their wells. Manager Radford responded she would not be forced to tie in to the lines; a subdivision plan is under review, but not discussed; she may sell her property and the developer may pay. He noted tap fees are not absorbent and had not force this and the Town does not cement wells.

Resident at 8001 SR 1010 asked about additional homes being built near him. It was noted these homes were not in the ETJ.



Public hearing # 1 continued

Mayor Weatherly closed the public hearing at 7:55 p.m. and restated the Ordinance for the proposed ETJ Extension will be considered at Council's October 2, 2007 meeting.

Council Member Sutton addressed representation on the Planning Board and Board of Adjustment knowing it was based on State law however noted there is approximately 9000 acres being considered. Khin noted representation is based on percentage and not acreage; the Town's population is higher, but representation still is under one and would require a UDO amendment to include more. Council Member Sutton wanted the record to reflect that he would like to allow more people on the Planning Board to represent the ETJ area.

End of Public Hearing # 01

Presenter: Planner June Cowles

Public Hearing # 02 – Old Mill Village

Planning Board met September 10, 2007 and recommended continuance to their October 8, 2007 meeting.

(Applicant requests continuance of this hearing to the October 16, 2007 Council meeting).

Public hearing and possible motion regarding Major site plan for Old Mill Village Lot 1; Apex First Development, LLC, petitioner; property located within Old Mill Village project, at southeast corner of Mason Street and Old Raleigh Road; plan includes townhomes, condominiums, retail and office.

Dianne Khin, Director of Planning stated applicant has not turned in the elevations and the Planning Board continued this to their October 8, 2007 meeting and applicant requested continuance of this hearing before the Council to the October 16, 2007 meeting.

Action: Council Member Jensen made the motion to continue this hearing to October 16, 2007. Council Member Jones made the second to the motion. Motion carried unanimously.

Public Hearing # 02 continued

Presenter: Principal Planner Brendie Mkhwanazi

Public Hearing # 03 – UDO Amendments

Planning Board met September 10, 2007 and unanimously recommended approval; staff recommends approval.

Public hearing and possible motion regarding proposed amendments to various sections of Unified Development Ordinance: includes adding inflatable play equipment spaces to Entertainment, Indoor; adding Entertainment, Indoor as a Permitted Use in Light Industrial District; and adding Retail Sales, Bulky Goods to the Tech/Flex District.

Dianne Khin, Director of Planning presented the Planning report which is attached and incorporated as a part of the minutes. This amendment would allow events to use inflatable play equipment in Light Industrial (Pinnacle Park), and permit retail sales, bulky goods in Tech/Flex District. Planning Board met September 10, 2007 and unanimously recommended approval; staff recommends approval. Council Member Sutton hates to see changes on a case by case basis, almost allowing anything recalling Investment Boulevard situation, but turning out.

Mayor Weatherly opened the public hearing and with no one addressing the amendments, closed the public hearing.

Action: Council Member Schulze made the motion to approve. Council Member Gossage made the second to the motion. Vote on the motion was four in favor and one opposed with Council Member Sutton voting no. Motion carried.

End of Public Hearing # 03



Public hearings continued

Presenter: Director of Planning Dianne Khin

Public Hearing # 04 – Annexation # 416

Public Hearing and possible motion regarding Annexation Petition # 416, JVI Development, II Inc., and Town of Apex, owners/petitioners, petitioning to annex 3.177 acres into Town's corporate limits and located off Center Street (N.C.S.R. 1010). Staff oriented to the location of the property and land dedicated for the town's park. Mayor Weatherly opened the public hearing at 8:06 p.m. and with no one addressing this proposed annexation, closed the public hearing calling for a motion.

Action: Council Member Gossage made the motion to approve the annexation petition, adopting an ordinance to extend the corporate limits of the Town. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

Presenter: Director of Planning Dianne Khin

Public Hearing # 05 – Annexation # 417

Public Hearing and possible motion regarding Annexation Petition # 417, William T. Wilson, Sr., owner/petitioner, petitioning to annex 7.740 acres and including a 30 foot private easement into Town's corporate limits and located off Evans Road (N.C.S.R. 1147). Staff oriented to the location of the property and for the proposed Bella Sara Subdivision, a JVI project. Mayor Weatherly opened the public hearing at 8:07 p.m. and with no one addressing the proposed annexation closed the public hearing calling for a motion.

Action: Council Member Gossage made the motion to approve the annexation petition, adopting a resolution to extend the corporate limits. Council Member Schulze made the second to the motion. Council Member Jensen noted potential for 9000 additional home sites; the development ratio of 19% Commercial to 81% Residential for the Town; should guide more in the direction of commercial rather than houses with limited wastewater. Council Member Gossage asked the Land Use Plan designation. Khin responded medium density residential; it was noted and changes would have to be made to the land use plan.

Question arose if the sewage for this proposed subdivision would go to the Kelly Road pump station. Tim Donnelly, Director of Public Works stated this to be the most challenged station and has told the engineers for the project about the concern with sewer capacity, and they seemed to be convinced it could be done. He stated with build out some will not be served with sewer, however tries to make them all aware of the situation; he told the Council they were running out of sewer capacity. He stated those eligible for sewer can prepay for 30,000 gallons, and there's provision for up to 5000 gallons, however has great concern about this as there's no certain date for sewer, calling attention to the Traskside development and the sewer capacity needed for this property.

Council Member Sutton wanted to know the legal aspect of this. Attorney Fordham responded the Town is obligated to use the same terms of policies in effect to provide sewer to anyone. Council Member Sutton asked, "so some may not get sewer." Council Member Jones noted one could be annexed in spite of that and sounds as if they know this. Khin felt sure JVI knew this, and the reason for annexation to get the property that is in the county annexed, so he could bring in the subdivision plan for consideration, and when approved could prepay for 30,000 gallons of sewer. Council Member Schulze recognized there was a consistent policy for people applying for sewer. Council Member Jensen noted overall, there were too many houses and not enough businesses. Attorney Fordham advised Council they were not obligated to annex property.

Mayor Weatherly called for the vote on the motion. Vote on the motion was three in favor and two opposed, with Council Member Jensen and Council Member Sutton voting no. It was noted the annexation had been introduced at the last meeting fixing the public hearing and could pass the ordinance, with a vote of three to two. Motion carried to approve the annexation petition by adopting the ordinance to extend the corporate limits of the Town.

End of Public Hearing # 05



Presenter: Director of Planning Dianne Khin

Public Hearing # 06 – Annexation # 418

Public Hearing and possible motion regarding Annexation Petition # 418, KCLC Development, LLC., Dovie Stewart Heirs, William Thomas Wilson, Jr., Delores Curtis and Gaynell Bullett, owners/petitioners, petitioning to annex 22.019 acres and including public right of way into Town's corporate limits and located on Evans Road (N.C.S.R. 1147).

Staff oriented to the location of the property again noting this for the proposed Bella Sara Subdivision, a JVI project south of the previous annexation, located in Wake County and with the land use plan designation of medium density; this being the same situation as discussed in Annexation # 417. Mayor Weatherly opened the public hearing at 8:15 p.m. and with no one addressing the proposed annexation, closed the public hearing.

Council Member Jones noted this being the same situation as previously discussed, asked if the petitioner was aware of the sewer situation. Tim Donnelly, Director of Public Works stated he had communicated the sewer situation with the engineer for this project, and can't say this was communicated to the petitioner. Attorney Fordham advised Council may want to state for the record the situation regarding sewer, and what the petitioner should hear, that the Town is not obligated to provide water and sewer for annexed properties. Mayor Weatherly, after having received this advice, stated for the record, "the Town of Apex has no obligation or guarantee to provide water and sewer for annexed property and even with prepayment of sewer capacity no way assures receipt of sewer, and with annexation would be obligated to pay Town taxes." Mayor Weatherly then called for a motion.

Action: Council Member Jones made the motion to approve the annexation petition by adopting an ordinance to extend the corporate limits. Council Member Schulze made the second to the motion. Council Member Jones stated with no guarantees, had talked in length about finite resources, people sale and make these land transactions contingent on annexation of property, and wanting to be annexed, with no subdivision plan approval or services.

Council Member Jensen stated there was no obligation to annex property, with Mayor Weatherly noting it was a property rights issue. Council Member Jensen then noted the potential for additional 9,000 homes and the limited wastewater and stated he felt once they are on line, we have no control and would grow at 30% again. He noted if the developer basically follows the UDO they are obligated to approve. He expressed concern over the rate of growth and felt it was out of hand and needed to get a handle on it while they have control.

Council Member Sutton asked if there were existing subdivisions that would be pumping sewer into Kelly Road that are approved, but not prepaid and Tim Donnelly Director of Public Works responded yes. Council Member Sutton verified the property could be annexed, subdivision approved, and they can prepay. Donnelly responded yes, and expanded on the Holland Crossing upgrade, however the study has not been done, however do have some ethical obligation having already approved, and would be a first come first serve; even with the prepaid fees, there's no guarantee of sewer; prepay only puts them ahead of anyone that has not prepaid. Council Member Sutton asked, why keep adding to the problem? Donnelly elaborated on the fact that he is in hopes the regional wastewater facility will be approved and in place before a crash, still achievable and can support the rate of growth if the plant is approved quickly. He continued the points have been taken and the solution is to build the wastewater plant. Vote on the motion was three in favor and two voting in opposition, with Council Member Jensen and Council Member Sutton voting no. Council Member Sutton voiced he was opposed and wanting to avoid a moratorium, and felt it irresponsible to continue to annex property with the existing sewer problem. Council Member Jensen voiced that allowing folks to prepay only adds gas to the fire, and hoping to utilize sewer by prepaying. He felt this pushes the developer to build more potential subdivisions. Motion carried to approve the annexation petition by adopting the ordinance to extend the corporate limits of the Town.

End of Public Hearing # 06



Public hearings continued

Presenter: Director of Planning Dianne Khin

Public Hearing # 07 – Annexation # 419

Public Hearing and possible motion regarding Annexation Petition # 419, New Freedom Ventures II, LLC Properties, owners/petitioners, petitioning to annex 33.21 acres and including public right of way into Town’s corporate limits and located off James Street.

Staff oriented to the location of the property in the Town’s ETJ, and designated as Residential Agricultural on the Land Use Plan; west of Salem Village and an unrelated project with a subdivision plan under review. Tim Donnelly Director of Public Works commented this would require upgrade of the Lexington Pumping Station, and the piece that drains best to Salem Village may not be developed, and may have to wait a long time. Mayor Weatherly opened the public hearing at 8:30 p.m. and with no one addressing the annexation petition, closed the public hearing and called for a motion.

Action: Council Member Schulze made the motion to approve the annexation petition by adopting an ordinance to extend the corporate limits. Council Member Jones made the second to the motion. Vote on the motion was four voting in favor and one voting in opposition, with Council Member Sutton voting no. Motion carried to approve the annexation petition by adopting the ordinance to extend the corporate limits of the Town.

End of Public Hearing # 07

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.

No one spoke during public forum.

NEW BUSINESS

Presenter: Director of Public Works Tim Donnelly

New Business # 01 – Western Wake Regional Wastewater Management Facilities

Technical Advisory Committee and Policy Advisory Committee have reviewed same and recommend approval.

Director of Public Works Tim Donnelly presented proposed amendments to Amendment No. 2 to the Agreement for Design, Construction, Ownership, Management and Operation of Western Wake Regional Wastewater Management Facilities and recommended approval. Proposed Amendment No. 2 contains changes to the original August 22, 2005 document, subsequently amended October 26, 2006, an Agreement between the Towns of Apex, Cary, Morrisville, and Holly Springs for construction and operation of the Regional Water Reclamation Facility. He gave a brief review of the proposed changes and highlighted throughout the document and under the review section of the Agenda Action Request form that deals with flows, construction, and cost shares which is attached and incorporated as a part of the minutes. Update of total capital costs for the project reflects Town of Apex share increase from \$70 million to \$73 million. Also, Town of Apex will solely fund the Beaver Creek Gravity sewer at an estimated cost of \$1,281,890 and ties into the proposed tunnel to be accomplished by the Partners. Technical Advisory Committee and Policy Advisory Committee have reviewed the engineering recommendations and proposed changes in flows as well as cost shares, and recommended approval. Should Council approve the N. Olive Chapel Road (No. 4) site for Beaver Creek Regional Pumping Station, this would also accept revised cost share percentages for the tunnel and gravity sewer line leading into the station from Beaver Creek. A map of the proposed project is attached.



Council Member Sutton asked if Partners had approved a mitigation plan for the folks that would be impacted, and were doing everything reasonably possible. Tim Donnelly explained the costs had been split among the Partners, and breaks in impact fees were associated with the immediate area of New Hill affected by the Plan, and that annexation was not required, however had not been adopted by all Councils. Policy Advisory Committee does support it, and may look at it again at a future date due to split in costs, noting it a sensitive issue with one of the Partners and they have agreed they would revisit this, and should the Corps of Engineers want more mitigation, they will revisit it. Mayor Weatherly reported after the vote, the request to reconsider came afterward, and then the Corps of Engineers took over, not knowing what was required in the mitigation, staff carried the message and supports it, but until the site is approved, there's no need to revisit this. Mayor Weatherly called for a motion.

Action: Motion by Council Member Gossage and second by Council Member Schulze to approve the proposed changes as recommended. With no opposition to the proposed changes, the motion carried unanimously.

End of New Business # 01

Presenter: Director of Public Works Tim Donnelly

New Business # 02 – Review of Water Supply Status

Director of Public Works Tim Donnelly gave an update on the Town's water supply status and recommended actions that may be necessary in the future which is attached. He reported Jordan Lake is operated by US Army Corps of Engineers for flood control with a normal lake elevation of 216 feet. The lake is designed to provide water downstream and to direct users with allocations during periods of drought. Because the watershed supplying the lake is very large, droughts that impact the lake occur over periods of many months, if not years. Current elevation is 211.8 feet; USACE releases from the lake have been reduced to conserve water and drops about 0.06 feet per day when no rain occurs in the basin. Apex drinking water demand is 3.8 mgd and currently withdrawn from the upper intake. Cary plans to switch to the lower intake if the lake gets below 211 feet and without rain would occur around the first week in October; if drought continues, Cary would modify the intake structure to allow full access to remaining storage. Predictions are 90% chance the lake will refill during the winter. Public Works recommends more restrictive water conservation measures in parallel with any action taken by Town of Cary; Cary plans to eliminate irrigation if the lake drops to an elevation of approximately 211. For Apex, the Town Manager could respond to Cary's action by implementing Stage II or III of the Town's Water Conservation Ordinance which is attached. Manager Radford commented that the public expects us to conserve our resources. Mayor Weatherly added the Governor has asked to participate in conservation measures, and that the Manager would keep Council informed.

End of New Business # 02

Consent Agenda Item No. 8 (Resolution No. 07-0918-20

Manager Radford introduced an Interlocal Agreement with Wake County for building inspection services related to Town of Apex ETJ extension. Attorney Fordham stated while in transition, Wake County inspectors will continue to provide inspections and permitting services within the Town of Apex's newly extended ETJ area that will eliminate confusion and project delays. Kent Jackson, Director of Construction Management stated he was in favor of the agreement while in transition and the County had been very cooperative; there are currently 85 permits and is a significant volume of work. Attorney Fordham stated the agreement would be contingent upon the adoption of an ordinance extending the ETJ and in accordance with the ETJ extension approved by the County. The Ordinance will be considered for adoption at the Council's October 2, 2007 meeting. Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to adopt the Resolution approving the Interlocal Agreement with Wake County. Council Member Jones made the second. Motion carried unanimously.

End of New Business



WORKSESSION

There were no Worksession items to be discussed.

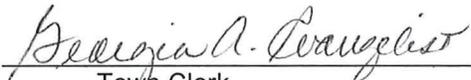
CLOSED SESSION

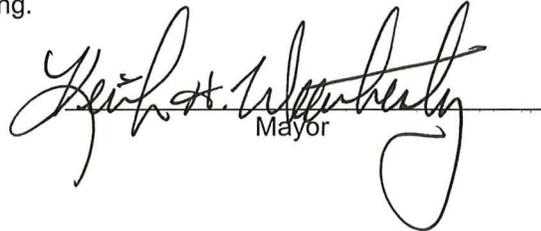
Mayor Weatherly called for a motion to move into Closed Session for condemnation matters. **Action:** Council Member Jones made the motion to move into Closed Session for the stated purpose. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session were recorded separately. **Action:** Council Member Gossage made the motion to move back into regular session at 9:17 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, Council Member Gossage made the motion to adjourn at 9:18 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the September 18, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their October 2, 2007 meeting.


Town Clerk


Mayor

TOWN OF APEX, NORTH CAROLINA

Apex Town Council attended a walk through of the Cultural Arts and Performance Center located on Salem Street, on Tuesday, October 2, 2007 at 5:30 p.m.

* * * * *

The Regular Meeting of the Apex Town Council was held on Tuesday, October 2, 2007, 7:00 p.m., in 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

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

Mayor Weatherly called the meeting to order and gave the Invocation. Scout Troop # 226, sponsored by Apex United Methodist Church led the Pledge of Allegiance. Welcome extended by Mayor Weatherly.

PRESENTATIONS

Presentation No. 1: Presentation of a grant from Fireman's Fund Insurance Company for \$9,769.00 to the Apex Fire Department for purchase inflatable boat for swift water rescue team *(approved by Council 09/18/07)*.

Presentation No. 2: Presentation by Standard Pacific of the Carolinas, LLC, initial \$1,000.00 contribution to Town of Apex for the Neighbor Woods Program: trees and vegetation for current future generations to enjoy.

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. With no amendments Mayor Weatherly called for a motion. **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 September 18, 2007 Council meeting.
2. Minutes and General Account of September 18, 2007 Council Closed Session *(recorded separately)*.
3. Minutes and General Account of September 17, 2007 Finance Committee meeting.
4. Budget Ordinance Amendment \$11,000 – Information Systems Contracted Services for electronic plan review service for one year.
5. Findings of Fact, Conclusions of Law, and Ordinance: Rezoning #07CZ19, Cotton Contracting, petitioner, property location 1617 Center Street and rezoning 0.86 acres to Mixed Office Residential Retail Conditional Zoning *(approved by Council 09/04/07)*.
6. Ordinance: Rezoning #07RZ20, Town of Cary, petitioner, property location at Old US1 Highway and US1 Highway between New Hill Holleman Road and Shearon Harris Road and rezoning 207.275 acres from Wake County Zoning designation to Residential Agricultural District *(approved by Council 09/04/07)*.
7. **Resolution No. 07-1002-21** formally approval of "Amendment No. 2 to the Interlocal Agreement for Design, Construction, Operation and Management of the Wastewater Management Facilities," *(approved by Council 09/18/07)*.



Consent Agenda continued

8. Approve Budget Ordinance Amendment No. 7 (\$147,758.00) with Capital Project Ordinance Amendment and authorized Town Manager to negotiate transfer of the South Wake Water Line to Town of Apex.
9. **Resolution No. 07-1002-22** to enter into a Municipal Agreement with the State of North Carolina Department of Transportation for inspection of bridges.

End of Consent Agenda

REGULAR MEETING AGENDA

The Regular Meeting Agenda was set prior to taking action on the following items, and amended to add Closed Session regarding condemnations. **Action:** Council Member Gossage made the motion to add closed session items regarding condemnations as requested by the Town Attorney. Council Member Jones made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case # 07CZ03 (Salem Village PUD)

Public Hearing and possible motion regarding Rezoning Case # 07CZ03 Winslow Properties, petitioners, petitioning to rezone from Residential Agricultural and Medium Density Residential to Planned Unit Development Conditional zoning District for property located at 1 South Salem Street between Apex Barbecue Road and Kelly Road containing 312 acres.

Presenter: Director of Planning Dianne Khin stated applicant and staff requested public hearing be continued indefinitely, while awaiting change to the phasing of the plan and new TIA. Public hearing will be re-advertised for a future meeting; applicant is still working with CSX regarding options for Apex Peakway and South Salem Street Intersection. No action was necessary by Council as the public hearing will be readvertised.

Public Hearing #01 was continued indefinitely and will be readvertised.

Public Hearing # 02 – Rezoning Case # 07CZ23

Public Hearing and possible motion regarding Rezoning Case # 07CZ23 Town of Apex, petitioner, petitioning to amend the 2025 Land Use Plan from Park to Mixed Use: Office & Institutional, Retail land use classification and to rezone from Conservation Buffer to Neighborhood Business District for the property located at 221 Saunders Street containing 1.73 acres (Apex Police Facility).

Presenter: Principal Planner Brendie Vega Mkhwanazi presented the Planning report which is attached and incorporated as a part of the official minutes and oriented to the property zoned Conservation Buffer in 2001 and necessary to rezone for upcoming expansion of Apex Police Station site which is zoned B2; also to amend the 2025 Land Use Plan from Park designation to Mixed Use O&I and Retail designation. Parks and Recreation Advisory Commission (PRAC) unanimously voted to vacate the Senior Citizen Park located on Saunders Street as a public park, so the site can be incorporated into the design of the new public safety building. The PRAC public hearing was held August 15, 2007 and no one spoke against the plan. Existing parking lot will be gated on both ends and former Senior Citizen Park will be utilized by the Police Department; Department has no intention of removing the shelter, tables, and other minor amenities and would like to spruce up the area for use by the Department. Also: Park can be removed from the public park designation, and from the Parks, Recreation, Greenways, and Open Space Master Plan. Planning Board met September 10, 2007 and recommended approval; staff recommends approval. Chief Jack Lewis gave status of project, noting with construction the public could not have access to the park.

Mayor Weatherly opened the public hearing. Penny McGuire, 210 W. Chatham Street owns property that backs to this property. She questioned Planning Board decision, having the vote called a blank check by Lance Olive, with two voting against, and one sustained from voting, and had asked three questions: what's up (gates for parking lot), what's down (trees unsure about the number – told trees along Saunders Street for utilities – sewage for downtown businesses; trees have been surveyed), and environmental impact (creek not shown on map – required riparian buffer on each side, already infringed upon). She asked if commercial businesses could locate to this property. Response was gates secure the site, trees marked for the sewage line along Saunders, and the creek was infringed upon as the parking lot was already in place when Conservation Buffer zoning classification designation was put in place for all town parks. Manager Radford reported on the mandatory security of the Police Department with gated drives, to keep vehicles in and out.



Mayor Weatherly stated this was Town owned property and different than privately owned property, and there would not be a commercial business on Town owned property and the site would be maintained by the Police Department; a change in use would require a public hearing; he was troubled by the comment "blank check" and noted uses under the zoning would be allowed, then would look at a site plan, for access and environmental issues; its not a zoning issue. Manager Radford stated Town has no intention of selling this property and will build a very expensive building there, and to sell the property to a private individual would require a public hearing.

With no one else addressing this proposed rezone, Mayor Weatherly closed the public hearing and called for a motion.

Action: Council Member Sutton made the motion to approve the rezone and land use plan amendment. Council Member Schulze made the second to the motion. Council Member Jensen felt with the withdrawal of the park from the parks system and turning it over to the Police Department, thinks it should be offset or compensated with money back into the park system. For him to vote for this, he would want to see a transfer of funds to offset this, as the Town is strapped for recreation properties and felt the need to compensate.

Mayor Weatherly understood his point, but noted Parks, Recreation, and Advisory Commission recommended in favor of this; second point, noted the park was the most underutilized park in Town, and being public property for public good and up to this board to decide if this is a better use of taxpayer owned property to benefit the public and as a law enforcement enhancement. Council Member Jones agreed and even though not making a payment for moving inventory, thinks there are expenditures that more than make up for this park acreage, and agreed with the PRAC; he noted the park was built for the Keenagers Program when they worked out of the Town Hall facility and valuable at that time, but now under was utilized. Mayor Weatherly noted the magnificent facility on Town Campus, Town owned property, and the amount of money taken from general fund for this specific space for this specific program. Motion carried with a four to one vote, with Council Member Jensen voting no.

End of Public Hearings

OLD BUSINESS

Old Business # 01 – Ordinance for Town of Apex ETJ Extension

Planning Board met September 10, 2007 and unanimously recommended approval of the ETJ Extension; September 18, 2007 Staff presented the Planning Report to the Town Council and the Public hearing was held and with the Public Hearing having been closed, the Ordinance is now before the Town Council for their consideration.

Possible motion to adopt an **Ordinance No. 07-1002- 421** regarding extension of Extra Territorial Jurisdiction (ETJ) by 8,937 acres, 2025 Land Use Plan amendment and Initial Zoning # 07ETJ24, Town of Apex, petitioner, seeks to extend the ETJ, amend the 2025 Land Use Plan and zone from Wake County zoning districts to Town of Apex zoning districts for 8,937 acres in the ETJ Extension Area.

Presenter: Director of Planning Dianne Khin stated Planning Board considered the 2025 Land Use Plan amendment and initial zoning for ETJ extension September 10, 2007 and voted unanimously to approve; staff recommends approval. An additional piece of information for the Briarwood Farms Mobile Home Park off Stephenson Road was added to the record and attached. Council Member Sutton asked, "Why not extend the ETJ to the County line on US64". Khin responded the County would not recommend approval of any area within the one mile critical buffer of the watershed for Jordan Lake, and would not support this, and had asked it be excluded; she added that anyone in that area could ask for annexation by the Town and could develop under Town regulations. Mayor Weatherly noted the ETJ extension takes place immediately, having begun the process July 2006 (for the record: with adoption of the Ordinance, all planning, building inspection services, and zoning shall no longer be provided by Wake County, but shall be provided by the Town of Apex; Public hearing before the Town Council was held September 18, 2007). Wake County granted ETJ extension to the Town on August 6, 2007 for 8,937 acres; this was given unanimous approval by Wake County Planning Board and Wake County Board of Commissioners; it was noted this is the largest ETJ extension in the County, and that the County folks were confident in Apex's vision for the future, and that Apex would be good stewards of the area as it would develop under the Town's planning requirements and ordinances. Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to adopt the Ordinance for the Town of Apex ETJ Extension. Council Member Schulze 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.

Mack Thorp, Rusty Bucket, Salem Street, spoke on behalf of Downtown Business Association, asking support for the high school Home Coming Parade, Friday, October 12, 2007, 4:10 p.m., down Salem Street from Church parking lot, down to Hunter Street and onto Laura Duncan to the high school. He asked support of the Cougar fundraising events. He presented Mayor Weatherly with a tee shirt with a pictorial downtown available in the shops for \$10.00. He had coordinated efforts with Police Chief; Chief Lewis added officers will be working intersections; street closed as needed and has CSX cooperation for the parade to cross the tracks and streets opened by 5:00 p.m.; game at 7:00 p.m. Manager Radford gave his support and stated Council's approval was needed for the street closing. Mayor Weatherly made comments in support of the students and the parade and called for a motion.

Action: Council Member Jones made the motion to approve the street closing for the Home Coming Parade. Council Member Gossage made the second to the motion. Motion carried unanimously.

Chris Place, Sugarland Run Home Owners Association and Community Watch for the neighborhood, explained there were serious public safety issues in his community; noted residential homes at 209 and 500 Lynch Street where drug dealers were selling and trafficking drugs, common knowledge. He noted police were doing all they could, with several raids, with folks now in jail, however, still selling. He noted: reassignment of the bus stop for his child's safety, noted drug users were cutting through their neighborhoods, found drug items, etc., noted comments said to he and his wife when he confronted some of these folks on his property, and was seeking grounds to resolve these problems by shutting down these homes that are owned by direct family members; one maybe up for sale and hopes it happens; both homes with identified by photos during drug transactions, asking legal action be taken. Manager Radford noted police awareness and their timely response to calls, and the dramatic action taken with raids, and their continued vigilance there, and including legal action taken against the owners. Mayor Weatherly knew this to be sensitive, calling on Chief of Police Jack Lewis to report; noted one property targeted for revitalization, however had not happened; noted challenges with displacement and not being aware of what's going on; has support of the neighbors, however police can't be there all the time; trying to address all sources however selling continues, the owners have been informed, and nothing is condemnable. When questioned if the residents had been informed and track record of such, and how could they not understand, are they stupid, Chief refrained from a direct response, but stated he had tried to explain to an elderly lady they had spoken, however felt she could not comprehend what they were saying.

End of Public Forum

NEW BUSINESS

There were no New Business items to be considered.

WORKSESSION

Presenters: Town Manager Bruce Radford and Director of Finance Lee Smiley

Worksession # 01 – Capital Funding Analysis for CIP

Manager Radford called on Director of Finance Lee Smiley for a presentation of the preliminary Capital Funding Analysis prepared by Davenport & company, LLC., for the Town of Apex's Capital Improvement Plan (CIP), which is attached and incorporated as a part of the official minutes, and having been reviewed by the Finance Committee, noted the major capital expenses over the upcoming years.

Analysis covered goals and objectives, existing debt service, decline in debt service, payout ratio for current debt with 67% of debt to be paid over next 10 years, (noted: what most rating agencies review; anything over 50% is good financial planning within 10 years and will be considered in calculations for new debt); existing debt ratios NC benchmarks, ratio in comparison to growth, and total debt expenditures, and key assumptions using annual growth rate of 4% and current tax rate of \$0.40; \$7 million is available for capital outlay and/or debt service, however \$4 million will be allocated to capital reserve fund.



Case 1 scenario examines financial requirements for approved 2004 bond projects, key borrowing assumptions show amortization over 20 years at a 5.50% interest rate, and preliminary funding analysis with no tax impact associated with 2004 referendum projects, showing payout ratio and debt ratios. General Fund revenue levels along with annual draws from capital reserve would be sufficient to service the debt associated with these projects without a rate of tax increase. Projects have come in over budget, causing the list to be reconfigured and shows the remaining major projects.

Case 2 scenario adds additional projects or \$10 million; key borrowing assumptions, preliminary funding analysis showing growth in Town's tax base assuming use of one-fourth of the growth to pay for debt and the rest for other projects—he stated all projects can't be done without some sort of tax increase at that point; several scenarios were considered, and staff and Finance Committee felt this was the most palatable; higher level of debt would cause need to increase tax rate by \$0.0319 in FY 2008-09 to achieve sufficient revenues to pay those debts. Council Member Jones stated Finance Committee looked at several options of using more reserve funds and didn't think it a good idea to use more of the reserve funds, and didn't have much of an impact on the amount of tax increase needed, and puts them in a less favorable position for selling bonds in the first place. Finance Committee viewed this as the most favorable or less favorable option, whichever way they wanted to put it. Noted: expenditures exceeded revenues by \$2 million last fiscal year and due to the Peakway project and Performing Arts Center project. Payout ratios and debt ratios were noted.

Mayor Weatherly clarified with Council Member Jones that if they wanted to proceed with capital spending talked about during the annual retreat, and since that time to pursue all those wants/needs are looking at a \$0.03 increase in the next FY budget. Council Member Jones noted it effective simultaneously with the County re-evaluation and recommended this for next years budget to factor all of this in at one time, not having tax up one year and down the next. The Finance Committee's major concerns were those items in the bond referendum related to transportation and noted, still would not require an increase in tax for those items, but to do the other items, transportation, parks, fire station and police station, this is how the Finance Committee endorsed the option to pay for them however no action was required to be taken by Council now.

Council Member Schulze asked the rate of increase in expenditures vs. rate of increase in revenues (Expenditures - page 22); tax rate has not been changed since 2000. Mayor Weatherly stated the Town had been revenue neutral for the last twenty years. Council Member Jensen stating revenue neutral increases your tax rate because inflation had not been considered and puts a harder burden on staff to make things balance.

Council Member Schulze added, they would hit the point where you can't afford to generate more revenues, and wanted to see this. Mayor Weatherly responded revenues were going up with; growth contributed to the tax base; he doesn't know anyone that has an inflation escalator in the budget, and didn't know that it's appropriate to do that and as long as you are growing, with economic development, should take care of inflation. Smiley noted the past five years, the average had been based on 7% growth, and the Board had set a 4% population growth rate and was using 4% in their calculations.

Mayor Weatherly stated, either they would have to increase taxes to fund the expenditures or cut expenditures, asking which things Council may want to cut out. Street widening are big chunks, but where the big bucks are. Mayor Weatherly turned to Council Member Gossage asking his opinion. He responded he didn't know that he liked looking at two options; when looking during the retreat were presented three or four options; taking two or three items out. Mayor Weatherly was willing to take any options he felt appropriate. Council Member Jones noted they were under the assumption that everything identified would be funded, and if we pull something out then that becomes the next option. Council Member Gossage responded everyone was looking at the same thing and there's a big expenditure with the police station and some smaller projects.

Mayor Weatherly stated he thought what the Finance Committee and staff is asking is for another endorsement in these projects, knowing what we are doing when we go forward. Council Member Jones stated if they move forward with this, as Council Member Sutton called it, "the big elephant is coming soon", and this is the consequence they would have to make; a matter of making one decision before the other, but at some point in the coming months have to make a decision. Mayor Weatherly agreed, and added it's obviously good to know before they take the step of letting contracts, and such, but he didn't want to get to the point when you get to next year's budget and the Manager gives us \$0.03 or whatever it happens to be at that time, and then to get cold feet, they would be in serious difficulty.

Manager Radford added that the reason for this discussion was that he was asking for direction, noting all these items discussed in past retreats; and that in the past retreat Council endorsed the police station, to the exception of all others, stating one thing they could do and would do if they had the money, would be to build the police station because of its antiquated nature and was not built for a police station, and subsequently has served itself as well as it could as a police station, but now is busting at the seams; wanted to lay out a plan for the next 15 to 18 years, before anything else has to be done to it, and now wanted Council to re-endorse their commitment for the police facility.



Worksession continued

Mayor Weatherly added that everyone knows how much he loves to say that Apex has the lowest tax rate, but the biggest expenditure is public safety police and fire, and one thing we can justify for increased spending, it's not for the frills, but for necessity, the basic service that municipalities provide is police and fire protection; as long as we are satisfied we need that expansion, and those additional facilities, and he frankly doesn't think they can back up on those two things. He further thinks the number one thing the citizens talk about every day is roads; as far as being able to justify public safety, certainly, he wouldn't have a problem with being able to justify that.

Council Member Gossage responded, he thinks it's the price tag on that one item; you look at it... with Mayor Weatherly interjecting, they had went over it and kind of late to say, the police department... with Council Member Gossage interjecting that he guesses the third option for him, and he's not sure quite how much is coming out of general fund revenues where the Finance Committee decided, their uncomfortableness in passing a certain dollar amount, not knowing what that dollar amount was, where he said they didn't want to take too much out of general fund for projects.

Council Member Jones stated \$7 million is available in that fund, this amount assumes \$4 million over the next ten years; Mayor Weatherly noted fund balance over the 8% required to have. Smiley added the whole \$7 million is over the percentage is over the 8% that you are required to have. Mayor Weatherly added the point was that they gobbled up \$2 million in the previous year, of fund balance expenditures, with Manager Radford noted by budget amendment, with Mayor Weatherly continuing they can't keep going in that direction very long. Council Member Gossage added a third option, to say the Finance Committee set a benchmark at \$4 million; what if its \$5 million or \$3 million... where does the, with Council Member Jones adding they did run those numbers, with Smiley adding they did and could actually give him those numbers. Mayor Weatherly stated he wanted to understand this, they spent \$2 million more than they made last year and if they are talking about spending \$4 million in this, then that would be next year presumably would be more in the hole, with Council Member Gossage interjecting, that's not in the hole, with the Mayor continuing that once they spend it all we have no where to go. Council Member Gossage added it was ok to earmark those funds to be used for projects, that's alright, and one of the reasons we have that money. Mayor Weatherly added we have big projects down the road, not knowing how we are going to fund the water and sewer deal, with the Manager adding, that's funded through water and sewer.

Council Member Jones added, that's a separate budget, but the issue is even with this list of \$23 million in projects, paid over twenty years something else will come up in the next five or ten years and will need some capital for... with Council Member Gossage understanding, with Council Member Jones adding not going through the whole \$7 million and risk not having annual balances to move to the general fund reserved, just didn't think it was the right thing to do. Council Member Jensen added plus concern to keep our bond rating, keep more than a minimum amount of money in reserve.

Mayor Weatherly asked if they want to talk about bond rating. Bob High, Davenport & Company, addressed the town's financial rating, noting fund balance at 8% or 10%, in the last report made reference that town maintained a reasonable amount of fund balance however reduced that in recent years; but currently actually below what an average city of this size in the state of North Carolina would be and are at that point, not critical at this point, still having an adequate amount of fund balance and comfortable using the \$4 million; but actually want to try to build it up after pulling the \$4 million out. The 8% level the State recommends is tied primarily to a tax levying government (cash flow money and not much safety in that money); taxes come in December and the town's year ends June 30 when you get the amount of fund balance, but bills keeping having to be paid from June 30 until tax money comes in; not an even flow of money, so when you let fund balance go below 8%, you start struggling to pay bills on a timely basis.

Mayor Weatherly stated he had said if we pull \$4 million out, then next year they need to start accumulating additional fund balance, other words not spending as much as we make, after this year, and can't spend it all after this expenditure of the \$4 million, and not only do we not anymore than that, have to be prudent and more frugal in our operation budget. High stated a little more conservative in the budget and hopefully build up; you're at a safe level, but thinks they would want it to be on the incline and not on the decline at that point. Council Member Sutton addressed the 4% growth rate on the assessed tax value, noting 5 year growth over 7% and thinking it would make a big difference with 7%. High responded it would help some, but most of the tax impact relates to earlier years; remembering in local government, debt service is coming down so the initial years after you issue the debt is where you feel the biggest impact. You create debt capacity, but also growth rate just because you are growing at a fast rate, the rate of increase is going to stop because the base is getting so big now, and expects that would slow down by nature the raw percentage number. Number two, when you are planning that far out, when you have a strong growth rate as the town does, you are more at risk if the interest rates go up to 10% what's the growth rate going to be, or if the credit problem continues, and no body can borrow money, what's the growth rate going to be. You have more room to suffer if your growth doesn't come in; if someone has a 2% growth rate and they budget 2%, if the economy goes down, which historically has about every 10 years. The last time the state borrowed money, they took your money as he remembered.



Worksession continued

Council Member Sutton verified the 4% is a very conservative figure, with High responding it is, but when looking at growth rate on a fast growing community, risk is so strong that it's going to slow down on us. Council Member Sutton addressed the chart of operating expenditures, assuming growth rate of 5% and over the last five years grown over 14%. High responded you are hoping to control those expenditures and are at a point now when you should be stabilizing and can't grow faster than revenues. Expenditures at some point will stop growing if your revenues don't grow. That number, doing debt to expenditures, the reason to look at expenditures is to what extent your expenditures will be tied up in debt service, and a conservative way to look at this. Council Member Sutton asked if 5% was conservative, with High responding correct; if you have 10% growth then the ratio would look better, and debt would be a lower percentage than expenditures; by having the number lower makes the projections more conservative. Council Member Sutton still felt like they are spending at a more rapid rate than growing in revenue. High stated two taxes in our state that does not grow from inflation, and seeing the effects of both, the highway gas tax, and back in the 80's put in a small piece to grow with the price of gasoline, most of that per gallon, the more gas used the more tax revenue we get, but that covers increased usage of the highway; you have price per gallon so no inflation, and highway construction cost has gone out the roof, so it's a self-destructing program to start with. Mayor Weatherly stated we have the highest gas tax in the southeast, maybe even a larger region than that. High continued, it's not a growth tax, so eventually you are in trouble again, so you can't maintain growth; another is property tax; with sales tax you get more people and they buy more stuff and prices go up, and you get more taxes; you get growth and inflation on income tax. More people pay tax, income goes up getting it both ways; that's why the state took the growing revenues.

Council Member Schulze noted cost of the Peakway assuming this was with the bridge.

Council Member Sutton asked if they had to let the Police Chief now he could go out for bid; the Manager responded yes, with the Mayor noting this the big ticket item, having already endorsed that more than once; it's speak now or forever hold your piece time. Council Member Sutton stated he wanted the Finance Committee to talk about this because he felt the town was in for a tax increase to do all the projects and wanted to know this up front before approving a project where we are going. He's not afraid to approve it based on this, he wanted to know.

Mayor Weatherly again stated, anything else other than police and fire, both huge things \$6.8 million, thinks they have been over that with a fine tooth comb and not second guess.... With Council Member Sutton interjecting the Peakway Bridge, we said we would do, with Mayor Weatherly continuing would have to do that sooner or later, and sooner would cost less than later.

Council Member Jones stated in looking at the Police Station looked at other locations, splitting up the operations, and we all agreed this was the right way to do it. Manager Radford addressed the Mayor, stating they had not talked about what tax assessors say about values, noting some inside the beltline values had increased 100% higher for commercial; he anticipates in excess of 30% increase in residential values in Apex in order to provide for the revenue increases may be able to reduce rate and still pay for this, but of course that is still a tax increase.

Mayor Weatherly insisted they be honest with the citizens and say this will be the same revenue as \$0.40 under the 2007 tax rate and this will be the tax rate if we maintain the revenue neutral and this is what we anticipate setting it at, which will be an effective increase; we need to be honest with folks and not hide one as far as he's concerned. We are now talking about being able to justify this, and if anybody thinks they can't justify it, these capital expenditures, that will cause that increase, let's talk about that now, and that's what Council Member Sutton is saying, let's talk about it now and not wait until June and we get into a discussion and then somebody says, well I'm going to oppose the tax increase, but what they had done all along is effectively supported a tax increase because they know on this date, unless they speak now, what we are doing. Manager Radford stated this would translate to approximately \$80 per household on a \$200,000 home. Mayor Weatherly stated the County would get everyone again, 4.7% with the school bond referendum passed, about another 4% on the next bond, to say \$80 and then the County says this is only another \$20 on a \$200,000 home, and then its only on top of another \$20, and another, with Council Member Gossage saying it all starts to add up, and our \$80 on top of that and he does have concerns about this. Mayor Weatherly continued anyone bring us something to cut those expenditures down where we don't have to raise taxes. He asked if they wanted to continue this discussion at the next meeting and put it on the table, it's either put up or shut up time; to either say, I don't believe we need a police station, and say why not, and we don't need whatever, could be other things, we may not need leaf pick up service on leaves and grass.

Council Member Jones added they need to keep in mind that this is the Capital Improvement Program and its effect on the tax rate; its assuming all other things remain equal, the operating budget stays what it is; there may be ups and downs in the operating budget on an annual basis, but this is strictly to pay the debt for this capital.

Council Member Schulze asked about the land acquisition; it was noted the property next to the Kelly Road School site, Apex Barbecue Road – 15 acres; the only one with a precise number on it. Attorney Fordham advised that if they do not want to do this one, he needs to know very quickly. Council Member Jones stated they had already voted on that one.



Mayor Weatherly stated no body, very few of them would say they embrace a tax increase without some feeling of remorse, but to say you oppose a tax increase but then don't enunciate the things you would cut out from that is being disingenuous and was pleading with the board now, to come forward and either say they need two weeks to think about this, or come forward, because basically by your silence you are endorsing that and will be held for that commitment next budget time. He thinks some of them may be looking at waiting until next year and decide to think about it then, they need to think about it now.

Council Member Jones stated philosophically, he agreed with him, but reminded all this was for the Capital Improvements Program and can't sit there and tell him that he's not supporting or will support a tax increase that may not have anything to do with this Capital Improvements Program, knowing what operating budget will be brought to them next spring. Manager Radford stated this is purely about capital budget. Council Member Jones continued if something changes and we have to have, making it up, a bunch of firemen, then that will have an expense that will be separate from this. Mayor Weatherly noted that's an increase, not talking a decrease, with Council Member Jones agreeing. Mayor Weatherly asked the debt service again for this \$23 million, an annual budget that we would have to cut to stay revenue neutral on the spending side. Smiley responded at the peak would be \$2.3 or \$2.4 million. The Mayor continued so out of the operating budget, to extend the argument one step further better be thinking about cutting \$2.5 million out of leaf collections, with Smiley interjecting he had looked at the wrong page and it was \$3.4 million, with the Mayor continuing that now they would be cutting into the recreation department staff and everything else. Smiley commented they had gone through several different variations of this report, one the Manager had gone through and taken an axe the list and cut out everything that he thought the town could possibly live without and knocked out roughly \$4 million or so from it; there's still a tax increase; its smaller – he's looked at 20 versions, but was roughly 2.3 or 2.4 cents or so, but it's still there. As long as the bridge, police station and fire station are on this list, you can't get it to zero. Mayor Weatherly continued that the things they had talked about at the retreat for operational budgets were staff, the most critical need, and made a modest contribution to that but not things discussed at the retreat, and Manager came to us and said again were doing a bear bones budget keeping things neutral; the things he was telling them about things in the budget that were operational that would cause a tax increase just to get the things that he thought were necessary, but was able to pare that down; we are facing a serious delimea; what he was talking about is probably not realistic.... With Council Member Jones responding that what he was saying was that there are other factors they need to consider; he's trying to clarify their assumption is that three-fourths (or seventy-five percent) of the growth in our tax base goes to the operating column and twenty-five percent of it is used for capital debt; still there are some unknowns.

Council Member Schulze wanted more clarification, he wanted to wait two weeks to do more analysis, and sees this going towards some sort of compromise to have some degree of a tax increase and may have to decrease the expenditures a bit. He continued they have talked about more unexpected taxes, the County re-evaluation on peoples properties, school taxes, bond referendum, and any other taxes that may cause an increase; he would like to see a complete package of what a typical Apex citizen would expect not only our taxes, but what other expected taxes increases; the impact on them. Manager Radford responded he's not sure they could give him an accurate forecast, with Council Member Schulze not saying accurate but he didn't even know what kind of taxes they want to charge, with Manager Radford saying he could give him that now if he didn't want accurate; asked if what he wanted was by category and not by amount, because he couldn't speculate on changes; there could have been a question of the legislature on sales tax. Mayor Weatherly stated we don't have any impact on what the County and the State will do; the re-evaluation doesn't cause an increase in tax; Manager Radford stated you are making modifications to the rates. Council Member Gossage added could have a rate decrease that reflects with Mayor Weatherly interjecting revenue neutral, the county and municipality will then set a tax rate after that evaluation, so it's up to us, after the County Commissioners to determine if there's an increase. Council Member Gossage asked when this was, with Mayor Weatherly stating the effects will be in the FY-08 budget next June, with Smiley agreeing. Council Member Gossage asked when we know what the re-evaluation will be, with Manager Radford stating required by law, January 1. Smiley stated the County anticipates mailing out the notices in November, with the Manager stating you will get the re-evaluation amount in the next three weeks or so. Council Member Gossage stated he respected Council Member Schulze's thinking in two weeks or so will have had time to take into consideration all material, but this is the results of two Finance Committee meetings, and four/six weeks of a professional firm, so he certainly respects his rights to keep tabs on things for several months, even if things progress in a direction we like. It certainly wouldn't tie their hands at any point in time, with Mayor Weatherly interjecting, yes, but don't miss the point that they are bringing forth tonight, is that these projects are not going to go away unless you make them go away. They will be reflected in a tax rate next July 1, with someone saying the police building, with Mayor Weatherly continuing that unless he says some of the projects should go away, they will be staring us right in the face, the third Tuesday of June 08 and reflected in the tax rate that we will be forced to adopt, so it's up to you and the rest of them to say no, we can't stand this level of spending because we want the tax rate to be thus and such or go forward; as we let contracts to build, that is a self-fulfilling prophecy.



Manager Radford stated he needed some direction very, very soon regarding the police station. He didn't have a problem with two weeks, but can't go much longer than that, with the situation he's in, based on the fact that architectural drawings are ready to come out and need to put this thing on the street and need to be able to bid it, put it to construction in the very early spring when prime construction weather comes, and there are a lot of factors to consider. Council Member Jones stated if he had construction documents ready to distribute for bids, they have spent 90% of their design money anyway, so a decision in two weeks will not make any difference; he suggested going ahead and proceeding with the bid opening, bring Council a price, which he has to do anyway. Manager Radford was satisfied with this. Council Member Schulze stated he didn't see himself changing his mind on the police station. Council Member Jones added they had spent the money they are going to spend between the now and the time they award the bid anyway for design. Council Member Jensen added they were basing the change on what they think the police station will cost, and really don't know. Council Member Jones didn't think it could be much less, maybe a bit more. Manager Radford asked if he could take this as direction. Council Member Schulze stated he was ok with this. Council Member Jones stated his point was, why should they wait two weeks to get an endorsement, if you've gone this far and based on Council's previous endorsements, go ahead and have a bid opening. Council Member Schulze responded he was ok with this.

Mayor Weatherly reminded them they were in a work session could surely take a straw vote, make sure they are all things we can afford, and if you need some direction basically more than just a nod or silence, lets see where everybody is individually. He will vote first and says we need to proceed with the Capital Improvement Program as they have discussed for a long time, and certainly the big ticket item are those two, public safety stations, and he's supportive of both of them.

Council Member Sutton stated he was going to vote for the police station, as it would trigger the tax increase which will be less than \$10 a month; he thinks people are hung up on the idea of a tax increase, but the actual cost is less than \$10 a month. Mayor Weatherly took Council Member Suttons comments as a yes.

Council Member Schulze stated he doesn't want to see a tax increase, but thinks they are forced to do one; as far as expenditures go the really high ticketed items, they are one step behind, so, he could probably scale this back a little bit, but probably not anything significant, certainly not enough to make us not have a tax increase, and why he had said a compromise may be in order. He didn't want to say he was 100% behind this full list of items, but he's certainly behind the list of big ticketed items: fire station, police station, the park – Seymour Park, those will be nice parks and thinks we need to look at the future, so anywhere he could cut on this list probably want amount to anything significant.

Council Member Gossage stated he would certainly like to have seen at least another option; was not 100% behind everything on the list, and is certainly going to reserve the right in the future to continue to evaluate our budgets and our tax rate, but obviously very much in favor of approving our public safety infrastructures; so, it sounds like we have passed the point of no return kind of on the police station; we don't have money to redesign; so it sounds like we go forward with this, at least on the police station.

Council Member Jensen stated he agreed to the need of our public safety aspect of this, and certainly folks want better roads here; he always tends to gulp when they are fixing Department of Transportation roads, it's a situation where if we don't fix them, we are not going to have them fixed ever and we have the I-540 delimea within our town; growth is not free and is what we are looking at, the cost of growth here, and it would be nice to make it revenue neutral in terms of growth, but that's not going to happen with the powers that we have. He doesn't like to see tax increases either, but the plus side of this is that the tax increase they are asking for is not to run the town, its to get physical structures in place that have a return on peoples quality of life and thinks that's what we are looking at. As Council Member Sutton had said, its \$10.00 to \$12.00 a month on a \$200,000 house; he didn't know if that was the average for Apex or not, thinking Apex is up a bit \$15.00 a month. We have police service that is efficient because we have a police station, that's the dividend we are going to have, a good police station, a physical facility we should get efficiency and probably cut half of our police force out with Council chuckling; he continued it does give us efficiency and thinks that's what we have to look at. We have to do the fire station because our rating is dependent on it, and if our rating goes down its going to cost our citizens more money than \$15.00 a month on their fire insurance. From a physical standpoint he thinks it's the thing to do, even though it's a hard stone to swallow.

Council Member Gossage stated he thinks we need to make sure we do provide tax payers with a rate decrease after the re-evaluation – the rate decrease, and if the Council in the next fiscal year decides to increase taxes that are for one time costs, then when those costs are paid for, that tax rate can be reconsidered.



Worksession continued

Mayor Weatherly stated that what the Manager was saying, 40 cent on the hundred next year will bring in 30% more, that's the estimate, the tax base will automatically overnight based on that re-evaluation be not \$2.5 billion, but \$2.5 billion times 30%, and then you put 40 cent to the 100 on that, and presto you are going to distract from tax payers 30% more revenue without doing anything, leaving the tax rate at 40 cents, and what we need to do is a 30% tax decrease, 30% of 40 cents. Council Member Jones noted another way to look at this is if a \$100,000.00 home brings in \$400.00 then \$400.00 on a \$130,000 home then what's the tax rate have to be, \$400.00 plus \$0.319, include that an you come up with the equivalent of 3% tax increase, with Mayor Weatherly agreeing, and doesn't think there's any question it will go down from \$0.40, its just how much down do we want to go, but it wouldn't be fair to say that's a tax decrease. Council Member Jones noted it's the tax rate fluctuation, with Mayor Weatherly agreeing.

Mayor Weatherly turned to Council Member Jones, Chair of the Finance Committee, asking what do they need to do. Council Member Jones responded he didn't know that they needed to do anything; its his opinion that all these items that is on the Capital Improvements Program are things Council has endorsed and that our citizens have asked them for, in transportation workshops, in parks and recreation master planning, and voted for them in the bond issue, the ones being talked about here, the fire station and police station, these are things we need to do.

Mayor Weatherly asked Manager Radford if he got the direction that he needed, with Manager Radford responding that he did, and expressed his appreciation. Mayor Weatherly noted this concludes the Worksession.

End of Worksession

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to discuss items related to condemnations as requested by Town Attorney Fordham. **Action:** Council Member Jones made the motion to move into Closed Session as requested. Council Member Gossage made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Schulze made the motion to move back into Regular Session at 9:15 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 Sutton made the motion to approve a Resolution Authorizing Eminent domain Proceedings Related to the Beaver Creek Commons Drive Extension Project for the Improvement of the Apex Street System. Council Member Jensen made the second to the motion. Motion carried unanimously. #07-1002-23

Action: Council Member Sutton made the motion to approve a Resolution Authorizing Eminent Domain Proceedings Related to the Beckwith Farms Sewer Project for the Improvement of the Apex Sewer System. Council Member Jones made the second to the motion. Motion carried unanimously. #07-1002-24

Council had a brief discussion regarding a potential to donate to Citizens for Apex Parks, the value of the donation and that it was the Second Century Campaign. No action was taken.

ADJOURNMENT

With no further business to come before the Council, Council Member Gossage made the motion to adjourn at 9:22 p.m. Council Member Jensen made the second to the motion. Motion carried unanimously.

The minutes of the October 2, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their October 16, 2007 meeting.

Georgia A. Evangelist, MMC
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

The Regular Meeting of the Apex Town Council was held on Tuesday, October 16, 2007, 7:00 p.m., in 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

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 the welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly presented a **Proclamation in Observance of Navy Week 2007**. Lieutenant Commander Pat Mallett, NC Navy Office, Community Outreach, Commander Aid Cox accompanied Rear-Admiral Gary Jones who received this Proclamation. Also accompanying the Admiral was the Admirals wife.

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. Manager Radford presented for Consent Item # 6, a substitute Yard Waste Service Agreement for consideration that amended the date in the Agreement to May 19, 2008. With no additional amendments to the Consent Agenda, Mayor Weatherly called for a motion for approval. **Action:** Council Member Gossage made the motion to approve the Consent Agenda. Council Member Jensen made the second to the motion. Motion carried unanimously.

1. Minutes and General Account of October 16, 2007 Council meeting.
2. Minutes and General Account of October 16, 2007 Council Closed Session (*recorded separately*).
3. Ordinance for Rezoning # 07RZ21, KCI Associates of NC, petitioner for property located at Herbert and Germaine Streets; rezone from Residential Agricultural (RA) to Medium Density located in the Small Town Character (STC) Overlay District and containing 1.36 acres. (*Approved by Council 09/04/07*).
4. Contract to purchase approximately 15 acres from Wake County Schools adjacent to the future E-32 Elementary School to be located on Apex Barbecue Road and to authorize Mayor to sign the Interlocal Agreement for Purchase and Development of a School and Other Public Facilities in Apex, NC.
5. Grant Contract # 383 between Town of Apex, and North Carolina Department of Environment and Natural Resources (DEHNR Recreational Trails Program) so Town can receive \$75,000 grant for Phase 1B of the Beaver Creek Greenway and authorization of the Mayor to sign the contracts on behalf of the Town.
6. Renewal of the Yard Waste Service Agreement with Highway 55 C&D Landfill, LLC. authorize Manager to execute Agreement.
7. Wake County Tax Report approved and accepted by Wake County Board of Commissioners in regular session October 1, 2007 for Town of Apex.
8. Cancellation of November 6, 2007 Apex Town Council Meeting (Election Day).

End of Consent Agenda

**REGULAR MEETING AGENDA**

The Regular Meeting Agenda was set as amended prior to taking action on the following items:

- 1) Attorney Fordham presented proposed Ordinance to Amend the Apex Town Code to allow electronic publications notice to Town's website for public hearings.

Action: Council Member Gossage made the motion to add to New Business Item # 6 the proposed Ordinance. Council Member Jones made the second to the motion. Motion carried unanimously.

- 2) Manager Radford presented proposed Ordinance regarding Town's Water Conservation Ordinance, and update regarding water drought and future water restrictions.

Action: Council Member Jones made the motion to add to Old Business Item # 1 the proposed Ordinance. Council Member Gossage made the second to the motion. Motion carried unanimously.

PUBLIC HEARINGS**Public Hearing # 01– Major Site Plan Old Mill Village Lot 1**

Planning Board met September 10, 2007 and voted to continue this hearing to their October 8, 2007 meeting per the Applicant's request; Planning Board met October 8, 2007 and voted unanimously for approval with conditions. Staff recommends approval with conditions. Council continued the public hearing from their September 18, 2007 meeting to this date.

Public hearing and possible motion regarding PUD Rezone and Amendment # 07CZ22 and Major Site Plan for Old Mill Village Lot 1 located within the Old Mill Village project, at the southeast corner of Mason Street and Old Raleigh Road. Apex First Development, LLC. is the owner, BBM Associates is the Applicant, requesting a rezone from Planned Commercial and Planned Unit Development Conditional Use to Planned Unit Development Conditional Zoning and Major Site Plan that includes 6 live/work condominiums, 34 condominiums on the upper floors of the main building, 10,800 square feet of retail and 7,000 square feet of office use on the ground floor.

Presenter: June Cowles, Senior Planner presented the staff report which is attached and incorporated as a part of the minutes, noting the applicant's request a rezone amendment for only Old Mill Village Lot 1 and a rezone on the small corner parcel from Planned Commercial to Planned Unit Development conditional Zoning. Building design, elevations, landscape, buffer, and screening requirements are included in the report. Lot 1 includes 0.28 acres on-site Resource Conservation Area (RCA) and 0.29 acres on off-site RCA; applicant proposes off-site RCA across from site and Apex Peakway; and consistent with the UDO; RCA will be 20 percent. Parks and Recreation Advisory Commission reviewed and unanimously recommended fee-in lieu based on density estimates at the PRAC meeting. Amendments to the existing PUD Plan include the following: Building height from three stories to four stories/60 feet, and Thoroughfare 20 foot wide Type D buffer to a Pedestrian-oriented streetscape buffer. This type buffer can be allowed in lieu of standard landscaped thoroughfare buffers when such buffers are located inside the Apex Peakway. Cowles expanded on save tree areas. Pedestrian-oriented streetscape buffer shall contain both hardscape elements such as but not limited to sidewalks, decorated lighting, street furniture, fountains, and street tree plantings which do not have to meet typical minimum island widths or sizes. Proposed is consistent with the Land Use Plan, the Transportation Plan and the UDO. PD Plan for Old Mill Village Lot 1 is attached.

Staff recommends approval of Old Mill Village Lot 1 PUD Plan Rezone Amendment and Major Site Plan with three additional conditions: 1) Off-site RCA shall be purchased prior to approval of Construction Plans. 2) Pedestrian lights shall include night-sky shields. 3) Applicant/owner shall work with planning staff on the streetscape buffer furniture, landscaping, and light design. Planning Board met October 8, 2007 and unanimously recommended approval with conditions (report attached).



Public Hearing # 01 continued

Mayor Weatherly opened the public hearing at 7:16 p.m. and speaking in favor:

James Allsbrook, representing Apex 1st Development and Old Mill Village Lot 1 stated he had met with staff and agrees to all three conditions and will continue to work with staff. Off-site RCA is proposed for the adjacent property at the future pool house and noted on the map the Old Raleigh Road right of way.

With no one speaking in opposition Mayor Weatherly closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve the PUD Plan Rezone and Amendment and Major Site Plan for Old Mill Village Lot 1. Council Member Sutton made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Public Hearing # 02– Major Site Plan for Beaver Creek Condominiums

Planning Board met October 8, 2007 and voted to continue this item to their November 5, 2007 meeting per the Applicant's request. Staff recommends continuance to the November 20, 2007 Council meeting.

Public hearing and possible motion regarding Major Site Plan for Beaver Creek Condominiums that includes 162 condominiums and recreation area located within Beaver Creek Crossing Shopping Center at Creekside Landing Drive; Shea Homes, petitioner.

Presenter: June Cowles, Senior Planner stated applicant requested continuance of the public hearing to the November 20, 2007 Council meeting. Planning Board met October 8, 2007 and recommended project be continued to their November 5, 2007 Planning Board meeting per the applicant's request.

Action: Council Member Gossage made the motion to continue this hearing to November 20, 2007 Council meeting as requested by applicant. Council Member Jensen made the second to the motion. Motion carried unanimously.

Public Hearing continued to November 20, 2007

Public Hearing # 03–Subdivision Plan and Special Use Permit for Germaine Street Subdivision

Planning Board met October 8, 2007 and unanimously recommended approval. Staff recommends approval.

Public hearing and possible motion regarding Subdivision Plan and Special Use Permit for Germaine Street Subdivision; CBL Property Group, petitioner, seeking approval for a major subdivision and Special Use Permit (requiring a public hearing) approval for a 14 lot subdivision that proposes 2 single-family homes and 12 detached Townhome lots with a density of 4.17 dwelling units per acre, and with shared or individual driveways, on 3.35 acres

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the staff report which is attached and incorporated as a part of the minutes, orienting to the vacant site adjacent to residential properties and located in the Small Town Character Overlay District at the north end of Germaine Street and Herbert Street, allowing permitted single family residential homes, with detached townhomes permitted as a Special Use, and noting current and adjacent zoning and land uses. Germaine Street stubs to property which is currently accessed via Herbert Street on the north. No RCA is required in Small Town Character Overlay District. Parks and Recreation: proposed plan is less than 35 acres, only a fee in lieu is required; no buffers are required; there will be save tree areas. Access: connect Germaine Street to Herbert Street; 5' dedication of right of way along Herbert Street to assist with increase of pavement width from 12 foot to 16 foot. Plan is consistent with Land Use Plan, UDO and Small Town Character Overlay District, and Transportation Plan. Planning Board met October 8, and unanimously recommended approval. Staff recommends approval of Germaine Street Subdivision Plan and Special Use Permit.



Mayor Weatherly opened the public hearing at 7:25 p.m. and speaking in favor:

Craig Lang, CBL Property Group, representing KCI Associates of NC, spoke in support of the request; he noted detached townhomes will have two-car garages at the rear.

With no one speaking in opposition, Mayor Weatherly closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve the Subdivision Plan and Special Use Permit for Germaine Street Subdivision. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 04— Transportation Plan Amendments

Planning Board met October 8, 2007 and recommends approval with condition. Staff recommends approval.

Public hearing and possible motion for approval of the Transportation Plan Amendments

Proposed amendments include and contained in the staff report: James Street Extension (to change Collector to Major Collector) Richardson Road/Mt. Zion Church Road/Bosco Road Extension (to change Collector to Major Collector), and amendment of the general designation "Collector" to "Minor Collector", and removal of Bodeswell Lane collector Street connection between Waterford Green and Buckingham.

Presenters: Candace Davis, Transportation Planner and Russell Dalton, Transportation Engineer
Davis presented the staff report which is attached and incorporated as a part of the minutes explaining the proposed amendments shown in the attached diagrams, to ensure the thoroughfare and collector street system is adequate for Town's future growth and planned land uses, with extended explanations contained in the staff report. It was noted: Bosco Road crosses the Old US1 and connects other thoroughfares and major collectors (CSX no longer allows connectors across their tracts).

Council Member Jensen shared concern with the proposed locations and concern of splitting properties. Davis explained the lines are drawn for consideration and not intended to occur at the specific lines. Council Member Jensen hopes the lines would be more closely to where they will be located, if he were a property owner, would have concerns. Dianne Khin, Director of Planning, explained the lines are on the current approved plan; that Bosco Road is on the plan as well as a Collector Street, and crosses the railroad tracts, and staff sees this as a higher level road and proposes upgrade to a Major Collector.

Planning Board met October 8, 2007 and recommended approval by a six to one vote and endorsed the proposed updates to the Thoroughfare and Collector Street plan map with one condition. In regards to the removal of the Bodeswell Lane Extension to Buckingham Way, the Planning Board would like for the new location Minor Collector between Watersglen Drive and Buckingham Way to be changed to a proposed Multi-Use Path and added to our Bicycle pedestrian and Equestrian Plan. Mayor Weatherly called attention to the fact that this is currently used as a pedestrian connection and had been discussed at Planning Board. Council Member Jensen approved of this idea and had heard this property may be for sale, and further noted if the property sells, should negotiate with the next person and make the adjustment. Council Member Jones noted the land use was not a part of this public hearing, only the change to the plan. Staff asked Council to approve the updates to the Thoroughfare and Collector Street Plan map.

Mayor Weatherly opened the public hearing at 7:32 p.m. and with no one addressing the proposed amendments, closed the public hearing, and called for a motion.



Council Member Gossage asked for clarification on the six to one vote of the Planning Board, with Khin explaining the one opposing vote wanted Bodeswell Lane connected. Mayor Weatherly further expressed concern regarding the connection of Waterford Green and Buckingham, calling for firm stipulation that the town does not plan to condemn or acquire and did not want to send the signal contrary to this intention, not being opposed to the acquire issue, but become a public path if can be acquired. He saw no issue if the transition was with a willing buyer or seller, and may be up for sale. Council Member Jones noted the plan shows the path through various properties, maybe roads or greenways at some point, whatever the town wants there to be, but not by eminent domain. Council Member Jensen commented there was a dedicated easement for a greenway in Buckingham Subdivision, noting the powerline location, and not being able to build there.

Action: Council Member Jones made the motion to approve the proposed changes to the Collector Street Plan and transportation amendments, including the change of the minor collector and removal of Bodeswell Lane Collector between Waterford Green to Buckingham Way, for a proposed multi-use path. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

Public Hearing # 05– Unified Development Ordinance Amendments

Planning Board met October 8, 2007 and voted unanimously to approve the amendments. Staff recommends approval. Public hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance (UDO): Removing details and referring to Town of Apex Standard Specifications and Construction Details; maintenance of fences; moving accessory structure standards to Measurements section; adding and defining Land Clearing and Inert Debris Landfill as a Special Use; adding specific uses to Building Supplies, Retail; and permitting Building Supplies, Wholesale in the Tech/ Flex District.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the staff report and explained the proposed UDO amendments which is attached and incorporated as a part of the minutes. Specific discussion was heard regarding Sections 7, 8, 9, 10, and 11 addressing the definition of Inert Debris (materials such as brick, concrete, rock, and clean soil), Article 12; new definition of Land-Clearing Debris (solid waste that is generated solely from land-clearing activities such as stumps, trees, etc), Article 12, and adding both to the Utilities Section of the Use Classification, and adding Land Clearing and Inert Debris Landfill as a Special Use in the Light Industrial District; noted conditions can be added to special use permits, and often comes with timing, and could look at adding hours of operations to the standards. Council Member Jones added in talking about pre-existing uses, may be more appropriate to consider them within the noise ordinance and could discuss this later. Planning Board met October 8, 2007 and unanimously recommended approval. Staff recommends approval.

Council Member Sutton asked the status in regards to addressing clear-cut and selective grading. Council Member Schulze responded it is being discussed in Planning Committee and will move to Planning Board and then to Council. Street trees will further be investigated by staff and move to the Planning Committee.



Mayor Weatherly opened the Public Hearing at 7:45 p.m.

Deborah Lanuti addressed concerns with the stump dump, relating to fire prevention, calling attention to the recent burning stump dump in Johnston County and asking how many would be allowed and if there were evaluation for Light Industrial properties around it, calling attention to the EQ Fire event. Khin responded there are two in the ETJ, one being where the Town sends yard waste, and special use permitted with Wake County; any new sites would go through the property permitting process.

With no further comments Mayor Weatherly closed the Public hearing and called for a motion regarding the proposed amendments to the UDO.

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

End of Public Hearings

OLD BUSINESS

Old Business Item # 01 –Water Conservation Ordinance

Manager Radford gave an update on the Town's water status, noting there was a 150 day supply with no additional rain carrying the Town through March 16, 2008. He noted large numbers of citizen phone calls regarding need to conserve water. He presented an amendment to Town's Water Conservation Ordinance proposing the following, as Apex and North Carolina is experiencing a prolonged period of less than normal precipitation:

No Town of Apex municipal water shall be used for exterior watering or irrigation by means of automatic devices, sprinklers, soaker hoses or other similar devices. This prohibition shall not apply for the next 30 days to exterior watering or irrigation pursuant to a Town permit already issued in order to establish lawns or other landscaping. Handheld or bucket watering is not prohibited.

All exterior fountains that use Town of Apex municipal water shall be turned off until the repeal of this Ordinance.

He did not recommend eliminating power washing and car washing due to businesses that rely on this for their work. Attorney Fordham had ruled they could not differentiate between business and person being able to power wash or car wash. Mayor Weatherly commented on Raleigh's policy for no car washing of personal cars, exception for buses, noting the Governor having made a big deal about dirty cars. He respected Attorney Fordham's ruling to avoid legal issues, by not drawing that distinction and at this point would air on the side of caution, noting this was use and loss of water issue, and not distinction. He deferred to Council to resolve this issue, and as far as drawing categories, regardless of business or private can add later private car washing being banned. Mayor Weatherly feels strongly drought affects the livelihood and unnecessary use of water is prohibited. Manager Radford asked for Council's action adopting the proposed amendments to the Town's Water Conservation Ordinance. It was noted that fountain water evaporates and reasons for them to be turned off.

Discussion continued regarding the band of all irrigation, and the landscape permits, allowing those 70 permitted to keep those in play for 30 days, and no additional permits issued after the effective date of this ordinance, which was suggested by the Manager, Friday, October 19, 2007.



Violations were discussed, noting the first warning comes in writing, and the second warning carries a \$50 fine up to \$1000 for repeat offenders. Michael Deaton, Director of Environmental Programs, stated staff is tracking daily violations, and responds to each complaint received and have found five in violation. Manager Radford noted police patrol have reported individuals watering at 3:00 a.m.

Council Member Gossage asked if the restrictions were in line with Cary, not wanting to cause confusion. Manager Radford had spoken to Cary officials and will forward this proposal over to Cary for their consideration.

Mayor Weatherly wanted to heighten awareness of the stricter rules and warnings, and proposes a formal ordinance amendment to enforce increased sanctions. Manager Radford agreed with getting the message out and heightening awareness, with the goal to get folks in compliance and their awareness of the significance of conservation. Mayor Weatherly noted if folks are not aware by now, they will never be. Council Member Jensen and Council Member Gossage commented on the penalty structure. Attorney Fordham advised a special meeting date could be set to consider a written ordinance to amend the existing ordinance. He offered his willingness to draft an ordinance for consideration prior to the end of the meeting. Mayor Weatherly suggested moving on with the Agenda and coming back to this item.

Council Member Jensen commented on the shallowness of reservoirs and the possibility of having them dug out further; he has written to the Corp of Engineers and has figured calculations, and would average \$2000 per household; he believes this to have merit as when you go deeper you don't lose water, and offers a better quality of water. He suggested connecting with Raleigh and Cary regarding such a program and encouraging folks to look ahead, and allowing Corp of Engineers to evaluate the environmental impacts.

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.

Jim Oxford, 2532B Hwy 64 west, addressed needs for folks in the ETJ that had functioned in the county previously:

- 1) Grading of lots without a site plan, rural folks have no clue for what future land holds, talked about a balance in lots, asking for some form of permit process, tree surveys, all things addressed as far as buffers, grading and environmental restraints.
- 2) Burn permits, and an ordinance set up for Fire Chief to oversee plans to burn in the ETJ, to inspect the site and offer permit for example pit burning, and radius from boundaries; leaves and brush and a safe and appropriate way to burn.

End of Public Forum

**NEW BUSINESS****New Business Item # 01 - Schieffelin Road Industrial Park Master Non-Residential Subdivision**

Planning Board met October 8, 2007 and unanimously recommended approval with condition.

Staff recommends approval with no reduction in buffer.

Possible motion regarding Schieffelin Industrial Park, Master Non-Residential Subdivision, Sigma Realty, LLC, applicant, proposing a 17 lot Industrial Park on 41.7 acres in the area of Schieffelin Road and Energy Drive area.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the Planning report which is attached and incorporated as a part of the minutes. She oriented to the site, noted adjacent zoning and land uses. Plan meets the requirements of the Transportation Plan with Energy Drive being extended through to Schieffelin Road; TIA has been submitted. Site will be mass graded for leveling of the site; staff discouraged this and recommended the proposal be brought to Council; lot is wooded, vacant, and with large stream. Plan meets UDO requirements for RCA, but does not meet requirements for perimeter buffers. Applicant requested 50% reduction in western buffer from 60' Type A buffer to 30' Type A buffer. Western buffer is adjacent to a residential neighborhood. Staff does not support a reduction in the buffer. Plan is consistent with 2010 Land Use Plan. Planning Board met October 8, 2007 and unanimously recommended approval with the following condition: Applicant will provide a 6' wooden fence with a 30' Type A buffer along the western property line. Staff recommends proposed Master Non-residential Subdivision with no reduction to the buffers.

Pete Clossen, Jones, Clossen Engineering, spoke in support of the request, and addressed the mass grade to level the site due to the topography to fill the lower side with the higher side of the site for the parking lot and building construction; he noted a substantial amount of stream buffer and RCA which was about one-third of the site, and there will be a substantial amount of tree save area, and will not grade in stream buffers, and showed on the map the amount of land that is wooded. He noted the request to reduce the buffer would be supplemented by the 6' high fence that would screen the industrial area from the subdivision. He stated adding the industrial base would benefit the Town in industrial tax base.

Council Member Jensen expressed concern with mass grading, even with the steep topography; he further addressed sedimentation ponds and ordinance amendment regarding this, desiring applicant comply with this upcoming ordinance change, asking Mike Deaton, Environmental Programs to report on the status of this ordinance, with Deaton stating this should be forth coming in November.

Council Member Sutton addressed buffer and fencing, noting this area was harder hit by EQ event, and felt 60' buffer was a better option for those homes, that was noted as rentals. Buffer area was discussed further, showing the location of pond there, noting the existing 30' buffer, with Council Member Jones commenting whether mass graded or not, it makes a difference on residents while it's being graded, and that visually there was not much vegetation there, and asking does 30' or 60' make a difference unless it's planted with Type A. It was noted a 10' setback with 60' or 30'.

Council Member Schulze addressed contact of the property owners regarding this plan, and Clossen noted property owners received letters and unsure if renters were contacted, but was presented in the preliminary plans in the public hearing and probably were not contacted. Dianne Khin, Director of Planning, noted legal notice were sent to property owners, however, are not required to send notice to tenants. Clossen noted the applicant owns the pond and rental property there and does know about the request for reduction in buffer, and believes some do know, and as far as the new duplex was unsure.



Council Member Jones addressed the landscape, with Cnossen responding he was following a landscape plan that was included; staff read the different types of plantings being used. Council Member Jensen would prefer Southern Magnolias or Leyland Cypress, something green all year round over Red Maples, Red Buds; there will also be Nellie Stevens and Carolina Pines planted. Cnossen stated he had no problem with changing out the plants to evergreen types, with Council Member Jensen commenting the town needs to require this all the time.

Council Member Schulze addressed the 30' buffer area, with Cnossen noting Lots 8 and 9 are the ones requiring buffer reductions from 60' to 30' and was because of the amount of usable land, and were trying to maximize the use, and leaving over 30% RCA, buffers and open space, and more than required in other areas, and the shape of the land makes this plan work. Council Member Jensen shared concern with a reduction to 30% buffer, because of the stream down the middle of the property and the site topography. Council Member Gossage offered maybe a compromise with one-third reduction in buffer or 33%, with the fence, and green plantings, with Cnossen adding it would be totally opaque buffer with the fence in place. Council Member Jensen commented on the building height, with the new duplex being one story, Cnossen noted the grade would lower the site.

Council Member Jensen addressed grade of the land, and the ordinance that will require sedimentation ponds during construction phase, two times the size, and reduction to retention ponds later. He would like to see them work with this if they are going to mass grade the site, and would also like for them to use the debris having it chipped on site, and put in areas to prevent erosion and be part of the mitigation for full grading of the site. He also would like to see the 25 year retention pond, and could be utilized in some area once they have seeded and have the parking, or used in some other area, as it protects the land, calling attention to the Seagroves Farm project and the concern raised regarding protection, wanting the chips to be used as an erosion control device, maybe with the plants. The Applicant responded that he was asking him to do things that are not required. Council Member Jensen responded long term, it may not cost him anything.

Mayor Weatherly stated the proposal was 40% reduction in buffer, and the 6' fence along the western boundary, and change of plants for evergreens to be planted. Cnossen was in agreement with this proposal. Mayor Weatherly called for a motion.

Action: Council Member Jensen made the motion to approve with the 30% reduction in buffer, the 6' fence, and evergreens being planted as the applicant had agreed to this and with sedimentation ponds during construction phase, and chipping materials on site to prevent on site erosion. There was no second to the motion with discussion following that the chipping and sedimentation goes beyond what is required. Mayor Weatherly asked if there was a new motion to be made.

Action: Council Member Sutton made the motion to approve the Schieffelin Industrial Park, Master Non-Residential Subdivision, with the 40' buffer, and the six foot fence along the western boundary, and for evergreen plantings. Council Member Jones added he felt we could encourage the 25 year storm standard to ensure run-off doesn't leave the site, and if Fowler was doing the grading, would strongly recommend it. Council Member Gossage commented on the change to the ordinance and encouraged to do so. Council Member Jensen commented probably would lose less than required. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen voting no. Motion carried.

End of New Business # 01

**New Business Item # 02 - James Street Station**

Planning Board met October 8, 2007 and recommended approval with conditions.

Staff recommends approval with conditions.

Possible motion regarding a Master Subdivision Plan for James Street Station Subdivision; New Freedom Ventures, LLC, petitioner, seeking approval of a 97 lot subdivision with a density of 3.24 dwelling units per acre, located in the area west of Apex Elementary School and south of S. Salem Street and the railroad tracks.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the Planning report which is attached and incorporated as a part of the minutes. She oriented to the site, gave adjacent zonings and land uses, giving existing conditions, with James Street becoming a major collector. Applicant will build out to 50 lots until they acquire a second connect. Second connection is proposed to be James Street connecting west through proposed Salem Village PUD and connection to Apex Peakway. Applicant has gone far in the review process when notified about upgrade of James Street to a Major Collector. Staff has agreed to work with applicant on finding solution to remove driveways from James Street. Staff has provided option of either alley access to lots on James Street or series of eyebrows along James Street. Applicant agrees to eyebrows and shared drives. TIA was submitted and reviewed for 97- single family homes; no new TIA will be required for build out. Summary of Traffic Impacts and Proposed Improvements are attached. RCA is 25%, with required RCA of 20%. Parks and Recreation recommendation for land dedication and fee in lieu to be used to off set the cost of the 14.7 acres purchased associated with E-32 Elementary School site planned for Apex Barbecue Road. Landscape, grading, and save tree areas are covered in the report. Plan is consistent with the 2025 Land Use Plan, the UDO, and Transportation Plan. Planning Board met October 8, 2007 and recommended approval with conditions presented by staff. Staff recommended approval of proposed Salem Street Station Subdivision with conditions: 1) There shall be no more than 50 COs issued until a secondary access point is obtained for subdivision. 2) Applicant agrees there will be limited driveways on James Street and agrees to work with staff to keep same number of residential lots while reconfiguring the layout along James Street. 3) Applicant understands that sewer availability is not guaranteed. Additional condition was added, 4) Prior to paving and improving James Street, off-site property shall be purchased to later be dedicated as public road right-of-way and sidewalk easement in accordance with the site plan prior to the first building permit. Russell Dalton Transportation Engineer commented on the additional condition: they don't control off-site, and wanted to make it clear property needs to be purchased before developing the subdivision, taxes are delinquent on this property, and can't locate owner, and the property sits until owner is found; eminent domain makes no difference, noting NCDOT had been sued before by property owners.

Council Member Schulze shared concern regarding the driveways, and was this it; there would not be a site plan. Mkhwanazi stated they had discussed shared driveways on the south; proposal is eyebrows along James Street, and applicant is prepared to do that, as unsure about alleys and garages; have discussed eyebrows, landscape islands in the middle. This property is already zoned high density single family, there would be no elevation plans, subdivision or site plan, it was all single family homes. Dianne Khin, Director of Planning explained subdivisions are not required to show elevations, it's not standard practice.

Don Gibbs, Santec Consulting Services, explained the plans for the subdivision, and noted there would be select grading and save tree areas. Council Member Sutton asked if they were comfortable to build with no guarantee of sewer. Gibbs responded yes.

**New Business # 02 continued**

Council Member Jensen recalled the denial of a subdivision to the west of this and the concern for access, and saw this as the same kind of situation but smaller, as they had directed the owner to get the Peak Way across the railroad tracts, and did not stand a chance; if they allow this subdivision and limit to 50 COs and its 45% developed, what's to stop Brown from coming back if approved this time, and get the same 45%. He felt they were setting precedent and with the traffic, Brown's was almost identical. Khin Explained Salem Village was not zoned however will come back; this property already was zoned and has rights toward this.

Council Member Jones expressed concern with the access, having 50 lots and the volume of traffic that would be by the school asking if there were mitigation for this, knowing the new piece would be a collector connection, and two lanes to Tingen; TIA was on disc and included in the agenda packet, however he had not looked at it. Dalton explained the collector street standards was two lanes, no curb/gutter in front of the school; looking at 100 units or 1000 daily trips is one-half of this; long term outside James Street connection with grade separation to the Peak Way, that more traffic was not a result of this development; 50 units adhere to the UDO conditions. He stated upgrade was a town project, and connection long term was off-site improvements, and can't put that on them. He stated the congestion at the school was all in about a 15 minute period, this development with 50 homes or 50 trips over a longer period and a fraction of school traffic. Mayor Weatherly asked if there were a motion.

Action: Council Member Jones made the motion to approve with the conditions stated by staff including the additional condition. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 02**New Business Item # 03 – Easement and Estoppel Related to Access Road**

Possible motion regarding request by Solid State Apex US1, LP (formerly known as Stone Hedge) for an Easement and Estoppel related to the access road between the Kangaroo Mart and Arby's on Highway 55 south of US1.

Presenter: Hank Fordham, Town Attorney, stated this item will be brought back November 20, 2007.

New Business # 03 continued to November 20, 2007.

New Business Item # 04 - Amend Section 14-33: Noise Ordinance

Possible motion regarding an amendment to the Apex Town Code Section 14-33: Noise Ordinance.

Presenter: Bruce Radford, Town Manager, presented an Ordinance to amend Section 14.-33 concerning prohibited noises, and referencing garbage truck pickup hour and business delivery hour complaints, some are asking for later beginnings. Waste Industries contract specifies 6 a.m. and would need to re-negotiate contract should this differ. Mayor Weatherly noted Waste Industries landfill operations begin at 7 a.m., with trucks full and waiting, adding to the efficiency of pickup. Discussion was heard regarding pros and cons. Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to approve the ordinance as amended concerning prohibited noises. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business # 04



New Business continued

New Business Item # 05- Western Area Plan Advisory Committee Members

Possible motion regarding appointments of the Western Area Plan Advisory Committee Members. Presenter: Dianne Khin Director of Planning presented for Council's approval Western Area Plan Advisory Committee Members, to study much of the ETJ west and southwest of I-540 corridor, with a majority being residential and knowing the direction of the Waste Water Treatment Plant is taking, and will be looking at areas for non-residential development, parks, schools, and a transportation plan for the area. She stated there would be workshops, and has hired Land Design, Charlotte, NC to work on the plan. Mayor Weatherly called for a motion to approve the appointees.

Action: Council Member Schulze made the motion to approve the appointments of the Western Area Plan Advisory Committee Members. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business # 05

New Business Item # 06 (Add on)

Ordinance Providing that Notice of Public Hearings May be Given by Electronic Means

Presenter: Attorney Hank Fordham, presented an Ordinance providing that notice of Public Hearings may be given by electronic means, authorized to the Town of Apex by legislative action. The UDO allows electronic advertising and has its own provisions, and this ordinance would cover all other public hearings under the same authority. Mayor Weatherly commented this was exclusive to public hearings, and asked if there were value to this, over the old fashion way. Manager Radford noted that sometimes the press omitted notices, and would have to start the process over again, and this meets the test, that the process can not be hampered, and an extreme savings in advertising costs. Staff will continue sending notices as dictated, and continue posting signage. Discussion continued regarding online notices, contacts by email. Mayor Weatherly called for a motion.

Action: Council Member Schulze made the motion to approve the Ordinance regarding electronic notices. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of New Business

Business Item # 01 continued

Council returned to consider a Water Conservation Ordinance. Attorney Fordham presented a draft amendment to the Water Conservation Ordinance for Council's consideration in order to conserve drinking water. Mayor Weatherly commented, citizens are waiting for them to take the position, and to move forward with conservation measures, sooner than later before this had become critical; looking at peak water users, volume used on mandated alternate water days, this does not eliminate hand or bucket watering; and should have had 30 more days if done earlier, and felt it prudent to bring this back; citizens anticipate it and is most important. Manager stated these measures could be shared with citizens through the media and press release, and with Cary doing the same will run on their local TV channel, and offered Apex to do the same. Attorney Fordham commented on various stages requiring action by Council for more stringent restrictions. It was discussed Code Red system could make a stronger point about the awareness; however not determined to use the minutes; Manager and Fire Chief have the right to do this if so choose to. Council Member Gossage commented on the use of the system, and its intent, not being a Code Red Alert, with the Manager commenting it's about how to write the message. Discussion of the effective date for the Ordinance led to an effective date of Friday, October 19, 2007. Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to approve the Water Conservation measures in the amendment to the Ordinance, effective Friday, October 19, 2007. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Old Business Item # 01



New Business continued

WORKSESSION

There were no Worksession items to be discussed.

CLOSED SESSION

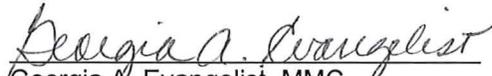
Mayor Weatherly called for a motion to move into Closed Session in regards to a personnel matter: routine review of Assistant Town Attorney compensation. Attorney Fordham asked to include legal advice regarding condemnations.

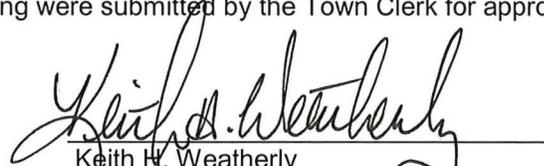
Action: Council Member Gossage made the motion to move into closed session at 9:15 p.m. for the items stated. Council Member Jones made the second to the motion. Motion carried unanimously. Minutes of Closed Session are recorded separately. **Action:** Council Member Gossage made the motion to move back into Regular Session at 9:40 p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Council, Council Member Gossage made the motion to adjourn at 9:41p.m. Council Member Schulze made the second to the motion. Motion carried unanimously.

The minutes of the October 16, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their November 20 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith W. Weatherly
Mayor

Note: The November 6, 2007 Town Council meeting is cancelled as this date is local Town Elections.

TOWN OF APEX, NORTH CAROLINA

Regular Meeting of the Apex Town Council scheduled for Tuesday, November 20, 2007, 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

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

Mayor Weatherly called the meeting to order and extended a welcome to those in attendance. Invocation was given by Council Member Jones. Pledge of Allegiance was led by Scout Troup # 205.

PRESENTATIONS

Mayor Weatherly presented a Proclamation endorsing the 2007 Scout Luminaria Project.

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 Jensen asked to pull Item 11 for separate consideration. **Action:** Council Member Jensen made the motion to consider Item 11 separately immediately following the consent agenda approval. 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 amended. Council Member Schulze made the second to the motion. Motion carried unanimously to approve the Consent Agenda with the exception of Item 11.

1. Minutes and General Account of October 16, 2007 Council meeting.
2. Minutes and General Account of October 16, 2007 Council Closed Session (*recorded separately*).
3. Findings of Fact, Conclusions of Law and regarding Special Use Permit #07SUP04, CBL, Property Group, petitioner, for the property located off Germaine Street.
4. Annexation Petition # 420, Apex First Development, LLC., and NCII, L.P., and KC2 Enterprises, LLC, (Trackside) owners/petitioners, petitioning to annex 131.54 acres into the Town's corporate limits and located South of US64, North of Hunter Street, and East of North Salem Street, and west of CSX railroad right-of-way; 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a Public Hearing for December 18, 2007.
5. Annexation Petition # 422, Kite Realty Peakway at 55, LLC; Jean Sutton Hack, owners/petitioners, petitioning to annex 138.455 acres into the Town's Corporate limits and located off E. Williams Street (NC Hwy 55) and US1; 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set a Public Hearing for December 4, 2007.
6. Annexation Petition # 423, Wake Acquisitions, LLC; owners/petitioners, petitioning to annex 1.959 acres into the Town's Corporate limits and located south of Reunion Creek Parkway, and east of Eddie Creek Drive and E. Williams Street (NC Hwy 55) and known as 84 Lumber; 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution to set Public Hearing December 18, 2007.
7. Request transfer of Cemetery Lots: Section 132 Plots G&H Apex Town Cemetery from Louis and Joanne Johnson to Mary Lou Breedlove.
8. Allow Fire Chief to sign Certification of Fire Protection emergency support document for Progress Energy.



9. Award construction contract for Phase 1B of Beaver Creek Greenway.
10. Revisions to Town Standard Specifications and Standard Details.
11. Accept donation of vehicle from Apex EMS to Apex Police Department: 2001 Ford E-450: with VIN #1FDXE45FX1HA70026, estimated value \$15,000 (considered separately).
12. Town of Apex to serve as lead agency for NCDOT Safe Routes to School Demonstration Grant Program and authorizing Planning Department staff to serve as Project Manager. *RESOLUTION # 07-1120-27.*
13. Apex Jaycees request closure of certain Town Streets for Apex Christmas Parade December 1, 2007.
14. Cancellation of Apex Town Council's January 1, 2008 meeting as this date falls on New Year's Day.
15. Wake County Tax Report for Apex approved by Wake County Board of Commissioners November 5, 2007.
16. Enter into an Agreement with CSX Transportation by approving the execution of CSX Pipeline/Wireline Crossing Agreement # CSX-044844 and Town of Apex, in regard to sewer crossing for Trackside North, and adopting a Resolution Authorizing Town Manager to Execute the Agreement.

Council Member Jensen questioned Chief of Police Lewis regarding acceptance of a donation of a vehicle from Apex EMS to Apex Police Department, opposed to selling the vehicle. Chief Lewis reported the vehicle has 120,000 miles and has been out of commission for some time and had been offered to the Police Department; proposed use as a mobile command vehicle for special events. To upfit the vehicle with paint (\$3,500), lights (\$500), etc. to match the fleet, reported there would be no additional funds needed and costs would be absorbed within the Police Department budget; vehicle has a long life expectancy. **Action:** Council Member Gossage made the motion to approve acceptance of the vehicle from EMS. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda, and was set prior to taking action on the following items.

PUBLIC HEARINGS

Public Hearing # 01– Major Site Plan for Beaver Creek Condominiums

Planning Board met October 8, 2007 and voted to continue this item to November 5, 2007 per the Applicant's request. Staff recommended continuance to November 20, 2007 Council meeting; Planning Board met November 5, 2007, reviewed and unanimously approved the major site plan with conditions. Staff recommends approval with conditions.

Public hearing and possible motion regarding Major Site Plan for Beaver Creek Condominiums that includes 162 condominiums and recreation area located within Beaver Creek Crossing Shopping Center at Creekside Landing Drive; Shea Homes, petitioner.

Presenter: June Cowles, Senior Planner, oriented to the site, and presented the Staff report which is attached and incorporated as a part of the minutes. The project connects to Chapel Ridge Road, steeply graded, pine trees are within 50'. The Historic House was re-located adjacent to the western property line within the lot and will be re-oriented facing the road prior the first lot; project includes 162 condominium units with pool and club house. Sidewalks will be placed on both sides of the street. A review of the Project is contained in the report. Recreation Advisory Committee recommended a fee-in lieu based on density estimates. Proposed project is consistent with the TIA; access proposed from Creekside Landing Drive which is public right of way through the Beaver Creek Crossings shopping center with connections to Beaver Creek commons Drive and Green level Church Road. An interim traffic analysis has been prepared to address the build-out of this site in the event Beaver Creek Commons Drive is not connected to Kelly Road by the time of build-out.

The Transportation Plan identifies two minor collector streets intended to serve this property: Creekside Landing Drive to the north and Chapel Ridge Road to the south. A strip of land is to be dedicated as right-of-way to provide a minor collector street connection to Chapel Ridge Road. 2004 Beaver Creek Crossings PUD Plan was reviewed and property owners along Chapel Ridge Road requested road not be connected as part of the PUD; it was determined the road was not essential at that time to meet the overall traffic requirements of the PUD based on the 2008 TIA build-out. Based on that input, the road connection to Chapel Ridge Road was not required as part of the PUD provided the right-of-way is dedicated to allow future completion.



For this residential site plan, staff recommends the minor collector street be stubbed at the existing fence adjacent to the historic house and a 10-foot wide multi-use path (pedestrian and bicycle) be constructed over the remaining distance to the edge-of-pavement at Chapel Ridge Road. Right-of-way will be dedicated to Chapel Ridge Road to allow connection of the road in the future when needed. The multi-use path will include bollards and a "Pedestrian and Bicycle Only" sign on the Chapel Ridge side and a vehicular barricade at the end of the stub out and the applicant would pay a fee-in lieu for the road construction minus the cost of the multi-use path; (located within the ETJ and currently an NCDOT road). In addition, Public Works has requested a water line be installed along the right-of-way leading to Chapel Ridge Road and a fire hydrant be provided. Currently, there is not a water line within that area and therefore no fire protection for Chapel Ridge.

Staff recommends the multi-use path be located within the 20 foot wide area required for the water line in order to reduce the amount of trees to be removed as part of this plan. A road connection will be recommended if and when all or part of Chapel Ridge is proposed for annexation into the Town of Apex as part of a request for Town services or other action requiring annexation.

Planning Board reviewed and unanimously approved this item with conditions as recommended. Staff recommends approval with the following conditions: 1) The owner/applicant shall relocate the historic house within the lot as specified by Capital Area Preservation prior to approval of the First Plat. 2) Road A shall be constructed to the existing fence adjacent to the historic house, the applicant/owner shall be a fee in lieu for the road construction to Chapel Ridge Road, and a 10 foot wide multi-use path (pedestrian and bicycle) be constructed to the Chapel Ridge Road edge of the pavement within the water line 20 foot cleared area. The multi-use path shall include bollards and a "Pedestrian and Bicycle Only" Sign with barricade gates at the end of the pavement at Road A. 3) Pedestrian lights shall include night-sky shields. 4) Retaining walls shall be a dark earth color.

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

Speaking in favor: Curtis Blazier, McKim and Creed: supports the project.

Speaking in opposition: Representing the Chapel Ridge Road residents: Rita Boykin (comments are attached).

Jim Oberlander opposed the multi-path; noted the builder didn't want it either; would save money; asked it not be built.

Mike Fesler, 107 Canterbury Lane, noted substantially more water run-off from Beaver Creek; as water levels rise, could cause future flooding problems; asked for additional holding ponds to project against down pours of rain.

Mayor Weatherly closed the public hearing.

Council Member Jones addressed the request by Public Works for the waterline connection and hydrant: Boykin noted a few houses will have fire protection; insurance would be less; would be a positive.

Discussion regarding the multi-path continued, with Cowles noting UDO states for a road connection stub, and was consistent; past residents have complained not wanting a pedestrian path. Mayor Weatherly stated Boykin had spoken for all of Chapel Ridge residents and the justification was not there. Russ Dalton stated the cleared area for the waterline will not be paved, and makes sense to pave it; could be access between the two public roadways. Cowles added the plans are based on future and makes sense for future residents. Mayor Weatherly noted if this is temporary, they loose, and was not a Town of Apex obligation, and no justification for a limited use path; and residents speak for themselves; people wanting to walk or bike, a shorter route was a transportation alternative. Council Member Gossage addressed the timing of the plan and noted the residents of Chapel Ridge in 2004 had requested no road connection. He asked if this was a part of the pedestrian plan in 2004. Cowles responded no.

Mayor Weatherly addressed public policy and that it would dictate for the greatest good, and was sympathetic with the neighbors and intrusion of their private setting. Brendie Vega Mkhwanazi, Principal Planner, noted there was 162 condominiums and with one access was not favorable, and should provide for a second access when possible. Council Member Gossage asked if there was a recommendation for the road connection, with Mkhwanazi responding no, a path was a better option. Council Member Jones weighed in on the fact that they continually talk about connections at all times, less cars if walking, being unique for small numbers of people, noted the unimproved roads, no sidewalks, and a connection maybe important at some point, however a connection at this point was not important.



Public hearing # 01 continued

Council Member Sutton addressed the connection, and there would be no emergency access with Dalton responding no there would not be if the entrance should be blocked. Council Member Jensen noted recommendation for a fee-in lieu and not wanting a multi-use path, with Cowles noting the approval for the 20' waterline right of way there. Council Member Sutton commented Beaver Creek has the road shown as a collector street on the plan, and it wasn't drawn in. Council Member Schulze noted the right of way would be a path, with graded grass area for the waterline even if it wasn't paved, would be a path there. Cowles noted the wooden fence would also stay. Attorney Fordham noted there should be a formal resolution for acceptance of the dedicated right of way if construction is contemplated; plan is for an offer of dedication by construction of a road or accepting for maintenance, if offer is not revoked. Council Member Sutton felt there should be road connectivity for public safety.

Council Member Jensen addressed the stormwater retention, noting the Town's requirement for a 10-year flow control, and asked Blazier if he was willing to expand to a 25-year storm, which is only about a 20% increase and would they be willing to look at this with staff, asking if he could do better, as he felt stormwater controls were to him inadequate. Blazier responded they had not looked at pre-post however the design was for 10-year storm events as required by the Town. Mayor Weatherly informed Council Member Jensen they had spoke to the requirements of the Unified Development Ordinance and called for a motion.

Action: Council Member Sutton made the motion to approve the major site plan for Beaver Creek Condominiums with the four conditions unanimously approved and recommended by the Planning Board, minus the condition for the 10-foot wide multi-use path, because a vehicle could not use it anyway, however recommends approval of the rest of the conditions. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Public Hearing # 02– Rezone #07CZ18, 2025 Land Use Plan Amendment and Major Site Plan

Planning Board met October 8, 2007 and unanimously recommended approval. Staff recommends approval.

Public Hearing and possible motion regarding Rezoning case #07CZ18 (White Oak), rezoning from Light Industrial to Planned Unit Development – Conditional Zoning, 2025 Land Use Plan Amendment and Major Site Plan (Lot 1); site is 8.05 acres located at 1109 Markham Street between East Williams Street to the west and Schieffelin Road to the east.

Presenter: Amy Overfield, Planner, oriented to the site and presented the Staff report which was attached and incorporated as a part of the minutes. She gave the project description and adjacent zoning and land uses for the proposed four story hotel that includes 165 parking spaces to be provided for the hotel to be developed on lot 1 and reserve for the future convention center. Project has perennial stream 100' buffer along the western property line of lot 1 and satisfies Resource Conservation Area requirement, which is above and beyond the requirement. Staff agrees with the Applicant's request for a US Highway 1 buffer reduction from 100' to a variable width Type A buffer (40' minimum). Design standards are listed in the report. Convention Center will meet the same standards. Neighborhood meeting was held: property owner of the mobile home park and a representative from the Holiday Inn were present and did not have any concerns that would prevent their support of the project. Restrictions and Conditions proposed by the applicant are contained in the staff report. An additional condition has been added to the rezone: There shall be a 10-foot Type B landscape buffer as defined in the Town of Apex UDO along the northern property line of Lot 2 that will be provided with the development of this lot. There shall also be a 6-foot high wooden privacy fence installed near the property line in this buffer at the time of development. Planning Board met October 8, 2007 and unanimously recommended approval for this project as submitted. Staff recommends approval of the rezone and major site plan based on the requested 2025 Land Use Plan Amendment and compatibility of the surrounding land uses, as well as the additional condition.

Mayor Weatherly opened the public hearing at 7:50 p.m. Speaking in favor: Stuart Jones, Jones and Crossen Engineering, shared excitement for the project, with an architect having been retained to develop the building plans; Lot 3 will have on street parking in the future; more parking is being provided than needed with additional access possible; site plan will be amended in the future. No one spoke in opposition. Council Member Jones asked from Schieffelin in the northeast direction, there would be what? Dalton stated with the connection would become the Apex Peakway to the north. Mayor Weatherly closed the public hearing at 7:54 p.m. and called for a motion.

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

End of Public Hearing # 02



Public Hearing # 03– Unified Development Ordinance Amendments

Planning Board met November 5, 2007 and recommended approval with minor changes that has been incorporated. Staff recommends approval.

Public Hearing and possible motion regarding possible amendment to various sections of the Unified Development Ordinance: UDO amendments include a change to the definition of Vehicle Sales and Rental, Heavy; the addition of the neighborhood meeting requirements to the Notice Table; a new section for sanitary landfill supplemental standards; a change to the acreage required for curb and gutter for residential lots; the extension of expiration dates of development plans; a change to chart 2.3.1 to separate Tree Removal and Pond Draining; a new section to allow the replacement of older mobile homes with new ones; and an amendment to the supplemental standards for communication towers to comply with State legislation.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the Staff report regarding the recommended amendments which is attached and incorporated as a part of the minutes, and presented the ordinance for adoption. Planning Board recommended approval of the proposed amendments with some minor changes that have been incorporated into the staff report.

Mayor Weatherly opened the public hearing at 8:00 p.m. and with no one addressing the proposed amendments, closed the public hearing and called for a motion.

Action: Council Member Jensen made the motion to adopt the ordinance approving the proposed amendments as recommended. Council Member Jones made the second. Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 04– Unified Development Ordinance Amendments

Planning Committee reviewed and revised the proposed changes to the residential grading ordinance, and asked it be brought forward for possible amendments. Planning Board met November 5, 2007 and unanimously recommended approval with minor revision. Staff recommends approval.

Public Hearing and possible motion regarding amendments to various sections of the Unified Development Ordinance: Change to the residential grading standards found in Section 8.1.5.

Presenter: Brendie Vega Mkhwanazi, Principal Planner, presented a summary of the changes since the first draft was presented to Town Council on February 6, 2007, and the staff report which attached and incorporated as a part of the minutes, and recommended approval of the proposed amendments to the UDO, and presented the Ordinance for adoption; this being the final recommendation from the Planning Committee. Planning Board unanimously recommended approval of the amendments at their November 5, 2007 meeting with recommendations: Remove the words "require a smaller amount of acreage" from 7.2.5C.3 so that it reads "In no case shall mass grading and clearing exceed 15 acres per phase including grading necessary for infrastructure. The Technical Review Committee may approve a larger amount of acreage based on the following..."

Council Member Schulze, Chair of the Planning Committee, gave a recap of the meetings having visited this item in public meetings, and addressing the controversial Seagroves development, noting staff had recommended a good balance of all interests, having solved the issues that had come up, and felt this was a good compromise, and will be reflected in the UDO, and promotes preservation of the natural topography of the land.

Mayor Weatherly opened the public hearing at 8:07 p.m. and with no one addressing the proposed amendment, closed the public hearing.

Council Member Gossage does agree with the Planning Board, and for clarification with the removal of the words from 7.2.5C.3 if changed, Technical Review Committee can exceed, but, not less than 15 acres. Council Member Jones felt this was a finite amount in phasing and 15 acres was a reasonable amount; may be reason to recommend a smaller amount of mass grading, not many of those, but Planning Board was o.k. with this. Council Member Schulze noted the site to be more accommodating. Council Member Sutton noted 30% of the lots would be spared from mass grading. Mkhwanzai stated the 10-foot in the back would preserve this leaving 30%. Council Member Jones added depending on the topography, slopes, can't mass graded, and if flat there was no need to mass grade. Mayor Weatherly called for a motion.

Action: Council Member Jones made the motion to approve the amendments with recommended changes by the Planning Board. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 04

End of Public Hearings

**OLD BUSINESS****Old Business #01– Exchange of Property**

Possible motion to authorize and adopt a Resolution Authorizing a Land Exchange of real property between the Town of Apex and Apex First Development, LLC. Presenter: Attorney Fordham advised Apex First Development, LLC had proposed a land exchange with the Town involving property owned by Apex First Development, LLC adjacent to the land currently owned by the Town. Apex First Development, LLC proposes to convey to the Town a 0.643 acre tract of land in exchange for the Town's conveying to Apex First Development, LLC a 0.438 acre tract of land (total) and located on Old Raleigh Road at the Apex Peakway; will add to the Town of Apex property, the Old Raleigh Road frontage. The details of the proposal are contained in the attached draft Exchange Contract. Town staff is of the opinion that the land the Town would receive as part of this exchange is fair consideration for the land the Town would relinquish. A proposed Resolution that would authorize the exchange and the proposed Exchange Contract were presented. Notice of the Town Council's Intent to Exchange Real Property has been properly advertised by the Town Clerk. Staff is in favor of this proposal.

Action: Council Member Gossage made the motion to adopt the Resolution authoring the exchange of property and approving the Land Exchange Agreement. Council Member Jensen made the second. Motion carried unanimously.
End of Old Business # 01

Old Business #02– Proposed Lease Agreement with AT&T

Consideration of possible co-location agreement with AT&T for location of cellular telephone antennas on the above ground water tank located on South Salem Street. Presenter: Tim Donnelly Director of Public Works stated AT&T has proposed to lease space from the Town of Apex at its southern water tank site for the location of cellular telephone antennas. The lease would provide for AT&T to lease ground space for its equipment and space on top of the tank for its antennas. He addressed negatives with this request, in that this is a drinking water tank, the wind could create problematic structural problems, and further, the esthetics: proposed to look like a fence; projected revenue \$2500 month, which is a higher than average fee, noting Town of Cary accepts this amount. He asked direction from Council before pursuing this further. Mayor Weatherly added this may open up to others for requests to do the same things, with Donnelly envisioning others wanting to share. Council Member Gossage offered perhaps Town should put out for bid, perhaps there are competitors interested, and should check with Radio and TV stations, regarding rentals and thinks more research would be o.k. Council Member Schulze agreed. Attorney Fordham advised the Town owns and could lease space to others, and could accommodate more if the Town determines 3rd parties and rates, with most locking in 15 year terms. He advised Council that he did not want to put time into this unless Council agrees they would like to consider this; and asked for clear direction in regards to the ATT contract. Discussion evolved around problems with operation, attachments to the tower, maintenance, benefits of revenues, materials that would be esthetically pleasing, painting, and liabilities. Mayor Weatherly recalled a legislative act regarding multiple cell towers and this more preferable than multiple cell towers. Attorney Fordham was willing to look into this further with direction seeking direction from Council. Council Member Sutton agreed and thought the League had opposed and was an important point. Mayor Weatherly asked if Council would like to give Attorney Fordham and Director of Public Works a signal to proceed. Council Member Jones added the Town was not in the market to top our tanks, but should consider a fair equitable amount, keeping in mind flexibility for others. Mayor Weatherly added he had rather have them on top of the tank, rather than search for other spots, with Council Member Gossage agreeing. Principal Planner Mkhwanzai commented on the UDO standards for compliance. Council Member Gossage added that he would highly recommend checking with private entities, if they lease space, and how much revenue they get for leasing space. Attorney Fordham advised that a motion would be helpful, however non-binding, asking for authority to proceed and return to Council at a later date. It was the consensus of Council that they authorize the Town Attorney and Public Works Director to proceed into checking with other municipalities and others that may lease space, their lease rates, and terms regarding sub-leasing of tower space.

End of Old Business # 02

End of Old Business 8:45 p.m.



PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council. Mayor Weatherly will recognize those who would like to speak at the appropriate time.

Large groups are asked to select a representative to speak for the entire group.

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

Dale Phillips, Athletic Director of the high school asked for the opportunity to water the athletic fields to assure grass for spring season, noting it was not only for esthetics, but protection of the grasses and seed, and assure a safe surface to play on. He noted Panther Creek was watering their fields. This request came after an ordinance was adopted that had stopped use of irrigation systems due to the extreme drought. It was noted he could continue to hand water; size of the fields made this near impossible. Mayor Weatherly responded he would take this request under advisement and would consult with staff. Director of Public Works Donnelly advised the Town's water supply was at 250 days, and to water would not affect the lake. Mayor Weatherly advised the Ordinance adopted by Council was still in place, and concern shared with breaking the restrictions, due to the severe drought.

Chris Williams, 714 Cash street addressed a storm drainage complaint. The Chronology of the complaint is attached, and outlines flooding, sediment run-off, drain covered with sand, mapping, need for construction of a catch basin, fixing the current drainage issues by routing the water, and proposing a compromise to fix the problem by correcting the curb, gutter and routing into a 15" drain pipe. He offered to build covered storm system to route the water, and asked Town to split the costs associated with this problem; he further said the school should provide sedimentation control or it will fill again. Manager Radford responded he had thought staff's position was clear and regrets he didn't observe the pipe but was in the existing right of way, and saw no additional obligation on the Town. Mayor Weatherly responded they would take this under advisement, staff would resolve this best as they can. Staff responses to this request are attached.

End of Public Forum 8:52 p.m.

NEW BUSINESS

New Business Item # 01 – Master Subdivision Plan

Planning Board met November 5, 2007 and unanimously recommended approval with conditions. Staff recommends approval.

Possible motion regarding Master Subdivision Plan for Parkside on the Creek; Peakside, LLC, petitioner, seeking subdivision plan approval which includes 104 single family lots on 60 acres, located at 2417 Mt. Zion Church Road, between Blazing Trail Drive and Snipe Court north of Humie Olive Road.

Presenter: Brendie Vega Mkhwanazi, Principal Planner presented the Staff report which is attached and incorporated as a part of the minutes. Background information for the proposed subdivision is contained in the staff report. Parks and Recreation Commission unanimously voted to recommend a fee-in-lieu for proposed Parkside on the Creek, as it shares a common border with the Nature Park; and recommendation was for designation to help reimburse JVI construction for acceleration of Evans Road Extension. Proposed subdivision has accessed off of Snipe Court from Whistling Quail Run and also from Blazing Trail Drive; both connections lead to Humie Olive Road, a thoroughfare on the Thoroughfare and Collector Street Plan. Because of the current status of Whistling Quail Run as a private road and Snipe Court as existing right-of-way without infrastructure, the plan includes the following condition: The off-site portion of Blazing Trail Drive is unimproved and located inside a 60' private right-of-way. Owners shall be responsible for improving the roadway to current Town of Apex standards and specifications. Blazing Trail Drive will be improved to the Town of Apex Standard, 27' back-to-back curb and gutter roadway on a minimum 50' dedicated public right-of-way to Humie Olive Road prior to the first plat. Snipe Court will be constructed to the Town of Apex standard, 27' back-to-back curb and gutter roadway prior to the 51st certificate of occupancy.

The 2025 Land Use Plan identifies the site for Low Density Residential Classification. The proposed subdivision plan is consistent with the Low Density Residential classification, a maximum of 3 units per an acre. The proposed subdivision plan is consistent with the Unified Development Ordinance. There are no requested variances from UDO requirements.



New Business Item # 01 continued

The Transportation Plan identifies Street G as a future major collector and Humie Olive Road as a two-lane Thoroughfare with Left-turn bays/lanes. The neighborhood meeting was held on July 10, 2007 where neighbors expressed concern over construction traffic on Whistling Quail Run; involuntary annexations; housing type; and the timing of development.

At their regular meeting on November 5, 2007, the Planning Board asked for a third condition to be added to address the potential for construction traffic on Whistling Quail Run. The Planning Board voted to recommend approval with the following conditions:

1. The off-site portion of Blazing Trail Drive is unimproved and located inside a 60' private right-of-way. The developers shall be responsible for improving the roadway to current Town of Apex standards and specifications. Blazing Trail Drive will be improved to the Town of Apex Standard, 27' back-to-back curb and gutter roadway on a minimum 50' dedicated public right-of-way to Humie Olive Road prior to the first plat. Snipe Court will be constructed to the Town of Apex standard, 27' back-to-back curb and gutter roadway prior to the 51st certificate of occupancy.
2. Tree protection fencing must be installed at the rear setback line at a minimum on each lot prior to the grading of individual lots.
3. "No construction traffic" signage shall be posted at the entrance to Whistling Quail Run Court.

Staff recommends proposed Parkside Subdivision on the Creek with the conditions recommended by the Planning Board.

Council Member Jones clarified Humie Olive Road would remain a two-lane road, and with Russ Dalton, Transportation Engineer for the Town responding the volumes of traffic would be low on this NCDOT route, and nothing required this project to do road improvements; levels of service would be Level A and B with build out.

Action: Council Member Jensen made a motion to deny the proposed master subdivision plan for Parkside on the Creek, stating it was an island out in a large-lot subdivision and was not in the best interest of the people in the Town of Apex. There was no second on the motion. Mayor Weatherly asked if there were another motion to be made.

Action: Council Member Jones made a motion to approve the master subdivision plan for Parkside on the Creek as stated with the conditions, and as recommended by the Planning Board, and due to the fact that it was consistent with the 2025 Land Use Plan and the Town's growth plan. Council Member Gossage made the second to the motion, agreeing, with future build out was more comfortable as it was off site to Humie Olive Road.

Council Member Jensen asked where the wastewater would flow. Tim Donnelly Director of Public Works responded it would go to Hollands Crossing and then to Kelly Road. Council Member Schulze asked if this would be within the Western Area Plan, with Donnelly responding yes. Council Member Schulze didn't want to see one-quarter acre lots, and would like to see lower densities. Mayor Weatherly called for a vote on the motion. Vote on the motion was 2 in favor and 3 opposed, with Council Member Jensen, Sutton, and Schulze voting no. At this point, Town Attorney Fordham asked Council to move into Closed Session to receive legal advice regarding this matter.

Action: Council Member Gossage made the motion to move into closed session at 9:08 p.m. to receive legal advice from the Town Attorney regarding this matter. 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 back into Regular Session at 9:10 p.m. Council Member Jones made the second to the motion. Motion carried unanimously. Mayor Weatherly stated the vote was 2 votes in favor and 3 votes opposing, asking if there were a motion to reconsider.

**New Business Item # 01 continued**

Action: Council Member Sutton made the motion to reconsider. Council Member Schulze made the second to the motion. Vote on the motion was 4 in favor and 1 opposed to reconsider the Council's vote on the proposed subdivision plan, with Council Member Jensen voting no. Council Member Schulze noted they were obligated to approve the subdivision plan as it meets the requirements of the Code, however, felt, they were looking at a new area of Town and they should do the right thing, and make adjustments to the Unified Development Ordinance to define densities, however at this point had to approve the subdivision plan. Motion carried.

Action: Council Member Jones made the motion to approve the subdivision plan with the conditions and recommendation from the Planning Board. Council Member Gossage made the second to the motion. Vote on the motion was 4 in favor and 1 opposed, with Council Member Jensen voting no. Council Member Jensen stated this was located very close to the Jordan Lake Watershed. Tim Donnelly Director of Public Works added it's outside the critical area governed by the watershed district, however Apex could adopt more stringent standards concerning the closeness to Jordan Lake and noted all of Apex's rules meet most current stringent rules, but could be more stringent. Attorney Fordham advised he would want to look at this more closely. Donnelly added it was in the best interest to have low density and could conclude this. Council Member Schulze shared concern about this as well. Motion carried.

End of New Business # 01

New Business Item # 02– Proposal to Replace Street Signs

Proposal reviewed by Town Manager, Planning Director, Police Chief, Fire Chief, EMS Chief, and other Department Heads.
Presenter: Police Officer Michelle Hill, Corporal Tim Kerley, and Chief of Police Jack Lewis led a discussion regarding a proposal to replace street signs with green reflectorized signs in certain housing developments, due to emergency response time being critical, and for public safety. Their report is attached. It was recommended an ordinance be drawn and adopted to get the existing signs replaced, and adopted as a Town of Apex standard signage for all signs in new developments. All town departments support this proposal, with Tim Donnelly Director of Public Works also speaking in support of this proposal, as the developer had paid for the first signs as slated in Technical Review Committee, and noted no extra costs involved, but catch-up, and could use Powell Bill funds on this project as well. Communication will be made through the Homeowner's Association to the residents. Mayor Weatherly asked if there were a motion to be made regarding this proposal. Chief Lewis commended Officer Hill in her efforts for ways to have a better/safer community.

Action: Motion by Council Member Jensen to approve the proposal to replace street signs as recommended. and Council Member Sutton made the second to the motion. Motion carried unanimously.

End of New Business # 02

New Business Item # 03 – Financial Summary

Presenter: Lee Smiley, Director of Finance: Review of the 1st Quarter FY07-08 Financial Summary. Benchmark for 1st Quarter financial performance is 25% for revenues and expenditures. Significant variances are noted. The report is attached, and well received by the Council.

End of New Business # 03

New Business #04 – Easement and Estoppel

Presenter: Attorney Fordham: This item relates to the private access road on Town of Apex property that runs between the Kangaroo Mart and Arby's on Highway 55 south of US1. Solid State Apex US1, LP (formerly known as Stone Hedge) is asking the Town for an Easement to use the access road to access its 48.04 acre tract located west of the access road. Solid State is also asking the Town for a statement that Solid State has not violated the Town's rights related to a small easement just west of the access road (an Estoppel). Attorney Fordham asked Council to move into closed session to receive legal advice and deferring possible action on this item after closed session.

Action regarding New Business # 04 will be taken following closed session.

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, and including New Business item # 4; receive legal advice from the Town Attorney regarding condemnation and related to Beaver Creek Drive Extension; discussion of right of way and storm drain easement acquisition for Harwood Street Community Development Block Grant Project. **Action:** Council Member Jones made the motion to move into Closed Session at 9:30 p.m. as stated above. Council Member Gossage 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 back into Regular Session at 10:03 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 Gossage made the motion to approve the Solid State easement and estoppel agreement and to Authorize the Town Manager to sign. Council Member Sutton made the second to the motion. Motion carried unanimously.

Action: Council Member Schulze made the motion to approve as to form, the five Unilateral Offers and Confidentiality Agreements for DDR to pay condemnation expenses and costs and authorize the Mayor to sign upon condemnations. Council Member Gossage 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 Gossage made the motion to adjourn at 10:05 p.m. Council Member Sutton made the second to the motion. Motion carried unanimously.

The minutes of the November 20, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their December 4, 2007 meeting.

Georgia A. Evangelist
Georgia A. Evangelist, MMC
Town Clerk

Keith M. Weatherly
Keith M. Weatherly
Mayor

TOWN OF APEX, NORTH CAROLINA

The Regular Meeting of the Apex Town Council was held Tuesday, December 4, 2007, 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, Gossage, Jones, Schulze and Sutton were present.

Mayor
Keith H. Weatherly



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

Web site: www.apexnc.org

Mayor Weatherly called the meeting to order.
Invocation was given by Reverend Warren Harvey, Ambassador Presbyterian Church.
Presentation of Colors and Pledge of Allegiance was led by Apex Scout Troop # 205.
Mayor Weatherly extended a welcome to those in attendance and recognized special guests.

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. Manager Radford asked to modify item # 6 by adding after the word Center ... of Apex. **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 November 20, 2007 Town Council Meeting.
2. Minutes of November 20, 2007 Closed Session for New Business # 1 (recorded separately).
3. Minutes of November 20, 2007 Closed Session of the Town Council.
4. Minutes of November 8, 2007 Planning Committee.
5. Annexation Petition # 424, Gerald & Janice Hornick, owners/petitioners, petitioning to annex 0.19 acres into Town's corporate limits (portion of dedicated right-of-way for Chantclair Dr. Stratford @ Abbington Subdivision) west of Lyndenbury Drive and north of Rothwood Way; 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency; 3) Resolution: set Public Hearing December 18, 2007.
6. Naming future Cultural Arts Center, "The Halle Cultural Arts Center of Apex" in perpetuity.
7. Annual Certification of Firemen: verification by Fire Chief that each name listed on roster is a member or retired member in good standing with Apex Fire Department.
8. Amend Apex Town Code: Section 20-100. Speed Limits, Subsection 6. **Ord. 07-1204-16**
9. Resolution authorizing condemnations related to upgrading Harwood Street; Resolution authorizing condemnations related to upgrading stormwater facilities in/around the intersection of Harwood Street.
10. Contract for New Hill Water Line Project and Associated Budget Ordinance Amendment No. 8 with Capital Project Ordinance Amendment.
11. Interlocal Agreement between Town of Apex and other participating entities within Wake County, and Contract with Sunguard HTE to provide Police Software.

End of Consent Agenda

OLD BUSINESS

There were no Old Business items to be considered.

Mayor Weatherly called for a recess of the Apex Town Council at 7:05 p.m.
for the Ceremonial Proceedings and Photographs.



CEREMONIAL PROCEEDINGS

APEX TOWN COUNCIL

December 4, 2007

MAYOR KEITH H. WEATHERLY PRESIDED OVER THE PROCEEDINGS

Mayor Weatherly introduced the Honorable Judge Ann Marie Calabria of the NC Court of Appeals.

CEREMONIAL OATHS

Family members joined the Elected Officials during the Oath of Office Ceremony and participated by holding their Bible.

Mayor Keith H. Weatherly

Oath Administered by

The Honorable Judge Ann Marie Calabria
North Carolina Court of Appeals

Melissa Weatherly, wife of the Mayor held the Bible.

Signing of Oath with Town Clerk Georgia A. Evangelist, MMC

Mayor Weatherly took his seat for a four year term 2011

Council Member Bryan Gossage

Oath Administered by

The Honorable Judge Ann Marie Calabria
North Carolina Court of Appeals

Chloe Gossage, wife of Council Member Gossage held the Bible.

Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC

Council Member Gossage took his seat for a four year term 2011

Council Member Bill Jensen

Oath Administered by Georgia A. Evangelist, MMC, Town Clerk
J.C. Knowles, Citizen of the Year, held the Bible.

Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC

Council Member Jensen took his seat for a four year term 2011

Mayor Weatherly, Council Member Gossage and Council Member Jensen expressed appreciation for support received and accepted their positions for the four year term 2011.

SELECTION OF MAYOR PRO TEMPORE

Mayor Weatherly opened the floor for nominations for Mayor Pro tempore. Council Member Sutton made the motion to nominate Council Member Jones. Council Member Jensen made the second to the motion. With no further nominations, Mayor Weatherly called the nominations closed, and called for a vote which was unanimous by Council to appoint Council Member Jones Mayor Pro tempore for a two year term, and noted he had served as Mayor Pro tempore since 1995, and having served on the Council since 1989. Council Member Jones accepted the position of Mayor Pro tempore for a two year term 2009.

APPOINTMENTS OF STANDING COMMITTEES AND LIAISONS

Mayor Weatherly appointed Chairs and Members to the Standing Committees and Liaisons.

(see next page for the appointments)



APEX TOWN COUNCIL APPOINTMENTS TO COMMITTEES AND LIAISONS

Chairs and Members for a two year term 2009

COMMITTEES

FINANCE

**Chair Council Member Jones
Member Council Member Sutton**

PLANNING

**Chair, Council Member Schulze,
Member Council Member Jones**

PERSONNEL

**Chair, Council Member Gossage,
Member Council Member Jensen**

LIAISONS

**APEX CHAMBER OF COMMERCE
Council Member Jones**

**APEX FIRE ADVISORY BOARD
Council Member Schulze**

**APEX PARKS, RECREATION, AND CULTURAL RESOURCES
ADVISORY COMMISSION
Council Member Jones**

**TRIANGLE J COUNCIL OF GOVERNMENTS:
Council Member Gossage**

**TRANSPORTATION ADVISORY COMMISSION
MEMBER Mayor Weatherly
ALTERNATE Council Member Jones**

END OF THE ORGANIZATIONAL MEETING

Reception honoring the Mayor and Town Council was held in the Atrium following the Council Meeting.
"Catering by Peak City Grill"



REGULAR MEETING AGENDA

Mayor Weatherly called the Apex Town Council meeting back into session at 7:30 p.m. and presented the Regular Meeting Agenda to be set prior to taking action. With no amendments the Agenda was set.

PUBLIC HEARINGS

Public Hearing # 01 – Rezoning Case # 07CZ17

Planning Board met November 5, 2007 to consider this 2025 Land Use Plan amendment and conditional zoning and voted unanimously to approve the 2025 Land Use Plan amendment and conditional zoning. Staff recommends approval of the 2025 Land Use Plan amendment and conditional zoning.

Public Hearing and possible motion regarding 2025 Land Use Plan amendment and Conditional Zoning # 07CZ17, Pierce Hardy Limited Partnership, petitioner, seeking a 2025 Land Use Plan Amendment from High Density Residential to Commercial and conditional zoning from Rural Residential (RR) to Neighborhood Business Conditional Zoning (B1-CZ) located at 5524 Eddie Creek Drive, containing 1.97 acres.

Presenter: Dianne Khin, Director of Planning oriented Council to the site, and noted applicant proposes a rezone of the property from Rural Residential to Neighborhood Business Conditional Use. Building Supply Company, 84 Lumber is located to the west of the property and this parcel is planned to serve as an expansion area for this business. Applicant requests the 2025 Land Use Plan be amended from High Density Residential to Commercial; land use looks at non-residential of the first piece. Property across the street is zoned Commercial and O&I, Camden Apartments to the east and south of proposed I-540. Proposed uses and conditions are listed on page 2 of the staff report is which attached and incorporated as a part of the minutes. Planning Board met November 5, 2007 and unanimously recommends approval; staff recommends approval. Access to the site would be off Eddie Creek Drive; there's a fence around the property; David York represents 84 Lumber and supports the request as presented. Neighbors are satisfied with this request.

Mayor Weatherly opened the public hearing at 7:35 p.m. and with no one addressing this request, closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve the rezone and 2025 Land Use Plan amendment as requested and recommended by Planning Board and staff. Council Member Schulze made the second to the motion. Motion carried unanimously.

End of Public Hearing # 01

Public Hearing # 02 – Annexation Petition #422

Public hearing and possible motion regarding Annexation Petition # 422 Kite Realty Peakway at 55, LLC. Jean Sutton Hack, owners/petitioners, petitioning to annex 138.455 acres into the Town's corporate limits and located off E. Williams Street (NC Hwy 55) and US1.

Presenter: Dianne Khin, Director of Planning oriented to the site, and noted this the approved Peakway at NC55 PUD "Broadstone Station", coming forth with a variety of site plans for the parcels; noted locations of apartments west of the Peakway, S. Hughes crosses the Peakway, with traffic exits on S. Hughes. Council Member Jensen wanted to minimize impacts from traffic on the neighbors and asked staff at site plan review to request a right only onto the Peakway and back to NC55 rather than going through the neighborhoods.

Mayor Weatherly opened the public hearing at 7:37 p.m. and with no one addressing this annexation petition, closed the public hearing and called for a motion.

Action: Council Member Jones made the motion to approve Annexation Petition # 422 by adopting an ordinance to extend the corporate limits of the Town. Council Member Schulze made the second to the motion. Council Member Jensen wanted to re-emphasize his request regarding the roads. Motion carried unanimously.

End of Public hearing # 02

End of Public Hearings



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 – Apex Board of Adjustment

Presenter: Mayor Weatherly requested Council's consideration for recommended appointment of Glynn Rodean and Lou Gregus to serve a three year term on the Apex Board of Adjustment that will expire December 31, 2010 and David Rowland to serve as an Alternate member for a three year term on the Board of Adjustment that will expire December 31, 2010.

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

End of New Business

CLOSED SESSION

There were no Closed Session items to be discussed.

ADJOURNMENT

With no further business to come before the Council, Council Member Schulze made the motion to adjourn at 7:40 p.m. Council Member Jones made the second to the motion. Motion carried unanimously.

The minutes of the December 4, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their December 18, 2007 meeting.


Georgia A. Evangelist, MMC
Town Clerk


Keith W. Weatherly
Mayor



CEREMONIAL PROCEEDINGS

APEX TOWN COUNCIL

December 4, 2007

MAYOR KEITH H. WEATHERLY PRESIDING

CEREMONIAL OATHS

Family members may join Elected Officials during the Oath of Office Ceremony and participate by holding their Bible.

Mayor Keith H. Weatherly

Oath Administered by
The Honorable Judge Ann Marie Calabria
North Carolina Court of Appeals
Melissa Weatherly, wife of the Mayor holding the Bible.
Signing of Oath with Town Clerk Georgia A. Evangelist, MMC
Mayor Weatherly takes his seat for a four year term.

Council Member Bryan Gossage

Oath Administered by
The Honorable Judge Ann Marie Calabria
North Carolina Court of Appeals
Chloe Gossage, wife of Council Member Gossage holding the Bible.
Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC
Council Member Gossage takes his seat for a four year term.

Council Member Bill Jensen

Oath Administered by Georgia A. Evangelist, MMC, Town Clerk
Lydia Jensen, wife of Council Member Jensen holding the Bible.
Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC
Council Member Jensen takes his seat for a four year term.

SELECTION OF MAYOR PRO TEMPORE

Mayor Weatherly will open the floor for nominations for Mayor Pro tempore.
Mayor Weatherly will call for a motion to close nominations.
Mayor Weatherly will call for the appointment of Mayor Pro tempore.

APPOINTMENTS OF STANDING COMMITTEES AND LIAISONS

Mayor Weatherly will appoint Standing Committees and Liaisons:
(see next page)

END OF THE ORGANIZATIONAL MEETING



APEX TOWN COUNCIL APPOINTMENTS TO COMMITTEES AND LIAISONS

December 4, 2007

COMMITTEES

FINANCE

PLANNING

PERSONNEL

LIAISONS

APEX CHAMBER OF COMMERCE

APEX FIRE ADVISORY BOARD

**APEX PARKS, RECREATION, AND CULTURAL RESOURCES
ADVISORY COMMISSION**

TRIANGLE J COUNCIL OF GOVERNMENTS

**TRANSPORTATION ADVISORY COMMISSION
AND ALTERNATE**



APEX TOWN COUNCIL APPOINTMENTS TO COMMITTEES AND LIAISONS

Current Chairs and Members

COMMITTEES

FINANCE

**Chair Council Member Jones
Member Council Member Sutton**

PLANNING

**Chair, Council Member Schulze
Member Council Member Jones**

PERSONNEL

**Chair, Council Member Gossage
Member Council Member Jensen**

LIAISONS

**APEX CHAMBER OF COMMERCE
Council Member Jones**

**APEX FIRE ADVISORY BOARD
Council Member Schulze**

**APEX PARKS, RECREATION, AND CULTURAL RESOURCES
ADVISORY COMMISSION
Council Member Jones**

**TRIANGLE J COUNCIL OF GOVERNMENTS:
Council Member Gossage**

**TRANSPORTATION ADVISORY COMMISSION
MEMBER Mayor Weatherly
ALTERNATE Council Member Jones**

TOWN OF APEX, NORTH CAROLINA

The Regular Meeting of the Apex Town Council was held Tuesday, December 18, 2007, 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

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

Mayor Weatherly called the meeting to order and gave the Invocation. RoboCats from Apex Middle School led the Pledge of Allegiance. Mayor Weatherly extended the welcome to those in attendance.

PRESENTATIONS

Presentation by Joyce and Company, CPA:

Town of Apex Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2007

Highlights of the Audit ending June 30, 2007 are attached reflecting a "Clean Audit". The Town has received a Certificate of Excellence in Financial Reporting for the past fourteen years and will submit again this year. Management Letter is attached and disclosed areas, while not considered to be material weaknesses or significant deficiencies, in which is believed improvements are desirable; all have been corrected at this time. The Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2007 was well received by Council.

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 presented a revision to the item # 7: **Resolution No. 07-1218-30** the Furthermore section regarding the representative authorized to negotiate compensation. Manager Radford presented a standard CSX Pipeline Agreement for transmission of raw/treated sewage, and noted the timeline in which the agreement should be executed; he asked it be added to the Consent Agenda.

1. Minutes of December 4, 2007 Council meeting.
2. **Ordinance No. 07-1218-17** Chapter 15 of Town Code: revisions to existing Code pertaining to Parks and Recreation.
3. Approval of general Operating Guidelines for Cultural Arts Center.
4. **Ordinance No. 07-1218-18** Section 14-14 of Town Code: Consumption of Alcohol on Town Property.
5. **Ordinance No. 07-1218-19** Section 18-17 of Town Code: Street Signs.
6. Tax Report for Town of Apex approved and accepted by Wake County Board of Commissioners 12/03/07.
7. **Resolution No. 07-1218-30** to Acquire Easements for Harwood Street Community Development Block Grant Street and Stormwater Improvements Without Formal Appraisals, and authorize staff to appoint a designated representative to negotiate a fair and just compensation for said property.
8. #CSX 057713 Pipeline Agreement: transmission of raw/treated sewage **Resolution # 07-1218-31**.

Action: Council Member Jones made the motion to approve the consent agenda with the amendments. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Consent Agenda



REGULAR MEETING AGENDA

Mayor Weatherly asked the Regular Meeting Agenda be set prior to taking action on the following items.

Manager Radford advised Public Hearing No. 2 would be continued to January 15, 2008 Council meeting for Traskside South Phase II Major Site Plan, awaiting submittal of lighting plan. Public Hearing No. 1 for Traskside South Phase 1 site plan will be held. Applicant asked the Public Hearing # 07 for Annexation Petition # 420, Apex First Development, LLC and NCII, L.P. and KC2 Enterprises, LLC, (Traskside be heard after Public Hearing No. 1 as it relates to Traskside. Manager Radford asked Council consideration regarding this request. Mayor Weatherly asked Council to formally move to continue Public Hearing # 02 to the January 15, 2008 Council meeting, and with the same motion move Public Hearing # 07 after Public Hearing # 01.

Action: Council Member Gossage made the motion to continue Public Hearing # 02 Traskside South Phase II Major Site Plan to January 15, 2008 Council meeting and to hear Public Hearing # 07 after Public Hearing # 01 as it relates to Traskside. Council Member Jones made the second to the motion. Motion carried unanimously. The Regular Meeting Agenda was set as amended.

PUBLIC HEARINGS

Public Hearing # 01– Traskside South Phase 1

Planning Board met December 10, 2007 and unanimously recommends approval; staff recommends approval.

Public hearing and possible motion regarding Major Site Plan, Apex First Development, LLC. petitioner, seeking site plan approval for Traskside South Phase 1 located with future Apex Peakway on the north, Hunter Street on the south, CSX rail right-of-way to the east and Laura Duncan Road to the west, containing 26.87 acres.

Presenter: Dianne Khin, Director of Planning: Staff report is attached and incorporated as a part of the official record. Khin oriented to the site, noted adjacent zoning and land uses; noted 2025 Land Use Plan identifies the site for high density residential, medium density residential, commercial, and office and institutional. Uses are noted in the table on page 2 of the staff report for minimums and maximums, and defined in the PUD Plan Project Data. Phase 1 is short of retail however, Phase II proposes retail, thus meeting the minimum and maximum requirements of the PUD-CZ plan. RCA 22.5% of the overall site in both Traskside's north and south. Buffer requirements meet the UDO and listed on page 2 of the staff report. Project will utilize town utilities. Developer will dedicate 12.98 acres for a public park and developer will receive a credit, and the developer would use fee in lieu money to build a public park and associated greenways as approved by the Town. Items recommended by Parks and Recreation Advisory Commission are listed on page 3 of the staff report. Transportation Impact Analysis was part of the original PUD-CZ documentation and there has been no change, and is consistent with the Apex Transportation Plan. Planning Board met December 10, 2007 and unanimously recommends approval. Staff recommends approval.

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

Alan Manase, BBM Associates, and representing Apex First Development, stated a pond would be built for volume control and flow into Shepherds Vineyard across from Laura Duncan, and is working on the design for the pond now. The Plan allows residential units: 585 unit maximum, with only 282 units proposed. Council Member Jensen would like to see a B Type buffer along Laura Duncan vs. an E Type buffer to keep the old town look.



Manase gave a presentation for the proposed Villages of Apex Phase I noting it 90% of the land between the railroad tracks and Laura Duncan Road and the future Peakway. He showed the types building planned, which includes small and large offices, live/work townhomes (ownership units) on west side of the main boulevard, with brownstones on the east side; condo's over retail; west side: Georgetown townhomes; against the tracks on the Westside will be carriage houses with garages facing the streets and the railroad tracks behind them; noted all units will have garages and will be additional on street parking through-out and behind condos and office buildings. He noted in the center of the main boulevard would be a round-a-bout.

With no one speaking in opposition, the public hearing was closed at 7:35 p.m. and Mayor Weatherly called for a motion.

Action: Council Member Gossage made the motion to approve the major site plan for Trackside South Phase 1. Council Member Jensen made the second to the motion and stated this was a great step to have live/work units, a way of the future, and commended this plan. Council Member Jones agreed this plan was a long time coming, and wished them good luck. Motion carried unanimously.

End of Public Hearing # 01

Presenter: Dianne Khin, Director of Planning

Public Hearing # 02– Trackside South Phase II Major Site Plan

(Continued to January 15, 2008 Council Meeting)

Request to continue to January 15, 2008; Applicant has yet to submit a required lighting plan; Planning Board will consider this major site plan at their January 14, 2008 meeting.

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.

Public Hearing # 07 – Annexation Petition # 420 (Trackside)

Public hearing and possible motion regarding Annexation Petition # 420, Apex First Development, LLC and NCII, L.P. and KC2 Enterprises, LLC, (Trackside) owners/petitioners, petitioning to annex 131.54 acres into the Town's corporate limits and located South of US64, North of Hunter Street, and East of North Salem Street, and west of CSX railroad right-of-way.

Presenter: Dianne Khin, Director of Planning, noted this was the Trackside annexation.

Mayor Weatherly opened the public hearing at 7:35 p.m. with Alan Mannes, BBM Associates speaking in favor of the annexation. With no one speaking in opposition, the public hearing was closed, and Mayor Weatherly called for a motion.

Action: Council Member Sutton made the motion to adopt an ordinance to extend the corporate limits approving Annexation # 420 for Trackside. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 07



Public Hearing # 03– Conditional Zoning # 07CZ15 PUD & Master Subdivision Plan Bella Sera

Planning Board met December 10, 2007 and unanimously recommends approval with condition for a fence between project and Lee property; staff recommends approval with same condition.

Public hearing and possible motion regarding Bella Sera PUD Plan Rezone and Master Subdivision Plan Phases 1 – 3 (52.15 acres) that includes 77 single family lots, 26 townhome lots, and 5 stormwater ponds.

Presenter: June Cowles, Planner: staff report is attached and incorporated as a part of the official record. Cowles oriented to the site and noted adjacent zoning and land uses for the rezone and master subdivision plan for Phase 1-3. Plan includes a mix of planned units; no RCA is required since the density is less than 2.0 units per acre. Pond on site will be drained. Subdivision will have public access by Evans Road extension to connect to existing Evans Road. Sewer lines will be built and discharge into Kelly Road pump station. Grading plan: less than 30 percent of the single family lots; residential units will have crawl spaces. Parks and Recreation Advisory Commission recommendation was a payment of fee in lieu for all phases of the project at \$959.60 per unit, and further recommends all fees collected from Bella Sera go to reimburse the developer or JVI Construction for accelerating the Evans Road Extension. TIA analyzed the development: all intersections are anticipated to operate with acceptable levels of service in build-out year 2010; no offsite intersection improvements are recommended based on the traffic analysis; summary of TIA is listed on page 4 of the staff report. Parking requirements are consistent with the UDO and noted on page 5 of the staff report. Planning Board met December 10, 2007 and recommends the rezone and mast subdivision plan Phases 1-3 with one condition: applicant/owner shall work with neighbors on a fence between project and Lee property. The property for the proposed has been annexed into the town's corporate limits. Build-out of Parkside on the Creek subdivision to the west and extension of Evans Road to Apex Barbecue Road was discussed with its relationship to Apex Nature Park and its connection by multi-use sidewalk along Evans Road. Evans Road Extension estimated cost is \$1 million, with alignment shifted for alignment, to avoid wetlands and less expense and easier to permit: JVI will pull all permits and cover design.

Mayor Weatherly opened the public hearing at 7:45 p.m.

Stuart Jones, Jones and Cnossen Engineering spoke in support of the project, noting different product types with lower density, averaging 20,000 square feet, and less than 3 units per acre, and noting build-out of townhomes, luxury condo's and homes adjacent to the park area, being compatible with the park and next door. He noted they had worked with staff to move the Evans Road Extension alignment out of the wetlands. Type buffers and landscape requirements meet the UDO and locations were noted.

Joey Iannone, JVI, owner of project spoke in support, for townhomes, single family homes in \$400,000 to \$500,000 range, east \$550,000 to \$1 million larger lots, and \$1 plus million on adjacent lots, and backs to park; his target to reach a high price point with low density development for high end project, offering nice better quality of living; seeks Council's support. He agrees with Planning Board condition for placement of fence along Lee property, no wood, but a 6 foot tall metal fence.

Jim and Karma Lee attended the Planning Board meeting, and had made the same statements with Comstock, and hopes Council grants proposal with fence condition in place as they agreed with the 6' metal fence, noting it first quality. Attorney Fordham asked if this was a written condition. Iannone will submit the drawings to the Planning Department and both parties felt the agreement was sufficient according to the general description and Iannone's agreement for placement of the fence with the Lee's. With no one speaking in opposition, the public hearing was closed at 7:50 p.m. and Mayor Weatherly called for a motion.

Action: Council Member Schulze made the motion to approve the rezone and master subdivision plan Phase 1-3 for Bella Sera with the condition for the fence as recommended by the Planning Board.

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

End of Public Hearing # 03



Public Hearing # 04– Special Use Permit and Minor Site Plan MC Precast

Planning Board met December 10, 2007 and unanimously recommends approval with two conditions related to: hours of operation and buffer; staff recommends approval with the two conditions.

Public hearing and possible motion regarding MC Precast Special Use Permit and Site Plan that includes a 26,490 square-foot concrete plant building and storage yard.

Presenter: June Cowles, Planner: REQUIRES SWORN TESTIMONY: All speaking during this hearing were administered an oath by the Town Clerk. Cowles presented the staff report which is attached and incorporated as a part of the official record; oriented to the site on Pristine Water Drive, noting adjacent zoning and land uses. The site is wooded, mostly small pine trees, and proposed to be combined with the adjacent existing concrete pipe manufacturing use. Restrictions are listed on page 2 of the staff report, hours of operation and buffer. RCA is 25.2% and includes existing creek, pond area on the southwestern portion, and buffers; screen storage yard in back. Two access drives off Pristine Water Drive and proposed future drive on eastern future collector street, half of public right of way will be dedicated. Applicant is dedicating public right of way and paving Pristine Water Drive along existing pipe manufacturing site to the west and proposed site (to the property lines on the two sites). Both are shown as collector streets on the Thoroughfare Plan. Landscape and lighting is consistent with the UDO. Planning Board and staff recommend approval of the Special Use Permit and site plan. Planning Board was unanimous. Jessie Drive location and buffer was discussed and how it plays into the office park. Dianne Khin stated it was zoned Light Industrial, and with the 100' buffer, would not see it, and was not much frontage. Council Member Gossage noted the change from Industrial to Light Industrial.

Council Member Jensen referred to the condition regarding the operation hours, and didn't want to lock the applicant in on these hours. Cowles responded this was proposed by the applicant and the way he operates. Brad Reinhold, Engineer, representative for Duchaine Properties, MC Precast, in discussion stated he had rather not impose the hours of operation, if not required; noise was considered, with representative stating there were some hoppers, but not outside; would pour concrete; there are no residential unit and would be happy to remove this condition. It was noted the Planning Board considered the condition as it was offered by the applicant, however, didn't discuss it.

With no one addressing this further, Mayor Weatherly closed the public hearing at 8:00 p.m. and called for a motion.

Action: Council Member Gossage made the motion to approve the special use permit and site with the condition that a proposed 100 foot wide Type "A" buffer in the southeast corner of the lot where the proposed Jessie Drive will be located. Council Member Schulze made the second to the motion, and further stated without the condition regarding hours of operation; which was correct. Motion carried unanimously.

End of Public Hearing # 03

Public Hearing # 05 – Hazard Mitigation Plan Update

Hazard Mitigation Plan was approved 2004 by Town of Apex and FEMA and requires annual report outlining progress on Mitigation Action Implementation and updates; Planning Board met December 10, 2007 and unanimously recommends approval; staff recommends approval.

Public hearing and possible motion to approve the Town of Apex Hazard Mitigation Plan Annual Report.

Presenter: June Cowles, Planner, presented the staff report which is attached and incorporated as a part of the official record. Report ensures goals and objectives continue to be met, UDO items are adjusted, awareness events are held by Fire Department (next event May 17, 2008), evacuation routes and phone numbers are on the website, NEIMS training is on-going. Planning Board met December 10, 2007 and recommends approval.



Hazard Mitigation Plan Update continued

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

Action: Council Member Jensen made the motion to approve the Hazard Mitigation Plan Annual Report. Council Member Gossage made the second to the motion. Motion carried unanimously.

End of Public Hearing # 05

Presenter: Brendie Vega Mkhwanazi, Principal Planner (was not present)

Public Hearing # 06– Unified Development Ordinance Amendments

Planning Board met December 10, 2007 and unanimously recommends approval; staff recommends approval.

Public Hearing and possible motion regarding amendment to various sections of the Unified Development Ordinance dealing with reductions to setbacks for nonconforming lots of record; the removal of the street sign section; and a correction to a reference in correction of violations.

Presenter: Dianne Khin, Director of Planning, presented the staff report which is attached and incorporated as a part of the official record. Amendments to various sections of the Unified Development Ordinance were: reductions to setbacks for nonconforming lots of record; removal of the street sign section; and correction to a reference in correction of violations. Planning Board met December 10, 2007 and unanimously recommends approval. Staff recommends approval.

Mayor Weatherly opened the public hearing at 8:08 p.m., and with no one addressing this item closed the public hearing, and called for a motion.

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

End of Public Hearing # 06

Public Hearing # 08 – Annexation Petition # 423 (84 Lumber)

Public hearing and possible motion regarding Annexation Petition # 423, Wake Acquisitions LLC., owners/petitioners, petitioning to annex 1.959 acres into the Town's Corporate limits and located south of Reunion Creek Parkway, and east of Eddie Creek Drive and E. Williams Street (NC Hwy 55) and known as 84 Lumber.

Presenter: Dianne Khin, Director of Planning, stated the annexation was for the 84 Lumber expansion, which was rezoned at the last meeting.

Mayor Weatherly opened the public hearing at 8:10 p.m. and with no one addressing this petition, closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve Annexation Petition # 423, adopting the ordinance to extend the corporate limits. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of Public Hearing # 08



Public hearings continued

Presenter: Dianne Khin, Director of Planning

Public Hearing # 09– Annexation Petition # 424 (Hornick)

Public hearing and possible motion regarding Annexation Petition # 424, Gerald & Janice Hornick, owners/petitioners, petitioning to annex 0.19 acres into Town's corporate limits, portion of dedicated right-of-way for Chantclair Dr. Stratford @ Abington Subdivision, west of Lyndenbury Drive and north of Rothwood Way.

Presenter: Dianne Khin, Director of Planning, stated the annexation was a portion of dedicated right-of-way for Chantclair Drive for a connection between Stratford and Abington; will be dedicated; Town of Apex will maintain; owner requested same.

Mayor Weatherly opened the public hearing at 8:12 p.m. and with no one addressing this petition, closed the public hearing and called for a motion.

Action: Council Member Gossage made the motion to approve Annexation Petition # 424, adopting the ordinance to extend the corporate limits. Council Member Jones made the second to the motion. Motion carried unanimously.

End of Public Hearing # 09

End of Public Hearings

OLD BUSINESS

There were no Old Business items.

PUBLIC FORUM

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

No one spoke during public forum.

NEW BUSINESS

Attorney Fordham asked if he could add on an item to be considered under new business regarding right of entry agreement. Consensus of the Council was for the additional item to be added under New Business # 03.

New Business # 01 – Police Department

Possible motion to authorize the Town Manager to proceed with the Police Building renovation and expansion project, and to approve and authorize the Town Manager and Town Attorney to negotiate and sign the lease for the interim Police Station at 1224 Perry Road.

Presenter: Bruce Radford, Town Manager, stated bids for the upfit costs for the Clark Building was coming in higher than expected, and asked to bring this item back with alternative measures at Council's January 15, 2008 meeting. Council Member Sutton asked if this was an item to be discussed at retreat. Manager Radford hopes to resolve it before the retreat.



New Business # 02 – Apex Planning Board

Mayor Weatherly asked Council's consideration for recommended re-appointments to the Apex Planning Board as follows and called for a motion:

- 1) The reappointment of Lance Olive for a 3 year term to expire December 2010.
- 2) The reappointment of Lance Olive as Vice Chair for a 1 year term to expire 12/2008.
- 3) The reappointment of Tommy Morgan as Chair for a 1 year term to expire 12/2008.

Action: Council Member Jones made the motion to approve the re-appointments as stated. Council Member Gossage made the second to the motion. Motion carried unanimously.

New Business # 03 – Add – On

Attorney Fordham asked Council for approval of an Entry Agreement between the Town of Apex and Deborah Murray Carmichael for a temporary construction easement, for the widening of Lake Pine at US64 and Old Raleigh Road, south of Wendy's on Lake Pine, giving opportunity to continue to negotiate.

Mayor Weatherly called for a motion.

Action: Council Member Gossage made the motion to approve the Entry Agreement. Council Member Jensen made the second to the motion. Motion carried unanimously.

End of New Business

WORKSESSION

There were no Worksession items.

CLOSED SESSION

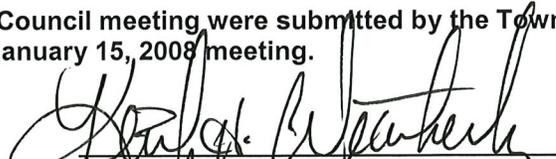
There were no Closed Session items.

ADJOURNMENT

With no further business to come before the Council, Council Member Jones made the motion to adjourn at 8:15 p.m. Council Member Gossage made the second to the motion. Motion carried unanimously.

The minutes of the December 18, 2007 Council meeting were submitted by the Town Clerk for approval by the Town Council at their January 15, 2008 meeting.


 Georgia A. Evangelist, MMC
 Town Clerk


 Keith H. Weatherly
 Mayor