TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, January 4, 2005 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m., Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present. Invocation was given by Commissioner Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked Item # 7 be given separate consideration for discussion. **Action:** Motion by Commissioner Jensen and second by Commissioner Meckes to consider this item under new business. Motion carried. Mayor Weatherly then asked approval of the consent agenda as modified. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to approve the consent agenda as modified. Motion carried.

1. Minutes of the December 21, 2004 Board of Commissioners meeting.
2. Minutes of the December 21, 2004 Board of Commissioners Closed Session (separate cover).
3. Annexation Petition # 369, Ricky A. Blevins and Yu-Chi Lui, owner(s)/petitioner(s); petitioning to annex 11.833 acres into the town's corporate limits; property located at 2728 US Highway 64 West (near the Jenks Road Intersection - SR1163); 1) Resolution Directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution Setting Date of Public Hearing for January 18, 2005.
4. Acceptance of a Local Law Enforcement Block Grant through the Governor's Commission on Crime, and adoption of a Budget Ordinance Amendment to reflect expenditures, and to authorize Officer Dondi Day as Project Director, and further to authorize Town Manager to execute documents.
5. Budget Ordinance Amendment and Capital Project Ordinance Amendment.
6. Approval of Annual 2004 Certification of Firemen Roster of the Apex Fire Department.
7. Approval of Amendment No. 1 to the Interlocal Agreement for regional wastewater management facilities land acquisition and preliminary work (**considered under new business**).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. There were no amendments to the agenda, and it was set as presented.

PUBLIC HEARINGS

David Rowland Director of Planning

Public Hearing # 1 – Annexation Petition # 368

Public hearing and possible motion regarding Annexation Petition # 368, Susan King Byrd and Glenda King Gosztyla, owners/petitioners; petitioning to annex 2.592 acres into the town's corporate limits; property located at the intersection of Davis Drive and Old Jenks Road and known as Davis Drive Village.

David Rowland Director of Planning oriented the board to the location of the 2.592 acres at the intersection of Davis Drive and Old Jenks Road with a site plan having been approved for a convenient store and shops, and in need of town water and sewer.

Mayor Weatherly opened the public hearing at 7:02 p.m., and with no one addressing this petition, the hearing was closed.

Manager Radford informed the board that it would be difficult if not impossible to get sewer to this property; and will fall on the developer to get sewer there; staff has made it clear to the Developer, Blain East with the challenge being the topography. Director of Public Works, Tim Donnelly advised there's a drainage basin with no sewer collection; the school site is served by a Wake County owned pump station; developer has been working with the County on a share of capacity in their pump station, however, the county is not inclined to do this; staff advised they should have this worked out with the county. He continued if the regional pump station is approved in the Williams Creek Basin, even though this is just over the ridge, it will probably give an easier route to sewer this property, and wouldn't have to ask the county to use their facilities there for the school. Commissioner Jones asked about the approval of either option.... with Donnelly responding any options that end up with a pump station basically at the park; it will still be expensive to get sewer to there, but would assume when development occurs, the problem will get easier; when people build onto the collection system they have to extend it and run it through their property so they next person can tie on.

Commissioner Meckes asked if there were a place they could put in their own pump station and get to it relatively easy, asking where the pump station at the schools sends its sewage. Donnelly responded the pump station at the school has a force main that runs down Jenks Road and ties into Charleston Village; a long distance, with the next closest gravity collection at Saint James Village – they could go in this direction, however, would run under the railroad with a private force main – could be a difficult task and doesn't know their economics, but would think that would be prohibited for this size parcel - he didn't know the value. He agrees with the Manager - in hopes these folks do not expect the Town to do something they can't do; will do all that can be done, but they need to understand that. Commissioner Jones asked if this had been made clear to them, with Donnelly and Director of Planning David Rowland both responding they had spoken with the developer Blain East about this matter, but not spoken to the property owners. Commissioner Meckes asked the location of the pump station at the school, with Donnelly responding it's in the back of the school site; they are proposing some arrangement where they could get into the force main or work a deal with the church across the street on Jenks and try to use their pump station that also goes into the county's force main. Commissioner Meckes asked if they are allowed to go into a force main, with Donnelly stating we can't, we don't own it and think it's a bad way to do things, but the County for some reason has chosen to do this.

Rowland advised it's his understanding Blain East, Developer, is to close on the property this month and it would then be his property, and not the seller's property, as far as the concern where property owners are being annexed and then the project not work out. Commissioner Meckes shared concern it could not work out, and not only the developer but the property owners also know about the sewer issue. Manager Radford advised the property owners had not been spoken to, however, noting they are the requestors.

Commissioner Jensen turned his focus on the situation about sewer into the force main, asking if it were the pumps; the fact you trying to pump effluent that is really cruddy, with Donnelly advising in this type situation, you have a large pump station and force main going by a site, and you set up a smaller pump station going into the force main – it works fine as long as the check valves work, however, if they fail then the big pump pumping lots of waste water says, " it's easier to go in one direction and then ...."; continuing every pump station has check valves, but they do fail sharing that every pump station the town has ever had has a check valve fail eventually. The Town has people on call 24 hours to fix those, unfortunately, private people don't have that and it puts them in a mess for a while. Commissioner Schulze asked if a septic system is out of the question, with Donnelly responding the soils in Apex generally to get an onsite system that would serve a commercial type development is pretty tough – obviously all the homes there now have onsite system, with their demands being less, with rules getting tougher each year – making those two things coincide.

Mayor Weatherly added normal procedures would be to honor the request of the petitioner, however for the reason the owners have not been adequately informed about this sewer, in this case, could delay action and allow them to come, and could ask them for their personal preference before passing their annexation petition, if the board wants to be doubly cautious. Commissioner Gossage added considering their taxes are about to go up, he prefers to table it, with Commissioner Jensen and Commissioner Meckes being in agreement, and with Commissioner Jones adding or some confirmation ... with Mayor Weatherly interjecting, that we would not be responsible for sewer of this property; whatever they do is fine, but need to understand directly without any equivocation they should not come and throw themselves on the mercy of the court to do that. Commissioner Meckes recalled they had made decisions like this in the presence of the people and it was still wrong, but at least he would feel better about this. Commissioner Jones agreed, and was comfortable East was going to close on the property and it would happen, but would feel better about the decision knowing the petitioners had heard exactly what the Board had heard. Commissioner Schulze asked if they were to delay, would it hurt the closing. Rowland responded he didn't know, with Commissioner Jones adding it's possible it could be a condition of the sale, but didn't know. Commissioner Jensen added if it gets delayed is for good reason, and believes it is. Consensus was for a two week delay, with Mayor Weatherly asking for a motion regarding this action.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to table this item to be considered at the January 18, 2005 meeting. Mayor Weatherly asked staff assure the owners and the developer is adequately notified the Board requests their presence before acting on this annexation petition. Commissioner Schulze recommended staff send them a written letter stating these facts. Commissioner Jones was not so much concerned about their presence when the board takes action, but confirmation they had heard the same thing the developer had heard. Mayor Weatherly added, and that we want bear any responsibility for helping them out of a delimea, with Commissioner Gossage adding East and the current sellers. Motion carried.

End of Public hearing

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
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 Add on moved from Consent Agenda
Approval of Amendment No. 1 to the Interlocal Agreement for regional wastewater management facilities land acquisition and preliminary work.

Mayor Weatherly stated there had been conversations between the two of them, but at this point no one at their level had been involved in these discussions of County Manager's and staff people. He asked if any of the Board had questions, however, he had no concerns regarding any of this.

Commissioner Schulze asked the latest on Holly Springs; looks like they are paying for access to the plant only. Director of Public Works Tim Donnelly advised Holly Springs was not sure whether they wanted in or out, but wanted to exam all their options; they opted to share in the discharge line going to the Cape Fear, treat their wastewater at their own facility and discharge to the Cape Fear, so they do not need the actual plant itself.

Commissioner Jensen clarified this is where we will discharge, with Donnelly responding the process is to prepare for an environmental impact statement; had met with Division of Water Qualify and other agencies interested in this size of discharge, having looked at Jordan Lake and all feasible alternatives, expanding existing plant, looking at existing discharge points and turned back to discharge in Cape Fear below Buck Horn Dam. The State has issued us a letter with speculative wastewater limits that says if our environmental impact statement holds up to the test of the procedures, we will be issued a permit with these limits at this discharge point. He noted this was a milestone: Division of Water Quality is in agreement that we can discharge here and will give us reasonable limits. He continued there has to be a public hearing procedure, a permit issued, an environmental document that has to go through State clearing house; Federal and State agencies will review the document to see if it is a bad idea – species to protect, etc. – there's a cultural resource there – last known civil war site or something – this is what they look for and trying to do everything they can to avoid this. He doesn't foresee any surprises, however, will not know until we get an approved document.

Commissioner Jones asked the significance of the Town of Cary purchasing the property, with Donnelly responding the original vision was Wake County would be the lead agency, however, as they moved along, the County realized they were not in the wastewater business and would be harder to explain to their board if they had to condemn, etc., which was not as easy as buying land, or if they had to make calls on the value, so they decided to let the owners of the facilities make these calls. Manager's and Technical Advisory Team got to together knowing someone had to take the lead, so because Cary has the biggest staff and biggest resources – they have full time land purchasers and they have the staff it takes to do this type evaluation – he could do it, but it would be an additional burden on the Town as we are smaller staffed relative to other towns, with the Mayor noting the efficiency of our staff. Donnelly advised they will record the rights to the property on the dead in a way agreed to by the Town Attorney. Attorney Fordham advised the Town would be a co-owner of the land, with Commissioner Jones asking if he were aware of what was going on as far as transactions, with Donnelly advising he was. Donnelly advised Cary had contacted the property owners and are examining the property checking for environmental issues. Mayor Weatherly asked that before a price is entered into, Apex would have to be in agreement with the purchase price? Donnelly responded the agreement says the choice must be unanimous with the people that will own the property, with Mayor Weatherly clarifying the choice and the price, with Donnelly responding his intent was the price.

Donnelly asked the Town Attorney for his advice, with Attorney Fordham advising they would have to give approval as one of the parties as it's a pertinent piece of property, and further advising Holly Springs doesn't have a voice in the water reclamation facility or the raw water pump station. Donnelly added that was the intent and wanted assurance from the Town Attorney if we had to bow out, they could say because, not expecting that to happen, with Mayor Weatherly agreeing; he was only curious if we indeed let them purchase the property and make all the decisions by acquisition and then we be stuck with whatever. Donnelly added the site was unanimously selected by the people examining all the 20+ sites looked at.

Commissioner Schulze asked about building and purchase, assuring it doesn't have anything to do with operations, with Donnelly responding he was correct; there will be a subsequent agreement being developed by Womble/Carlyle to be approved by all parties for operation and construction.

Commissioner Jensen added Cary has to cross Apex to get to this facility, with Donnelly adding the design of the facility envisions a jointly owned pump station in the Beaver Creek Basin that will deliver their wastewater from the north, actually the White Oak Basin to the Beaver Creek Basin; it will pump from the Beaver Creek Basin to this new facility then from this new facility to the Cape Fear. Cary will share in the cost of the bid for the pump station in Beaver Creek. Cary would be the lead agency running it just as the water plant. Commissioner Jensen asked how the cost would be broken down for running it, with Donnelly responding it would be in the agreement and noted it complicated that you have fixed costs and variable costs; variable costs is how much chemical, how much electricity; fixed cost, how much staff on a daily basis – agreement will take care of both of those, and still be constructed, but the theory is it will mirror the water plant agreement; he thinks there's been a general level of comfort and trust in the water plant. Mayor Weatherly added basically it's based on capacity usage, with Donnelly agreeing, obviously a big driver would be how much fixed capacity you have bought and in what phase you are in – there's a phase one and phase two envision, so we will buy a fixed amount in phase one and subsequent boards will make that decision in phase two.

Manager Radford added staff will be briefing the board about the proposed methods to pay for this facility, and coming to them for the upcoming bond referendum for the plant. Commissioner Meckes asked if there were a dollar figure. Mayor Weatherly stated timing concerns him, but will hear this out and see where we are on this. Donnelly addressed the dollar figure; the numbers staff proposed at the last retreat – it does not indicate they are going up – he feels good about this; the biggest variable as he sees is how we will be treated by the construction of grants and loans program the state has. Plans are to get a percentage of the cost from construction grants and loans; we have not gotten full commitment but are working on it; there will be this piece that will be part of the funding, and some with the bond, and some with cash on hand.

Commissioner Jensen asked how impact fees will carry the load. Donnelly responded the impact fees were always a vision to have a regional plant, recalling the briefing from the retreat there are no plans to increase those but to hold the line and let the 4% growth rate that the Town has adopted that's ideal for a community fill in those pieces; the financial reports show we generally do ok and are growing at that rate or close to it; a little more commercial some years and a little more residential some years; he will bring the board more on this as needed.

Commissioner Meckes asked about the increase in wastewater treatment fees for the citizens asking if this were a portion of the entire acquirement and as we get closer we will have a better idea where we are with money, requirements for bonds, etc, with Donnelly responding that is correct. Commissioner Meckes asked the final figure that was raised, with Donnelly responding the highest number seen for phase one to get into the plant and get wastewater moving that way, having to make changes in the collection system, gross number is $70 million, but you have to do the sub-pieces to get it. Commissioner Meckes asked what they ended up calculating our revenue from increased wastewater treatment fees – with Manager Radford added $5.00 additional charge – with Commissioner Meckes noting the incremental increases over the next years up to 2011. Assistant Manager Wilson stated total, it seemed to take pricing 50% higher than it is now, when working your way through to the end of all those increases with Manager Radford adding the end of an eight year period.

.Commissioner Meckes still asked if there were a figure that those increases represent some portion of what costs are going to be, with Commissioner Gossage adding it's in the retreat. Donnelly didn't remember, but thought he was asking if 30% is coming from rates, and 60% from other, etc. and he doesn't have that, but has folks that can get this, with Manager adding it would be part of the presentation, with Commissioner Meckes adding or at the retreat for review.

Commissioner Jensen asked if we plan to continue running our own facility in the foreseeable future, with Donnelly responding yes, that when we did the total analysis of all the ways it could be done, looking at lots of different ways, it became apparent to them, they had so much investment in our existing facility and it's relatively healthy, it's not 50 years old or rusted out, that is environment is rough on steel and concrete, that it didn't make sense to accelerate the decommissioning of that plant; we have too much investment and too much value to it; we envision the flows that naturally go the Cape Fear will go there for sure, and some of the flows in the Neuse that can easily be redirected to the Cape Fear will go to the Cape Fear, but some of the flows in the Neuse that easily goes to the plant – there's a big gravity interceptor that goes to the plant – will continue to go to the plant. He hopes to do, and he will not be here talking to the board when it's done, but somebody down the road will have to make a decision – when would you take that plant out, or do you want to keep it running; it would cost a lot to decommission it now vs. what it would save in other things.

Commissioner Jensen asked if it meets the IBT requirements, with Donnelly responding it does which is one of the biggest drivers; you have a document that says by 2011 you will be returning waste water to the Cape Fear, with Commissioner Jensen adding he meant still running the plant if we ran it out to 2020, with Donnelly adding yes, we would not be in conflict with any IBT requirements to do it the way it's proposed; most of it going to the Cape Fear, but some of it continuing into Neuse.

Commissioner Meckes clarified there was no problem – conceivably we could end up still with Interbasin Transfers, except this time we are going from the Neuse River Basin into the Cape Fear Basin. Donnelly responded they don't worry about the wastewater running around; they only worry about is the source of the drinking water and where does it finish up. Commissioner Meckes confirmed it didn't matter... with Donnelly interjecting you could cross the base line four or five times if you need too. There will still be an Interbasin Transfer and we will still have authority to do it; it will basically revert to the authority when our water plant was a smaller size, recalling there was hardly any issues when the water plant was 16 mgd; we will go back to the way it was then as far as what the Neuse plan is seeing and discharging.

Commissioner Jensen asked if we would be slowing down the flow to the Neuse Plant, with Donnelly responding absolutely, it would cut significantly. Commissioner Jensen asked by slowing down the process we would be delivering water with less nitrates, with Donnelly responding we would be delivering less poundage per year, with Commissioner Jensen adding on a per gallon basis. Donnelly responded treatment processes are limited by percent movable and even though you may have a little excess basinage out there, the type of treatment process you have in the environments the bacteria can work in, it will only give about 99% removal. Just because you double aeration time, because you have less wastewater going to it, doesn't mean you double your efficient. Commissioner Jensen asked if we remove 99% with Donnelly responding yes, we are in 95 to 99% removal for most pollutants. Commissioner Jensen asked about the nitrates, with Donnelly responding it comes in at 20 or 30 mg per liter and gets down to about four and one-half. Commissioner Jensen asked what our fresh water plant has in nitrates when we deliver fresh water, with Donnelly responding he didn't know, it's a low number; you try not to have those because it's a syndrome called "blue babies" and when you expose them, it's a bad thing. Commissioner Jensen asked how about coming out of the lake – still low, with Donnelly responding its low; there's something there because algae can live, but if you have very much, you have an algae bloom – the lakes green. Commissioner Jensen clarified he was saying on nitrates, we remove 80% roughly – with Donnelly responding on that one, but when looking at total pollutants the biggest pollutant of concern is biochemical oxygen in our wastewater treatment plant.

Commissioner Meckes asked if this is what brings about detrubification, with Donnelly responding, it's the nutrients that actually do that – nitrogen in the phosphorus, the biochemical oxygen demand saps the oxygen out of the receiving stream and the fish, etc. can't live.

Mayor Weatherly noted they had gotten far field from the agreement, turning to Attorney Fordham for some modifications to the agreement. Attorney Fordham advised the board of some minor modifications to the agreement with those changes having been made in the agreement.

Mayor Weatherly noted the figures had changed substantially since first starting the process, particularly Cary's asking if there were an explanation. Manager Radford stated Cary had decided they would take some wastewater to Durham, and then changed their minds and put more into this plant. Mayor Weatherly stated they were well below Apex at one time; we were the larger partner. Donnelly felt they had looked at the idea of other ways they would manage it and they didn't work out for them, so they ended up putting lots more into this plant; of course there is the discussion of the merger with Morrisville, they would actually take over their utilities; he thinks this will probably be reality. Mayor Weatherly added Wake Forest, and Raleigh. Commissioner Meckes asked Donnelly if it were fair to say he was happy with all that has been done, with Donnelly responding he was.

Commissioner Jensen asked if 20 to 30 mg per gallon – with Donnelly responding per liter and could get up John Cratch at the Waste Water Facility for the influent data; he doesn't focus a lot on influent data; like your normal BLD coming in – if you have 200/250 per liter, they cut it down to 2 or 3.

Mayor Weatherly called for a motion to adopt the Interlocal Agreement with the modifications as suggested by the Town Attorney.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes. Motion carried.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

There were no Closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and second by Commissioner Meckes to adjourn. Motion carried.

The above minutes were approved on the 18th day of January 2005.

Georgia A. Evangelist
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, January 18, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Board of Commissioners to order. Invocation was given by Commissioner Meckes. Pledge of Allegiance was led by Scout Denam Horton, Troop #131, working towards his citizenship merit badge. Welcome was extended by Mayor Weatherly to all those in attendance.

PROCLAMATION

Mayor Weatherly proclaimed National Jaycee Week January 17-22, 2005 and presented the Proclamation to Karen Byrd, accepting the proclamation on behalf of the Jaycees.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Attorney Fordham asked Item # 7 be pulled from the consent agenda (final survey plat was not ready). **Action:** Motion by Commissioner Gossage and second by Commissioner Jensen to pull Item # 7. Motion carried. **Action:** Motion by Commissioner Schulze and second by Commissioner Jensen to approve the consent agenda without item # 7. Motion carried.

1. Minutes of the January 4, 2005 Board of Commissioners meeting.
2. Subdivision Plan: Jones & Cnossen, petitioner, seeking approval for subdivision plan containing 5 lots on 1.7 acres located on Fairview Road ***(Planning Board recommends approval unanimously).***
3. Authorize Sgt. Greg Towell, Apex Police Department as Project Director for an "Overtime (Salary) Drug Interdiction Grant" under the Governor's Crime Commission, and further authorize Town Manager to execute supporting documents.
4. Authorize David Boggs, Communications Supervisor, Apex Police Department as Project Director for an "Interoperability Communications Grant" under the Governor's Crime Commission, and further authorize Town Manager to execute supporting documents.
5. Authorize Town Manager to sign contract with the Clean Water Management Trust Fund relative to acceptance of a $612,000 grant to aid in the possible purchase of additional acreage adjacent to the planned Nature Park on Apex Barbecue Road.
6. Wake County tax report.
7. Adopt Resolution authorizing condemnation of land for easement and temporary construction easement related of the Chanticlair Drive extension (***This item was pulled from the consent agenda).***

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. 1) Commissioner Meckes asked to amend the agenda to include an additional item to closed session agenda: Consideration of acquisition of property located at the intersection of Center Street and Salem Street. 2) Attorney Fordham asked to amend the agenda to include an additional item to old business regarding a Resolution concerning potential purchase of public land relating to use of property as requested by the seller.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to add these items to the agenda. Motion carried. The meeting agenda was set as modified.

PUBLIC HEARINGS

June Cowles, Planner

Public Hearing # 1 – Rezoning Case #O4CU19 and Master Site Plan

(Planning Board recommends approval unanimously with conditions).

Public hearing and possible motion regarding Rezoning Case #04CU19 and Master Site Plan, Crown Builders & Developers, Inc. petitioner, seeking to rezone from Planned Unit Development District to Planned Unit Development District and a Master Site Plan to include 65 townhomes containing 8.33 acres located north of Salem Street between Sugarland Drive and Lynch Street.

Town Clerk administered oaths to those that would be speaking during the public hearing.

Director of Planning David Rowland reviewed the staff report for Planner June Cowles (absent due to sickness). He oriented to the location of the property, and noted adjacent zoning and land uses. Staff report is attached and incorporated as a part of the minutes. Background information: Salem Creek PUD was approved earlier; applicant submitted site plans for townhomes with a one car garage which requires maximum height of 48 feet; Salem Creek PUD was approved with a maximum height of 36 feet. Applicant requests maximum height of 48 feet for townhomes, and asked amendment to the PUD. Rezone includes a site plan for units and includes a daycare center to be reviewed later. Highlights: public road connection proposed to South Salem will be stubbed out to the adjacent property for future connection to Sugarland Run; RCA area has intermittent stream and will preserve the sensitive areas of the site, and requires a 50 foot buffer on each side of the stream; there are steep slopes in the area and noted an ideal place for RCA which is 35% (comparison – UDO amendments require 20% of the property within the area bounded by I-540, US1 and US64) 35% is more than required; 50' stream buffers are required, and also includes a greenway easement for future extension in this area. Parks and Recreation Commission reviewed and approved the proposed project with the following recommendation: The applicant/owner shall provide a fee-in-lieu based on units approved. Stormwater retention will be provided by underground storage pipes with no visible area which the stormwater is stored. Curb and gutter and sidewalks will be provided; provides a left turn lane along South Salem Street into the development so people heading north on Salem can continue without being blocked making a left hand turn into the project. Planning Board recommends approval with conditions: townhomes height shall be maximum 48 feet, another condition not in the original plan: townhomes roof ridge shall be stepped and staggered in order to create visual interest (goal not to have one continuous building with no relief between the units), and South Salem Street buffer is part of the PUD process to allow reduction in the thoroughfare buffer - typically would be a 30 foot buffer and proposes a 15 feet buffer with plantings that normally would go into a 30 foot buffer will be placed in the 15 foot buffer, therefore mitigating bringing it down by putting more plantings in the buffer. Developer has agreed to these conditions.

Chris Roberts BBM noted in the plan there is a density on the first page of the plan that calls for development perimeters being 2.3 units per grass acre and is not correct – density is around 13.92 units, an error that should be corrected in the plan and Roberts agrees to this correction. Planning Board expressed concern about parking and asked Roberts to revise the site plan: there is off-street parking shown along the project and also there will be on-street parking for guests, however, it has been laid out where they were meeting the parking requirement of two spaces per dwelling unit however, the Planning Board felt there needed to be more parking on the plan so the revised plan currently in front of the board shows some additional parking that is tucked in on a couple of places. This was a summary of the proposed rezone.

Commissioner Schulze asked: If the site plan was previously approved with the rezoning. Rowland responded it was only the rezoning. Asked the rationale behind the decision for fee-in-lieu. Director of Planning read an email from Director of Parks and Recreation, "...fee in lieu option was recommended because of the proximity of the Apex Elementary School Park, West Street Park, and the eventual connection, via sidewalks around the West Street area to the proposed Beaver Creek Greenway link from downtown to Jaycee Park. As far as the fee in lieu money and where it is used, the funds will go into the recreation subdivision fee account which could be used to purchase additional land, or make park improvements either in that general area or in other locations around town as the Board deems appropriate." Asked where the West Street Park was located, with Director of Planning showing this on the map.

Commissioner Jensen asked the size of West Street Park (has basketball court and shelter). Commissioner Jones continued the other thought – this was eight acres and if you take a percentage of that for parks compared to the number of units and times the fee in lieu made better business sense within the adjacency of other parks.

Commissioner Gossage asked what the space in the middle of the units (the common area of about one-quarter acre).

Commissioner Meckes asked the character of the area within the stream buffers (vegetative and steep slopes).

Commissioner Jensen asked if there were other parks beside West Street Park on this side where people could walk to in this area – understanding with Apex Elementary you cross over Salem and down streets and to Jaycee Park up to NC55, asking if there is something else planned to take this fee-in-lieu; further noting Sugarland Run took a fee-in-lieu and it seemed to him - runs into the same situation with Surry Meadows; with the need to try to mold parks within the area, and somehow accumulate enough to give them a neighborhood park.

Town Clerk administered an oath to John Brown, Director of Parks and Recreation who explained there is nothing on that side, with the closest park being down Salem Street. Master Plan calls for a significant size park farther down Salem Street that will be accessible by sidewalk in the future. Closest now is Apex Elementary – Master Plan does not call for property in this particular development for a park site, with Commissioner Jones noting nor directly adjacent to that. Brown continued in the past, have looked at the proximity to other parks and rationale was proximity to Elementary School Park, even though you do cross Salem – proximity to West Street Park and future access by sidewalks to Jaycee Park as part of the Beaver Creek connection from downtown to Jaycee Park and eventually to Kelly Road Park.

Mayor Weatherly asked his perspective on the number of units the land dedication would have been for this, with Brown responding 65 units – one thirty-fifth of an acre per unit. Mayor Weatherly added it's always been the philosophy when it's going to be an acreage - we can't utilize in the meaningful...with Brown adding the ordinance. Commissioner Jensen said he was not arguing about requiring a park in this, he's just asking where we are going to spend the money that we are taking for this and is it going to be used local, somewhere within walking distance – maybe down Salem Street – the big park with sidewalk access is reasonable walking access – this is what he'd like to see.

Commissioner Meckes added what ultimately may come to pass is the mobile home park would no longer be, and is a significant piece of land, with Brown noting current Master Plan calls for a fairly sizeable piece of property farther down Salem Street near Barbeque Road where Salem Street intersects (approved 2001), and then the I-540 plan as well. The current ordinance says, and does not pertain to this, ..."if a development comes in with less than 35 units, then they only have to pay a fee, because it's less than one acre of parkland."

Commissioner Jensen asked if the area being talked about is going to be on the northwest corner of Apex Barbeque Road and Salem Street and how far a walk, with Brown responding it's the plan, with Commissioner Meckes adding about one half mile. Brown thinks as improvements to Salem Street are made, long term would connect by sidewalk and thinks the transportation plan actually calls for that to be sidewalk or multi-use path similar to sidewalk or greenway that would make it accessible.

Commissioner Meckes asked how close they are to a greenway headed towards the Jaycee Park, with Brown responding it's Phase I of the Beaver Creek Greenway; and construction plans should be submitted mid February and with approval would bid as part of the bond project early April, with construction mid April; proximity - down the street behind the Rescue Squad (Harward Street) to the Community Life Church and greenway easement over to Jaycee Park to Whitehall PUD (under design) and to Kelly Road Park.

Mayor Weatherly opened the public hearing at 7:28 p.m.

Chris Roberts, BBN Associates, 407 Gorman Street, Raleigh, is Engineer for the project. He advised the following:

Landscape buffer will be reduced to 15 feet, but will keep the same amount of landscape as in the 30 foot wide buffer. Private streets in the private areas will be constructed and designed as if they are a parking lot, and not considered public streets – standards will not be up to what they would be for a public street (areas beyond the right-of-way on the south and east, and west - anything not on the main street – only the one loop). Stormwater will be designed to use large pipe at the end to handle the amount of stormwater going off the property (he used CMP and has found out he's not allowed to use metal within the right-of-way and will use either RCP or something allowed by the town that will be to the standard specs and UDO).

Commissioner Jensen asked questions with Roberts responding: Square footage of impermeable surface on this project (4.67 acres). Storage volume in pipes to retain the water from the run-off and if it's a 10-year storm (volume 16,085 cubic feet and for a 10 year storm).

Commissioner Meckes asked if the additional parking was the area adjacent to unit 31 with Roberts responding yes one on the northwest side and also three more parking spaces near units 62-65.

Commissioner Gossage asked if the two spaces per unit included the one in the garage with Roberts responding yes – one in the garage and one in the driveway.

Commissioner Meckes asked if parking would be an issue if someone had twenty people over, with Roberts responding yes – the street is wide enough where one could have twelve feet – two cars on both sides off the main street or public street – there's still room enough for two cars to pass between there and in the private areas enough room for at least one car to drive by. Commissioner Meckes confirmed there would be some spaces along the main street with Roberts responding yes, there would be some room for someone to park temporarily). Commissioner Meckes could see the two cars depicted and still room for two cars to pass.

Commissioner Schulze asked where the dumpsters were, seeing trash roll-out storage area, but not seeing them on the map, with Roberts responding they are going to roll-out units with each townhome having its on roll-out unit that they can roll out each morning – there's not going to be a centralized area for dumpster. Commissioner Schulze asked if each unit would be in front of their house. Roberts responded yes, there should be enough room in the garage to pull them in. Commissioner Schulze asked if this were slab construction, with Roberts responding no, it's going to be elevated and have crawl space underneath.

Mayor Weatherly questioned the private drive area, asking if it were used for access – would residence and others use this for access to the units. Robert asked for clarification, with Mayor Weatherly continuing, anything marked private drive that he had said would be homeowner association owned he guesses. Mayor Weatherly continued there had been bad experiences with this in the past, and he wanted to make sure he knew exactly what the use will be, whether it's required to access any of the units, whether there will be garbage trucks or anything like this to go through there; he guarantees it will be the town's problem once the units are sold out and the substandard surface starts to break up – they will not remember what the covenant said and what was said at closing – all they will remember is the town agreed to this to start with. He wanted to know what the use would be for. Commissioner Jones added and because it stubs to the lot to the south which may or may not be a private drive. Commissioner Schulze added the width of the road itself says 13 feet, with Roberts advising, no, that's the width with the car; it's 24 without the car. Mayor Weatherly asked again, "is this going to be used for access to any of the units", with Roberts responding yes, it will provide access to all the units down in that area, that's correct. Mayor Weatherly added when he described it, it was for parking and he wanted to hear him say it was ... he stated he'd get to that later after anything else for the hearing, and then would cross exam staff about why they did some of these things.

Commissioner Schulze questioned buildings 58-65 their backside facing Salem Street, asking to see the elevation Sketch (A-2), being concerned about the presentation from Salem Street, with Roberts showing the elevation, except the roof lines will be broken up elevation wise and also on the front surfaces – it will not be a complete flat building all the way across – it will be broken up per unit. Commissioner Meckes added they are also doubling up on the plantings in the 15 foot right of way as well. Commissioner Schulze added he had said it would be a crawl space, but doesn't see it – it looks like slab construction. Roberts responded it does, but should show crawl space going beneath those, but is not apparent on this. Commissioner Schulze asked if there would be any kind of facade with Roberts responding it would be hardy-plank and to the UDO standards. Commissioner Schulze noted typical crawl space of a house had brick two or three feet up, he's not seeing that here, asking if hardy-plank would go to ground level, with Roberts saying, it would not be all the way to the ground, the crawl space would be facade brick.

Commissioner Jensen questioned fire truck access to the back parking area, with Roberts advising there will be a no-parking zone along the outside edge of the common space where people would not be allowed to park. Commissioner Schulze was concerned about the garage size and how, if they had a garbage can in the garage, would fit the car in; he senses it as a small garage. Roberts responded it would be fairly small, but the depth is going to be deep enough to allow it; he doesn't have the exact figure but remembers it's at least 22 feet.

Commissioner Gossage asked the length of the longest fire truck the town has, with Manager Radford estimating 42 or 45 feet; his concern is not so much the length as it is the turning radius, with Commissioner Jensen adding that has to do with length. Manager Radford continued the passage where a car is shown on the far left side, and shows a remainder of 13 feet causes him concern, with Commissioner Gossage agreeing and Manager Radford continuing parking elsewhere could keep them from getting to someone, with Commissioner Gossage interjecting, if a car is violating the no-parking Apex Police Department has no authority to go in. Commissioner Jones added unless it's a safety issue, you can't do it on a private drive otherwise, asking if that's correct. Commissioner Gossage asked if this were correct; would we be unable to enforce a no-parking zone on a private drive or would we be able to. Manager Radford responded, if it's impeding the emergency vehicle, it takes precedent over that. Commissioner Gossage clarified, a fire truck would have to get out there, call in and say they can't make the turn and ask, can you come out and write a ticket.... Manager Radford asked the Director of Planning Rowland, during TRC, what were the fire department's concerns, with Rowland responding apparently it was o.k. by them or it would not have gotten this far. Manager Radford was having trouble with this. Mayor Weatherly asked if there were notes or minutes from the TRC, with Rowland responding sure he could look at them, he doesn't have them with him. Mayor Weatherly didn't want to delay this; they were still in public hearing and he wanted to move beyond this and discuss the issues. Commissioner Jensen said he had run some numbers regarding retention, asking how he came up with his numbers as far as retention volume. Roberts responded on what he used to base the calculations.

No one else spoke during the public hearing, so Mayor Weatherly closed the public hearing, but then decided to leave the hearing open for further comments. He directed his thoughts to Director of Planning, thinking there was policy or ordinance that prohibits accepting the dedication of private streets. Director of Planning responded the only thing he could think of was the PUD does allow for some variation to standards, and Manager Radford had brought up a good point about fire access, however he assumes if it made it this far and through TRC, that the fire folks were o.k. with the layout; he wished he could be more specific (Cowles had attended TRC).

Mayor Weatherly felt there were some apparent deficiencies here in that regard, wanting to clarify that before going further. He had concerns and issues in regards to accepting private streets in a development, because it ultimately will be this board's problem when there is problems with the maintenance of those streets as it's costly to the homeowners associations, with Commissioner Meckes adding garbage trucks could chew it up, with Commissioner Jones adding especially with the radius ... and Mayor Weatherly interjected it's only been a couple of years that we had a bad experience and had to dish out a considerable amount of public money to make good, even though, they should have certainly been aware of what they were buying when they bought their townhomes, they were also buying the streets. Director of Planning again went back to the PUD, advising it does allow some variation in our standards. Commissioner Jones concern was the stub to the south to the Thompson Heirs property, and what would happen there, asking if that would be a private drive. Director of Planning looked at the public street on the slide, with Commissioner Jones noting the stub to the south, and it's connection at some point in the future and whether it would be private or vice versa. Mayor Weatherly stated it could be access off Salem, with Commissioner Jones continuing it may not be that big of a deal, but like had been said, "we have had a situation in the past."

Commissioner Schulze asked in relation to this street and the street in Dogwood Ridge where there was a problem with folks parking on both sides of the road, with only one car passing, seemed like a similar situation. Commissioner Meckes noted it the same situation on Magdala Drive with cars on both sides, with Rowland responding that's one of the hallmarks – it does slow traffic. Commissioner Schulze didn't know if this law applies to private streets, but remembers from Dogwood Ridge you couldn't park within 15 feet of a driveway. Commissioner Gossage thought it was on the books. Commissioner Schulze thought that to be the law, and if that's the case he doesn't see how a car can park between the driveways. Commissioner Jensen added that was the same complaint they had in Dogwood Ridge. Mayor Weatherly asked Director of Planning if he were familiar with the stub standard construction of the drive, asking how substandard it intends to be, gravel or what.

Director of Planning responded he assumed it to be paved, with Commissioner Meckes adding instead of 4 inches of asphalt, it would be 2 inches of asphalt. Maness responded it would be 3 inches of asphalt. Commissioner Jones added the issue is not necessarily the thickness of the asphalt but preparation of the subgrade underneath it; any pavement. Mayor Weatherly added obviously the reason they want it to be a private street rather than public street - there's a savings somewhere or otherwise... Alan Maness added in terms of fire truck access, the turn radius is not a problem – the truck can make and Karl (Huegerich) had agreed with that; he didn't believe there were any comments on access from the fire department. Abatement structure could be debated, but in terms of access with no cars on the street, there's no problem getting the fire truck in and out – cars on the streets, there may be a problem, with his neighborhood at night, there's always cars on the street and doesn't think it's enforced 15 feet from the driveway very well, but the bottom line is the Planning Board asked for more parking and they have tried to accommodate them with on street parking and extra, but, they meet the ordinance and provides two parking spaces per unit minus any on street parking; they are trying to accommodate the Planning Board here and if that's not the best solution they can strike on street parking in this neighborhood – he doesn't think there is – there may be a few places where you wouldn't be within 15 feet of a driveway, but not many. Commissioner Meckes didn't think that was very practical to not have any on street parking; you can't invite anybody over. Maness added given garage townhomes, it's hard to have a spot where they can park – you have a shared drive that comes up to single car garages and the driveways are spaced pretty tight, but is that urban feel and an urban glitch too.

Commissioner Meckes was not as worried about the parking issues because if the fire department has already said they can make this work, the road issue. Commissioner Gossage added that was without on street parking. Commissioner Meckes was talking about ultimately collapse of the private drive.

Mayor Weatherly added the homeowners although they may sign a document at closing that says they acknowledge the ownership of the common areas, but ultimately they don't know. He thought the town's experience in that – they had resolved never to get into that situation again, so based on that, he has a problem with the private drive situation. He asked if they need to look at the technical review committee's specific responses on that, if they actually covered it to the detail – it's pretty obvious, he guessed they would – it's a pretty obvious safety issue. Manager Radford added he would like to have a conversation with Chief Haraway regarding this. Mayor Weatherly asked if anyone wanted to make a motion to delay action for two weeks. Mayor Weatherly reminded he had kept the hearing open, stating the motion should be to continue the public hearing to the next regular meeting of the town board, February 1, 2005.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to continue this hearing to February 1, 2005. Motion carried unanimously. Commissioner Meckes asked Director of Planning if he had seen this, with Rowland responding he had, but June Cowles attended TRC and knows the details and privy to the discussion.

Public hearing # 1 continued to February 1, 2005

June Cowles, Planner

Public Hearing # 2 – Amendment to Unified Development Ordinance

(Staff request item be continued to March 1, 2005 meeting)

Public hearing and possible motion regarding amendment to Section 5.2 of the UDO regarding definition of lot width in "General Measurement Requirements." Mayor Weatherly advised staff asked this hearing be continued to March 1 meeting.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to continue this hearing to March 1, 2005. Motion carried.

Public hearing # 2 continued to March 1, 2005

Town Manager Bruce Radford

Public Hearing # 3 – FY 2005-2006 Annual Budget

Mayor Weatherly opened a public hearing to receive citizen input regarding the formulation of FY2005-2006 Annual Budget.

Art Clem, Beckett Crossing, requested money in the budget for: continuation of sidewalks and further making them friendly along Olive Chapel Road with lighting continued out to the school on Olive Chapel, along Old Raleigh Road and Laura Duncan Road; completion of sidewalk tie from Beaver Commons to Beaver Crossings; completion of the intersection at NC55/Olive Chapel Road this fiscal year; work with the state to complete the lanes "straight shot" on NC55 from Olive Chapel Road to US64/NC55; two more speed humps in Beckett Crossing approximately $4,000 to help with cut through traffic issues; transportation planning for construction and maintenance of roads.

Tim Carley, 301 Satinwood Drive, requested money be budgeted for "brown" historic district signage directing people to downtown on US64, NC55, and US1; for downtown parking; lives in Surry Meadows and traffic challenged in the neighborhood – sidewalks are on Satinwood and Vintage Grove, with connectivity recommended by Planning in the future – his neighborhood would like to see the developer pay for sidewalks and traffic calming in their neighborhoods as a condition of development – if not, ask to have a plan B ($11.00 per foot for sidewalks) – doesn't know what but should be there to correct a design flaw, and hopes it will be corrected by a developer. Expressed appreciation for the board's support to the downtown merchants.

Mayor Weatherly closed the public hearing; opportunity to hear further comments will come at the next hearing.

End of public hearing # 3

David Rowland Director of Planning

Public Hearing # 4 – Annexation Petition # 368

(Continued from January 04, 2005 meeting)

Public hearing and possible motion regarding Annexation Petition # 368, Susan King Byrd and Glenda King Gosztyla, owners/petitioners; petitioning to annex 2.592 acres into the town's corporate limits; property located at the intersection of Davis Drive and Old Jenks Road and known as Davis Drive Village.

Director of Planning stated this hearing had been continued from January 4 with the concern of the board the property owners would annex the property and the town could not serve it with sewer. Developer Blain East was present and confirmed he had closed on the property and takes care of the concern. Mayor Weatherly explained to East the board wanted to be assured he knew the town would not bear any future responsibility of the sewer to this property and help in this process and would only annex this property, knowing this before he became a citizen of Apex. East stated he had met with the pastor of Hope church and agrees to the tie in of the pump station; also have met with Wake County School Board – their Engineer calculations shows substantial capacity on the existing force main line that can service this facility; the engineer has presented the calculations to the school board and has agreed to allow them to tie into that, and is awaiting a letter from the school board saying they can tie into the church lift station. Kimley Horne has designed a gravity feed from their property down to the church pump station that will increase the size of the pump in the lift station; they will also help with maintenance; the church pump station is private and there is large enough capacity, not only for what is existing in the church but for future expansion of the church; that portion was also in the calculations. This feeds back into the lift station of the school which is a force main back down Old Jenks. Mayor Weatherly noted the reason for the concern was the information given was not at all optimistic about the prospects. East responded it has been challenging to say the least, but is working out. They also take responsibility for the maintenance of the Wake County line – a double win for the county and the church, and gives them sewer capacity they didn't have. He continued maybe one day the town will provide adequate, not in the near future.

He's anxious to start the project and a couple of days away from receipt of the letter from Wake County, with construction plans being submitted shortly for building permits and will be underway soon. Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to adopt an ordinance to extend the corporate limits regarding annexation petition # 368. Motion carried.

End of public hearing # 4

David Rowland Director of Planning

Public Hearing # 5 – Annexation Petition # 369

Public hearing and possible motion regarding Annexation Petition # 369, Ricky A. Blevins and Yu-Chi Lui, owner(s)/petitioner(s); petitioning to annex 11.833 acres into the town's corporate limits; property located at 2728 US Highway 64 West (near the Jenks Road Intersection - SR1163).

Director of Planning oriented the board to the location of the property in Wake County zoned R40W and being contiguous to Abbington Subdivision.

Mayor Weatherly opened the public hearing at 8:12 p.m.; with no one speaking, the public hearing was closed.

Commissioner Jensen asked the expected zone classification, with Rowland responding it is the future Wal-Mart site and would be a commercial zone from current county residential zone. Future request will be for change in land use plan and rezone property. Commissioner Jensen asked about the US64 access with Rowland responding the plan he's seen would probably be right-in and right-out.

Jason Baron, Attorney for petitioner was present assisting the developers, Angeloni Development, and introduced Al Lasara of Kimley Horne and Associates, Engineers of the project. He noted this is a piece of a larger tract with the other parcels lying around it are all within the Apex ETJ and this parcel is not; all of the parcels will be a part of the site plan; Developer plans to submit plans for a propose Wal-Mart – majority of the access will back onto Jenks Road opposed to putting it on US64; total acreage 110 acres with out parcels planned on US64; planned one access right-in/right-out on US64 and several other access points from Jenks Road. There is some question of annexation before from Commissioner Meckes. Commissioner Jones the other parcels are in the ETJ and this piece is not, with Attorney Baron stating they needed this piece for this project. Commissioner Gossage added it's never a guarantee for approval of rezoning or site plan. Lasara noted it a wonderful project and looked forward to them seeing the site plan.

Commissioner Jensen asked if there would be a transportation plan upgrade. Director of Planning stated the plan has been redesigned for Richardson Road to be extended over to Jenks Road (past had Barbeque Road coming up, but changed the plan) and there would be some east to west connectors, with a planned interchange at this intersection on the transportation plan. Commissioner Meckes thought this had been discussed before with US64 being a controlled access highway with no interchanges, with Rowland responding interchanges were ok, it's just break in access at surface connections – there will be an overpass. Commissioner Jensen was concerned with the load onto Jenks Road with Rowland responding there would be a required TIA. Mayor Weatherly closed the hearing and called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve annexation #369 by adopting an ordinance to extend the corporate limits. Motion carried.

End of Public Hearings

OLD BUSINESS

Kent Jackson, Director of Construction Management

Old Business Item # 1 – Utility Relocation Agreement

Discussion and possible motion to approve a Utility Relocation Agreement with Progress Energy related to the Olive Chapel Road and NC55 improvement project.

Mayor Weatherly gave a review of the meeting with Progress Energy, DeWitt Smith, General Manager of Distribution, Kent Jackson, Mayor Weatherly and Manager Radford, and Marty Clayton, Progress Energy. Staff agrees with the cost estimate of the relocation of the eight poles, being consistent with materials, difference in labor ($85,000). PE has committed to give a straight pass through of the cost not to exceed a price, when final costs comes to them, they will pass the exact cost to us and give us an opportunity to discuss the billing of the final pricing - $128,000. Commissioner Jensen asked if there had been thought of an audit (ex. CSX). Mayor Weatherly felt this was an average pricing and not intended to be exact. Contingency overhead is 35% but will not be charged for this if not incurred. If there are difficulties in granting easements, they have asked for our cooperation by using the town's imminent domain to help with the project. His perspective is the town received as much as we could with the understanding from the beginning that they were not going to give us a cut-rate price because we were asking, they could pass along the exact cost for the project. They further agreed to accelerate the field work; Smith followed up with Jackson restating the commitment we could consider the $128,000 as a not to exceed amount regardless. Mayor Weatherly stated as far as expediting the project as soon as paving season begins, want to be ready to go; tenants of the property needs access and have been unable to get temporary access from NCDOT and it's essential we be able to expedite this project for them to get into their new facilities, and felt those concerns were understood.

Jackson stated the question is how the board prefers to deal with the $128,000 utility relocation costs; plan early last year covered all construction related costs with developer agreement. Walgreens has agreed to pick up $45,000 of the costs in September 2004, with the town picking up the remainder or about one-third and one-half of the funeral home – with the costs on this side having been reduced by the Beavers project where they have had the pole adjusted on their side at their expense. Commissioner Jones felt we have done our due diligence through-out the project; all costs having been more then had thought when first started. Commissioner Meckes asked if the burden had been adequately shared, asking if the board was satisfied, with Jackson responding the town is probably bearing more of the costs then our share ($230,000 construction, $13,000 easements – attached chart). Additional costs for design fees and utility relocation total participating costs additional $100,000 – Budget Option 1 – Budget Option 3 was what he had initially thought would come to play – further discussion followed on the budget options. Commissioner Jones felt as long as we had followed through with Progress Energy and understood their process, there is some accountability for the actual cost of the project, it's time to move on and get this done, with the Board agreeing they had done all they could do. Commissioner Jones clarified the only action to be taken was to approve or not approve the utility relocation agreement. Jackson, stated yes, and also helpful to settle on a maximum budget amount for the entire effort; if they approve the $128,000 as a town expenditure, that's more then the town's fair share. Commissioner Jones looked at approving the agreement and spreading the costs similar in Budget Option 1; this also was the Mayor's understanding. Commissioner Jensen recalled the McIvers said they would not pick up anymore of the costs, with Walgreens agreeing to pick up half if the town picks up half, with Jackson agreeing; the portion would be 50/50. Commissioner Gossage added we would be approving up to $64,000 with Jackson adding it would be drafted into the developer agreement 50% Town of Apex and 50% Walgreens up to the final actual costs, but may not cost this much. He would guess it will not cost this much, with Commissioner Jones feeling it would be close. Jackson felt the fair share was I/3 each party but broke the bank for the funeral home project and he went back to Walgreens, asking what more were they willing to do, and then they came up with them paying for a pole and town paying for a pole and shouldn't exceed $64,000 based on the $128,000.

Action: Motion by Commissioner Jones to approve entering into a utility relocation agreement with Progress Energy for a not to exceed amount of $128,825.70, and staff work with the appropriate developers to amend the developer agreement as appropriate as have discussed and based on the agreement. Second by Commissioner Jensen. Motion carried unanimously. Jackson stated the developer agreement would come back in a future agenda for better number amount. He can tell the contractor to move ahead, March or April. (02/01/05)

End of Old Business # 1

John Brown, Director of Parks & Recreation

Old Business Item # 2 – Resolution for Use of Park Property

Director of Parks and Recreation John Brown presented for approval a Resolution Regarding Certain Designations Related to the Seymour Family Land on Apex Barbecue Road. Information tab provides information regarding this resolution ($1.5 million in grant money) and further the consent agenda item dealing with Clean Water Management Trust Fund. Property is adjacent to the Nature Park site and part of the land looked at when purchasing the Holleman Tract. Grant money was lined up with Wake County and Clean Water Management Trust Fund and property owner decided not to sell. Town continued to follow up with the property and this resolution addresses the property owner's concerns regarding entering into an agreement to sell the property to the trust for public land and then would sell to the town for a park. Property owner asked when developing a specific piece of the property with athletic fields that their name be on the signage of this area of the park. Resolution should be adopted to start the process so property owner will sign contract with Trust for Public Land; time critical due to restrictions and time frames placed on the town by Clean Water Management Trust, not to loose a portion of the funds. Town would close on the property on February 17, 2005 and go to Wake County Board of Commissioners early February for final approval on the grant money which is in place (two-year process). Attorney Fordham didn't see any legal issues; resolution has been accurately described.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the Resolution as presented. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Art Clem appreciates the board's efforts in moving forward with the intersection of Olive Chapel Road and NC55 as it is needed and a benefit to the town. As staff to research "No Thru Streets" designation in Apex; start in Becketts Crossing to handle cut-through traffic (noting also Surry Meadows) wanting to designate it within some of the cut-through traffic streets. Ask Public Forum be changed on the agenda to be heard earlier in the evening. Mayor Weatherly stated this had been thought about, but there was rationale for this and not put there to aggravate anyone.

End of public forum

NEW BUSINESS

Tim Donnelly, Director of Public Works

New Business Item # 1 – Wastewater System Bonds

(Staff will provide an overview of the project and funding prior to consideration of a resolution.)

Possible motion to adopt a Resolution Authorizing the Filing of an Application with the Local Government Commission and Appointing of Bond Counsel in connection with the proposed issuance of Wastewater System Bonds.

Director of Public Works noticed this is a continuation of the process to build the Regional Wastewater Treatment Plant and gave an overview of the process, need for the facility, project and solution, activities to complete the project, cost implications and actions to be taken by the board.

Town's Interbasin Transfer Certificate mandates returning water to the Cape Fear River Basin by 2011; contract with Raleigh expires 2010; expansion of existing facilities is not cost effective and in the wrong basin to return to the Cape Fear, existing facilities are in the Neuse. 4% Growth Rate will eventually run out of utilities – to continue to grow, must make provisions for this. Regional project is the best solution according to Division of Water Quality and Department of Environment and Natural Resources, thinking there's cost savings and environmental benefits for larger plant, vs. smaller plants. Save Apex approximately $40 million dollars for the 2030 design period of the plant. Activities to complete the project: submit environmental impact statement, Interlocal agreements for design, construction, operations, maintenance and management of facilities (similar to water plant). Section of consultant for design of facilities; land acquisition in process; authorize bonds by November 2006. To meet the 2011 date, thinks last date for a bond authorization would be November 2006 to stay on schedule – partners wouldn't want to go to bid or award contracts without knowing how it would be paid for. Contracts can't be signed with money to pay. Documents complete in 2006, regulatory review and approval 2006, advertise for construction 2007, award contracts 2007, complete construction November 2010 with the January 1, 2011 Interbasin Transfer Certificate mandate.

Mayor Weatherly started discussion regarding bond referendum and need for the project. Commissioner Gossage recalled the board having approved a fee increase a year or so ago, with Donnelly stated it's in the presentation and he will address it. Donnelly advised November 2006 was the last date felt there could be bond approval for all financing to be in place to continue with the next stages; without funding bid documents are worthless. Spreadsheets are attached that show cost implications and how funding will be acquired; if revenue projections and expenditures occur as projected town will need $15 million in bonds, without loans $20 million (amounts would vary asking for $35 million). Town is currently on funding list, and there are priority systems; regulatory changes happen others may need more, and Apex may not get as much as we hope for. State revolving loans have favorable rates.

Mayor Weatherly wanted to know if they could assure voters even with $35 million we could repay this indebtedness without tax increases; Donnelly responded it would require some rate increases but not proposing this be accomplished through Ad valorem taxes. Commissioner Meckes clarified of the $95 million - $60 million is covered with fund balances, surplus, and rate increases implemented in wastewater treatment , with a $35 million shortfall which will ultimately be paid back by future rate increases and wastewater treatment fees, with Donnelly agreeing and with a combination of water rates – that is the projection. Table 5 was discussed in Retreat that the board adopted, believing this will be more aggressive in rate increases than will occur. Minor rate increase on base charges occurred and went into affect this fiscal year; direction in budget would look at future needs and costs to pay bonds back and make increases only if required, with portion to capital reserve and rest into operation expense. Donnelly believes they would not have to make this aggressive measure, as they have lowered the cost of the plant and shifted phasing of the plant, spending more up front and pushing off the expansion out beyond FY15-16. He doesn't see the need to raise rates too aggressively; could be some; Manager will keep eye on this.

Actions needed: Bond or financing beyond state revolving loan; staff recommends general obligation bonds due to lower cost than revenue bonds – with direct public input through a referendum; after receiving authority for the bonds you don't have to issue those if you don't need them – good for ten years. Timing is critical: November 2006 (Cary using same avenues to fund theirs – proposing referendum in May, and asking if Apex would like to participate – could be cost savings, with Cary looking at $110 million).

Commissioner Gossage asked what did approving the $20 million in parks and transportation bonds due to our debt ration and how does $35 million factor in on this. Lee Smiley Director of Finance hasn't run the numbers and how it affects our per capita debt; original bond referendum was for general fund purposes and comes from tax revenues; these would be supported entirely by utility revenues; all are supported by our tax base and purpose for having a referendum; two different sets of numbers would be used.

Commissioner Gossage had asked a year ago, on increase of fees, we had reached a point 2017 that's almost the break even point and asked what we do after that; are we able to scale things back at that time – response was no, we don't really know, but probably wouldn't want to do that; he's still curious to know how those increases if they continue past that time. Donnelly responded you have the debt service – with Director of Finance recalling this from the retreat. He explained it would be an unrealistic expectation to ever think rates would go backwards, with best hope for over a period of stable rates; we are coming out of a period of ten years the rates have remained stable and would like to think this again, but ten years projected revenue and expenses he doesn't think anyone could give a great assurance on that. The numbers at the retreat over ten years added up to 50% - past 11 months has improved this situation and doesn't think we will see a rate increase that's anywhere close to 50%. Plans are to have Davenport folks; Bob High and Ted Cole come to talk in detail about our debt capacity in the utility funds and will walk through those pages of figures in the agenda packet.

Commissioner Gossage asked if we approved $15 million in May, would that be enough for our partners. Donnelly responded this would put us at a tremendous risk – if those state revolving loans come through, you still have the problem that we wanted a 6 mgd capacity in this plant and sized pipe for it, and see we can't fund it and make them nervous. Commissioner Gossage added we will have until November 2006. Manager Radford stated the State has a billion dollar hole – State has taken municipally shared resources and has come up with legislation that now guarantees us a replenishment of the funds we have lost in the past. They will be looking for a place to fill that hole – there is $800 million in the entire Clean Water Management Trust Fund Programs – they believe they have already given municipalities and counties more money and resources than they should in many ways. Best place they can find a large block of money is to stop budgeting for the revolving loans, if they do this, then we will be out of $20 million, then we would have to come up with a shortfall. Commissioner Meckes asked how they figure it as an expense, it's a loan, with Manager Radford advising its short term money rather than long term repayment; it goes out at one time, but comes back over a long period. Commissioner Jones noted we have lost lesser money amounts to the state than $20 million.

Commissioner Schulze asked how much do we currently have in water/sewer fund. Director of Finance responded approximately $5 million in operating fund and $15 million in reserve funds. Commissioner Schulze calculated $95 million, $60 million would come out of water/sewer fund, asking if this is correct (it was correct).

Commissioner Jensen asked if we said the full $35 million affected our debt situation if we borrow, but if not borrow, it's a line of credit, does it affect our rating if we intend to borrow this money, but not borrow for 5 or 7 years. If we pass the ability to do this, it doesn't affect us, only when we do it, asking if this is correct (it was correct). Mayor Weatherly added we don't know the repayment until we actually sell those bonds.

Commissioner Jones stated this was like an article in the news recently, not whether we do it, but how we pay for it; we have to spend the money, most judicious and prudent way to do it. Commissioner Meckes felt it would be good to do this with Cary, we'll have a lot of information out there about wastewater and treatment, Interbasin transfer, and could do it all in one swoop, he's say do it with Cary. Mayor Weatherly noted issues, having talked with the Manager, is skeptical, having to be committed for professional help for education purposes as we go in, we're going to have a dismally low turn out – he can foresee just a handful of votes being able to turn this, for some reason, there was some grassfire opposition out there for some unforeseen reason ... with Commissioner Meckes asking if he felt better... with Mayor Weatherly continuing then if we fell back to November we will still have the municipal campaign here, and the only real general election in 2006. He noted the make up of the board may be different, we are all committed and educated and know the needs as far as Interbasin transfer, etc., so speaking for the Manager, he states strongly if we are dealing with the board, and we need to be the one to make the decision he guesses, go ahead, being a good point. We'd be prohibited from using public money to advocate for passage of the bond, but we can get professional help. He can see as many problems with linking this campaign to Cary because of the magnitude of Cary's vs. ours. Commissioner Gossage interjected people would miss understand ... with Mayor Weatherly continuing if we start thinking bond referendum, you know how people don't pay attention, with Commissioner Meckes adding at least it's not $110 million. Commissioner Gossage added you may have people that think it is and then the media out there.

Commissioner Schulze asked how much it cost to have an election in May opposed to running this with the regular election in November. Assistant Manager Wilson advised the last bond referendum cost us $14,000, coupled with the general election in November. Stand alone, he's not sure ... with Mayor Weatherly adding we would pay the full cost of pole workers, and mechanisms to run in our precincts, even precincts where there would be only a handful of folks voting, would have to maintain poling places and be an interesting expense, maybe we should run those numbers, with Manager Radford advising we could. Mayor Weatherly stated we have 18 precincts and some of those with only ten people voting and maybe no one based on a 2% turn out. He doesn't have a good answer, but his concern is turn out would be so low we would have to be committed to do whatever we can to assure people are aware of the issues involved here. There's always an undercurrent of people that would vote no on every bond referendum, no matter what – you could come up with any scenario and there would be 15% voting no and is that the 15% that would vote and we don't have any advocates out there to do. Commissioner Jones concern was if we wait until November – we think bonds are the right way to pay for this – if it fails once, we are going to try again he would assume, with re-education efforts; do we try it in May then ... with Commissioner Meckes adding they have to convey what he said, it's not if we do this, it's how we pay for it. Mayor Weatherly continued we are not talking about just sewer, if we think not doing this, we are also talking about water – EMC could cut off our water if we don't comply with the Interbasin transfer agreement, they will cut off our supply from Lake Jordan.

Commissioner Schulze stated he personally didn't feel any need to tie our referendum to Cary's, thinking there is some benefit to having a joint campaign, but thinks we could do just as well on our own. Mayor Weatherly added what media is common between Apex and Cary, very little, unless you do TV, which we are not, they are so expensive to do over air media, maybe News & Observed would be the only common ... with Commissioner Meckes interjecting, heaven forbid if we went in May and failed we wouldn't go again until November 2006 or May 2006, given a year, where if we wait until November 2005, it fails, then we come back, we have to have November 2006 all this set up, with Donnelly adding to stay on tract and partners to know which plant we are going to build; he's sure if we are out, partners would deal with it, but need time, they are trying to meet their schedules and have to know what size plant to have designed.

Mayor Weatherly referred back to his comments, that he didn't mean that he was opposed to the May time, he wanted to be sure we know he thinks may take the un-precedent step of having professional consulting services. Commissioner Jones had no problem with this, but doesn't think we should rely on Cary to do the PR work for the bond referendum.

Commissioner Meckes asked if other municipalities beside Cary, Holly Springs, and Morrisville would they have to have a bond referendum. Donnelly responded Holly Springs is only participating in the outfall, but have to build they estimate $30 million worth of plant, so not knowing their finances, that would seem logical solution for them too. Morrisville is looking at merger with Cary.

Commissioner Jensen added if we went in November we would have hind-site of watching Cary in May; we could mold ourselves to the outcome; Manager Radford added the Clean Water bonds. Commissioner Schulze asked if we are deciding when we want to hold this, with Mayor Weatherly stating he felt this was the first thing to do. Donnelly added the importance of the questions is timing issues, and if we don't kick it off this month, you miss May; it's ok not to decide what they want to do, but you miss May, you will have other opportunities, with the final date by the end of January so they can provide notice to the Local Government Commission.

Mayor Weatherly asked if we want wait to the end and have a special session, what information would we have then, that we don't have tonight? Manager Radford responded we could have additional information in regard to the education campaign. Mayor Weatherly stated we had talked about this and he was going to suggest staff before, and obviously we need to make the decision about the amount and the timing but then staff could come back with options for professional consultants that does this kind of work and what they would cost and our options. Commissioner Gossage asked if he were talking May and the cost difference between having it ... with Mayor Weatherly continuing holding the free standing vote in financing that, we bear the entire cost, with Manager Radford answering yes. Mayor Weatherly stated that's what he wants to know before plowing into May, with Commissioner Schulze thinking it's at least $14,000, with Mayor Weatherly stating if that is just a share in a presidential election. Assistant Manager Wilson added he wanted them to keep in mind, early voting, we pay a premium because of that; that's a different factor, this wouldn't have an early voting component; there was a $5,000 charge just to print ballots, and have never had a charge like this before, thinking it was because they had to print those ballots and put them in places all over the county for all those weeks and made this one unusual.

Commissioner Meckes asked how Cary folks feel about this; going before the public with $110 million. Manager Radford stated Cary had moved to hold their referendum in May 2005, and the only folks they were talking to are Cary staff, and they feel very confident $110 million is something they will make palatable to their rate payers. Mayor Weatherly spoke with Cary Mayor McAllister and he believes it's so compelling, the issues about the Interbasin transfer that it will be an easy sell, and he tried to say there are all kinds of forces out there that would... with Commissioner Meckes interjecting he thinks as Tim Carley had said, Joe citizen doesn't give a hoot about Interbasin transfer, doesn't understand it, and not compelling at all to him. Mayor Weatherly added once you get to $35 million, asks will this affect my drinking water or sewer now, thinking if the answer can't be yes, then they are less concerned about it. He doesn't know. Commissioner Meckes added we've never done anything like this in this dollar volume and especially on the heels of what we have just done. Mayor Weatherly doesn't want to be a nay-sayer without having something positive to suggest but not sure whether May is not a good date, what is the better date. Commissioner Meckes stated these people are use to voting in May, primary.

Commissioner Schulze personally thinks November is his preference; he thinks you get a better turnout and better reflection of the feeling of the voters. Mayor Weatherly stated the issue with November would be do we want to tie this in with three of our municipal elections candidates... with Commissioner Gossage interjecting it would inevitably become a campaign. Commissioner Schulze added he's one of those guys and he's ok with this. Commissioner Meckes added it couldn't really become a campaign issue; he wouldn't think, practically speaking it's not ... with Commissioner Gossage adding it will become an issue, with Commissioner Schulze adding if it is, he's still ok with this, he feels good about it.

Commissioner Meckes felt maybe someone would come in and run on a campaign opposing $35 million bond issue for wastewater treatment, with Mayor Weatherly adding then the incumbents would be put on the ... with Commissioner Gossage interjecting that's ok, that may be the loosing position. Mayor Weatherly added then again, the campaign has to be elevated to a level that you get your message out, with Commissioner Meckes adding this might be one way of doing it, getting a positive message out is doing it in November – another way to look at it. Commissioner Jones felt it was the matter of when was the right time to take this to the citizens to look at, with Commissioner Meckes asking if we want to have a special session to look at all this information, with Commissioner Gossage adding with the cost.

Action: Motion by Commissioner Meckes to have a special session on Tuesday, January 25, 2005 at 6:00 p.m. with Commissioner Gossage making the second to the motion to adopt a Resolution Authorizing the Filing of an Application with the Local Government Commission and Appointing of Bond Counsel in connection with the proposed issuance of Wastewater System Bonds.

Director of Finance stated the bond attorney would revise the calendar and still make it work. Mayor Weatherly asked staff the issue about the bond counsel, asking if we had determined we would have a variable or fixed rate which would affect – we have the bond counsel already determined based on our actions several months ago, and then Helms Mullis for a second bond counsel, asking if there is a variable. We may not need Helms Mullis assistance if we have a fixed rate throughout, but the other decision Womble Carlyle to be our bond counsel; when do we make the determination whether we would obligate the bonds at fixed or variable. Director of Finance stated there are some situations where people have used variable, with Mayor Weatherly interjecting underwriting counsel if we have need of one, not clear when that would come to play or not and since that time was told it has to do with fixed or variable rates, with Director of Finance responding general obligation bonds are always issued at a fixed rate; Local Government Commission handles the bidding process and have people submit bids and takes the lowest interest rate that's actually bid by an underwriter. He thinks variable rate would come in some type revenue bond or more exotic for lack of better word type financing. He thinks the Resolution before them appoints Womble Carlyle as bond counsel. Mayor Weatherly stated for some reason this was done previously, not remembering why, but we did. Director of Finance responded we took request for proposal last spring and chose Womble Carlyle and thinks this is not something you would do a request for proposal every time you want to do this type resolution. Mayor Weatherly wanted him to look at those minutes and the conversation why we did the two law firms and how that was supposed to be divided up.

Attorney Fordham advised the motion was in order to set it and then adopt the motion. He asked to include consent agenda item # 7 – he may have it ready, if not, want waste the time on it. There was a motion and a second, and Commissioner Meckes restated his motion to have a special session on Tuesday, January 25, 2005 at 6:00 p.m. with Commissioner Gossage making the second to the motion to adopt a Resolution Authorizing the Filing of an Application with the Local Government Commission and Appointing of Bond Counsel in connection with the proposed issuance of Wastewater System Bonds and to... with Attorney Fordham saying he wanted to withdraw his request to add this item. Motion carried.

End of New Business # 1

Rosetta Radtke, Design Planner

New Business Item # 2 – Apex Community Center

Rosetta Radtke, Design Planner, presented a site plan for the Town of Apex Community Center addition of gym toward Jordan site, expanded office space for conference rooms and class rooms, additional handicapped parking from Hughes Street to the side of the existing gym, and enhanced drop-off to the front of the Community Center. Staff report is attached and incorporated as a part of the minutes. All materials compatible to complement what already exists on Campus; landscape buffer and screen are being met – will dig and stockpile existing trees and plants.

There is no additional RCA all stays in place already serving the present site; parking will be shared so use of town hall and community center are used different times, should this not be sufficient, they have preferred scheme to have alternate parking thirteen spaces if and when needed where the third building will be between the two buildings off the main entrance drive. We will still keep some existing trees wherever possible to make improvements; this further approves additional parking when need be and foot print for the third building and good way to approach expanded parking needs. Utilities remain the same; street access point was questioned by Planning Board member and vote was short of being unanimous by one vote – issue was in regard to access of rear parking – question can we have a connective space between rear and over to the parking by ATM – answer, not enough space – only four feet at narrow point to accommodate drive – looked at it would be nice, will serve so few people, physically there not enough space to do that. Access on N. Hughes is minor serving senior citizens that require closer access to the rooms in the back. All UDO requirements are being met; continued to grow faster than anticipated – space is needed and can fit it into the site.

Commissioner Schulze asked if there were required changes in the retention pond, with Radtke responding there are no plans to do anything to it; it was looked at and they are ok. Smith-Sinnet Associates representative responded to his questions: Town Engineer Adam Stephenson had looked at this and with the impervious area did a capacity analysis and determined it would be adequate for the impervious area being added and are using large diameter pipes keeping slopes low, adding very little discharge. Commissioner Schulze asked if it meets the same standards that it currently meets: He couldn't answer that, the current facility is adequate for the impervious area being added. Commissioner Schulze asked if it meets all UDO requirements: He responded yes, their stormwater calculations were forwarded to the engineer and they met in TRC.

Commissioner Jensen asked for what year storm it was good for before and after the addition, asking if this was what Commissioner Schulze was asking. Commissioner Schulze asked prior in handling the retention pond it apparently didn't meet the standard that we had at the time for basically retention volume during a regular storm – it had to go out the same rate it went in before and after the storm, pre and post run-off and wanted to assure it meets the same standards with the addition of the community center. Smith Sinnet representative stated he's not a civil engineer, he's not sure he could answer that directly. Commissioner Schulze added when it was raised, we were just meeting the requirements that time, so something tells him by adding the community center we are less than the standard as it is now; trying to ascertain if this is the case. Smith Sinnet representative stated for a ten year storm they are only adding at discharge to the pond 2.8 cubic feet per second and that would not cause a back up at the catch basin; he assumes they will still meet those requirements. Commissioner Schulze still wanted assurance it would still meet the pre/post standard that is currently in place according to the UDO.

Commissioner Jensen asked the Director of Public Works with the original design of the pond what size storm was it designed for pre/post. Donnelly stated the town's ordinance in place at the time was not as restrictive as the UDO now and at that time was not designed at the same pre/post; he didn't recall the design storm because it's main function was to capture the first inch of run-off and release it over a five day period. Recall the Board elected to raise the amount of storage to give it a better function than before; not sure it will ever meet current pre/post short of complete redesign of the system; given it was the master plan that was approved and in place at that time.

Commissioner Schulze stated his impression was when it was raised it brought the pond up to compliance with the current UDO for pre/post and was satisfied the pond met the standards we ask everyone to abide by; he's trying to ascertain now, does it still meet those same standards with the addition of the community center. Donnelly's recollection to raise – the idea more storage was better given the way it functioned at the time – he's not sure it met the standards because you were constrained with what was there; object was to provide more storage.

Mayor Weatherly felt the study on Williams Creek Basin indicated there was negligible if any impact on the drainage from construction on the town campus; no measurable impact and what was done because of citizen concern and board concern was they do everything possible to mitigate any impact was raise level of capacity of pond; wasn't and didn't ask for any specifications, they had reacted the only way they could to mitigate any potential impact. Commissioner Schulze was next to positive he had asked the question: Now this town campus is up to compliance according to the UDO and exact same thing we would ask anyone else to do. He felt satisfied at that point. Radtke responded to his last part – stated with an existing site a requirement for anyone else to bring part of the project up to the UDO or current standards to all extent reasonable and practicable so that it would reasonably function; in affect, we have kept our own standards of treatment to an existing site.

Smith Sinnet representative read an email from Engineer Adam Stephenson, they had forwarded impervious areas to Adam and Dan LaMontagne for review of the calculations; email says, "... he had reviewed the proposed additions and have determined based on the additional built upon area of figures you have given, no additional provisions to the engineered storm water control structure (existing retention pond) will be required." Commissioner Schulze asked based on what standards – UDO standards, with Mayor Weatherly responding yes, that's what he would be measuring the compliance, with Commissioner Schulze saying he was not hearing that, with Mayor Weatherly asking what else would he be looking at other than our ordinances, with Commissioner Schulze responding he didn't know, with Smith Sinnet representative responding this would be a question for Adam.

Commissioner Schulze said he was trying to get somebody to say is with the community center, the retention pond meets the current UDO standards and he's not getting that. Commissioner Gossage clarified with him the existing community center, with Commissioner Schulze adding the existing UDO standards. Commissioner Meckes responded it didn't because it wasn't built under the UDO, with Commissioner Schulze agreeing, but when it was built up, he was positive he asked the question, do we currently abide by the current UDO standards and the answer was yes. That's his goal standard, you can't ask any more than that. Now, he's trying to find out with the addition of the community center, is it still going to abide by the UDO and he's not hearing that, and that's what he's trying to get to the bottom of. Commissioner Gossage, talking to Commissioner Schulze, said he was thinking we might flip back under, with Commissioner Schulze adding yes.

Director of Planning asked if this is something they could get back to them with, have Adam to respond, with Commissioner Schulze agreeing this was fine. Commissioner Meckes stated they could have him expand on his email. Commissioner Jensen stated we had looked at subdivision where there will be underground storage, asking if this is a possibility or do we even have to do this; he recollects the change on the stormwater pond is we did whatever we could – to make it better, not recalling that we tried to bring it up to the UDO, we did the most we could with the area we had and believes the pond was designed for the whole campus, assuming full build out with Donnelly responding from the standards that was in place at that time with Commissioner Meckes agreeing. Commissioner Jensen said if we can do something with underground storage, that would be the thing to look at, but obviously the expense didn't kill these people proposing it for the last subdivision, although he thinks the site elevations are going to preclude that. Commissioner Meckes felt by the same token, what Radtke had said is that we are doing exactly what anyone else in a similar circumstance would do – we are doing exactly what a private citizen developing in similar circumstances would do, with Radtke adding with an existing site; we are meeting that same standard. Commissioner Jensen understood that's is, asking if underground storage is a possibility, expects it's not, but would think this would be one thing he would ask a standard citizen to take a look at; he expects with the topography of this site it's not going to work out, but that would be a question he would have. Radtke responded to get back to that standard, our standard is reasonable and practicable, and the little she knows about that and its expense we would land on reasonable, especially if two engineers had documented this will function for the site; she thinks we would not make them do it.

Action: Commissioner Meckes proposed we go on, not hold this project up with the idea being those issues can certainly be reviewed and if there is something else we can do additionally then we would certainly all be willing to do this. We have met the standard of our development ordinances for existing development and he says move on with it. Second by Commissioner Gossage.

Discussion: Commissioner Jensen wanted to know if we are going to look into other alternatives; is that in the motion. Commissioner Jones asked for clarification if he was asking to go back and redesign the site. Mayor Weatherly stated the motion was to approve the site plan, with Commissioner Jensen adding, as is, with Mayor Weatherly responding yes. Commissioner Jones continued when you go back to look at alternatives, that is a very, very broad request, we would essentially not be approving the site plan. Commissioner Jensen stated the other person was going to store 16,000 cubic feet of water in underground pipe on his plan, with Commissioner Jones adding this site plan does not include that and he's not arguing the merit of what he was asking, you would have to go back and redesign it to include that.

Director of Public Works advised the storm drainage and grade of site is set to take the stormwater to the existing pond; its size is fixed by the land area it is in, so if are asking for a more rigorous storm water system, you are asking a major change to the site grading and planning. Underground piping only works if you plan for it; there's no magic creation of additional space unless you excavate out all the existing parking lots and put in underground piping there – which can be done, if that's the cost benefit you want to have, it's very expensive, but can be done. These other sites these commercial sites are paying numbers of $70 and $80,000 per acre for land and they are planning for underground piping under their parking lots as they grade, so they have a very high cost for land, maybe more, plus they are planning for it when they do the grading. When you retrofit, it's going to more expensive and much more disruptive to the citizens because you will take away all the parking and area where people are trying to use the community center and one goal here is to use as much as we can while trying to do this; you'll take all that away cause you will have huge mounds of dirt that will major interrupt one of the goals which is as much service as can be provided. Commissioner Gossage interjected which is why (to Commissioner Schulze) it may not hit his goal standards, he feels that in principle we are ok, and doing what we would require from someone else. Commissioner Schulze felt this was fine but was still empowered to do more if we deem necessary in the future, with Commissioner Gossage agreeing.

Commissioner Jones added as we build something else on this site, we are going to have to look for alternatives. Commissioner Jensen felt alternatives could be looked at from the ground up and fully agrees, however wanted this thrown out as a possibility. Director of Parks and Recreation added since they had started working on this, one thing they had pushed Smith Sinnet (Chris Farmer) to assure they addressed the stormwater issue, primarily because they knew it would be a concern and why they had gone through the process for Engineer Adam Stephenson, and Dan LaMontagne and TRC – everybody had looked at it to make sure it met the UDO and met what was needed to meet – what everybody else needed to meet – they have been sensitive to it from the day one.

Commissioner Meckes added we are not coming in trying to sneak something in that anyone else wouldn't be able to do; we've met our obligations. Director of Parks and Recreation added it could be approved with a stipulation that it satisfy or verify it meets the UDO – with Commissioner Meckes adding just have Dan expand upon the email he sent for everybody to look at.

Commissioner Schulze wanted to make one more point, asking, yes or no, does it meet the current UDO standards and if not, by how much are we off? Director of Parks and Recreation added and if it doesn't is it a reasonable and practical issue, with Commissioner Schulze could understand practicable at times. Mayor Weatherly added if that's not the question posed to Adam Stephenson, what was the question thinking it was the obvious question he was answering in his response, that we don't need to do anything. Director of Parks and Recreation added he could get that answer quickly; it was hammered to death to assure it met what it needed to meet.

Mayor Weatherly added the question, we want to be in compliance with what ... our site plans have to ... and he's saying the question has been answered.

Mayor Weatherly noted the motion and second was to approve the site plan as submitted. The motion carried unanimously.

End of New Business # 2

Lee Smiley, Director of Finance
New Business Item # 3 – Quarter FY04-05 Finance Summary
Director of Finance gave a review of 2nd Quarter FY04-05 Financial Summary noting everything was on track, with revenues being ahead of expenditures and a good situation to be in. The report is attached and incorporated as a part of the minutes. The Board accepted the report as presented.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session to: 1) establish the town's negotiating position with the respect to the following properties Trull, Seagroves, and Shearin properties for possible downtown parking area, and 2) possible lease of a police substation at Beaver Creek Commons, and 3) consideration of acquisition of the Powell Heirs property at the corner of Center Street and Salem Street. He asked a special note in the motion to the Town Attorney has asked to be excused during consideration of item # 3.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to move into closed session as stated by the Mayor. Motion carried. The minutes of closed session are recorded separately. Motion by Commissioner Meckes and second by Commissioner Schulze to move out of closed session at 10:54 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jensen and second by Commissioner Gossage to adjourn at 10:55 p.m. Motion carried.

The above minutes were approved on the 1st day of February 2005.

Georgia A. Evangelista
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, January 25, 2005 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called a special meeting of the Town of Apex Board of Commissioners to order at 6:00 p.m., Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present. Invocation was given by Commissioner Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to the staff in attendance: Lee Smiley Director of Finance, Tim Donnelly Director of Public Works, Bruce Radford Town Manager, Mike Wilson Assistant Town Manager, Hank Fordham Town Attorney.

Mayor Weatherly introduced the Resolution, and noted the purpose of the meeting to continue discussion for Authorizing of Filing of an Application with the Local Government Commission and Appointing of Bond Counsel in Connection with the Proposed Issuance of Wastewater System Bonds by the Town, and necessary action regarding participation in a Bond Referendum.

Manager Radford updated the Board on developments and information regarding election costs as directed from the January 18, 2005 meeting: Wake County Board of Elections estimates cost for special election $17,825 with normal election expenses increasing by 3.9% over last election. November 2004 referendum for the Parks & Road Bonds was $14,368. Mayor Weatherly noted this increase substantially more and not logical to him. Manager Radford reported on the media campaign to educate voters on the necessity of the regional Waste Water Treatment Plant and financial advantages of general obligation bond financing. ElectriCities proposed to spend as much as $50,000 in economic development assistance to underwrite the media campaign, acting independently from the Town; estimated cost for media consultant, posters, newspaper, pamphlets $10,000; radio ads $35,000.

Director of Finance answered the Mayor Weatherly's questions in the previous meeting regarding the bond counsel: Helms Mullis would be the underwriting attorneys should the Town decide to go with negotiated bonds – those with restrictions and negotiations, and with general obligation bonds the Town would use the one bond attorney Womble Carlyle Sandbridge & Rice, PLLC.

Director of Finance reported Town of Cary had talked with the Local Government Commission regarding the Interlocal Agreement, with the LGC staff preferring a combined Cary / Apex referendum (Apex $35 million); should Apex not choose May 3, 2005 as Cary had chosen, the LCG could possibly delay the planned Cary referendum ($110 million). Their concern being conservative in their decisions is the LGC would want to present the entire package to the commission as one project. Mayor Weatherly voiced Cary/Apex should be equal and before the decisions are made for Apex to follow along, the politicals should be involved and not just the staff in making a joint decision with Cary not thinking of Apex as after thought, but a true partner; not blind sited by Cary moving ahead and making decisions where we are forced to be joined at the hip feeling it necessary to make joint decisions. Commissioner Meckes responded they want us to be joined and the towns are already joined, with the LGC wanting the same table, same time and make the decision.

Commissioner Schulze asked what the other towns were doing, with Director of Public Works responding Holly Springs plans private financing, with Morrisville considering a merger with Cary as far as their public utilities. Director of Finance reported Apex/Cary would be partners in the Bond referendum and equal as partners as equal in the water plant facility. As far as the plant site, it looks like Cary/Apex will be the utility partners, with Holly Springs being included in the discharge portion and Morrisville sending wastewater to Cary.

Mayor Weatherly asked the Board if they were comfortable moving ahead with $35 million in general obligation bonds. Manager Radford reported on the portion of funds available from the Clean Water Management Trust Fund $20 million with Cary looking at the same amount. He reported on the states $1.2 billion shortfall with portions of this money being a potential target, suggesting the town would be well ahead to move forward with a May referendum as the amount of money would be in place.

Commissioner Jones spoke in support of moving forward with the bond referendum in May with the election expenses of $17,000 being the same in May or November. Commissioner Meckes spoke in favor of moving forward with the bond referendum being inclined to go with May, with benefits possibly overlapping. Commissioner Schulze felt there would be costs saved as far as the $900,000 interests ($20 million) and the $17,000 election expenses. Continued discussion followed regarding expenses. Commissioner Gossage looking ahead asked should the election time pass where would the money come from – it could potentially not be there in November budget process. Manager Radford reported on the state budget process where the money could be frozen and not available; could move forward with the $35 million bond referendum, with no direct authority to make it happen. Commissioner Jensen agreed to move forward seeing the town has no choice, and with the town paying no interest until the money is spent; $20 million interest free during construction adding once we get the money, we have to show we have the other money. Director of Public Works reported on the loan program, with the Mayor asking the impact to the citizens with Donnelly reporting the impact would be with the rate to the payers. Commissioner Jensen was satisfied this was the right approach. Commissioner Meckes viewed the $35 million in bonds, with $20 million as an added bonus.

Mayor Weatherly stated he had heard the signal to move forward with the project, still reluctant with the May schedule, however may be able to do an adequate education program to the citizens with ElectriCities doing that, and further noting the Interbasin Transfer water allocation allowance by 2010, and not wanting to jeopardize our allocation being drawn from Jordan Lake.

Mayor Weatherly asked if he was hearing May for the bond referendum date, with Commissioner Jones feeling the best turn out could be in November however, with time being the essence doing it in May. Mayor Weatherly asked if he were hearing a unanimous vote in favor of the $35 million May referendum date, calling for a motion.

Action: Motion by Commissioner Schulze to approve the May 3, 2005 Bond Referendum date for the Regional Wastewater Treatment Plant for $35 million, and appointment of the bond counsel Womble Carlyle Sandridge & Rice as stated in the Resolution. The second to the motion was made by Commissioner Meckes. Motion carried unanimously.

The meeting then adjourned at 6:40 p.m.

The above minutes were approved on the 15th day of February 2005.

Georgia A Evangelist
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, February 1, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order with Commissioners Jones, Gossage, Meckes, Jensen and Schulze present. Invocation was given by Commissioner Gossage. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda, adding the Town Attorney asked item #10 be considered separately. **Action:** Motion by Commissioner Jones and second by Commissioner Meckes to consider item #10 with Old Business. Motion carried. **Action:** Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda as amended. Motion carried.

1. Minutes of the January 18, 2005 Board of Commissioners meeting.
2. Minutes of the January 18, 2005 Board of Commissioners Closed Session (separate cover).
3. Request for approval to purchase substation material.
4. Request approval to purchase reclosers, regulators, and controls for the substation project under the Sole-Source Exception.
5. Request for approval to piggyback a bid for a Law Enforcement Records Management System.
6. Renew Contract between Town of Apex and Wake County Board of Elections whereby the Board will conduct all elections for Town with a base retainer cost of $3,125.00.
7. Declare Town vehicles surplus property: 86 Top Kick Fire Tanker and 97 Ford F350 Cab & Chassis.
8. Petition to close alley all of 15 feet in width extending easterly from Hughes Street to Mason Street (portion between Center Street and Culvert Street); and Resolution of Intent to consider closing and notice setting date of public hearing for March 15, 2005.
9. Resolution authorizing condemnation of land for easement and temporary construction easement related to the Chanticlair Drive extension.
10. Resolution authorizing Town Manager to sign documents related to the purchase of 58 acres from the Trust for Public Land **(considered under old business).**

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Commissioner Jensen asked to add a closed session item to discuss possible purchase of Bullock property located on the east end of Forest Grove Drive. **Action:** Motion by Commissioner Jones and second by Commissioner Meckes to add this item. Motion carried. Manager Radford asked to add a closed session item to discuss potential acquisition of real property located between Saunders Street and Templeton Street. **Action:** Motion by Commissioner Schulze and second by Commissioner Jones to add this item. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

June Cowles, Planner

Public Hearing # 1 – Rezoning Case #04CU19 and Master Site Plan (Continued from 01/18/05)

(Planning Board recommends approval unanimously with conditions –
Town Board continued this hearing to address their concerns regarding private streets).

Continuation of Public hearing and possible motion regarding Rezoning Case #04CU19 and Master Site Plan, Crown Builders & Developers, Inc. petitioner, seeking to rezone from Planned Unit Development District to Planned Unit Development District and a Master Site Plan to include 65 townhomes containing 8.33 acres located north of Salem Street between Sugarland Drive and Lynch Street.

Town Clerk administered oaths to those speaking during the hearing.

June Cowles, Planner, noted this hearing continued from January 18, 2005, as there were questions concerning the private area; applicant and staff have met and applicant has revised the site plan to include public streets where the private area was located and noted at the 50' right of way - 27 back to back curb; units decreased from 65 to 63. Site plan doesn't show, but staff recommends the stub street to the Thompson Heirs property be extended to the property line which is general procedure with applicant agreeing.

Commissioner Meckes noted the concern of 27 foot streets and fire access, with Cowles responding standard street. Commissioner Jensen questioned underground storage, asking the affect on water quality vs. the retention pond, with Cowles referring his question to the applicant.

Mayor Weatherly asked to hold the public hearing and then answer questions, reopening the hearing at 7:05 p.m., and with no one speaking in favor or in opposition closed the hearing.

Commissioner Jensen asked the water quality with underground storage, with applicant responding the quality will be handled through a special unit to handle TSS removal of 85%, with quantity being stored in a system being designed underneath the street. Commissioner Jensen questioned maintenance, with applicant responding several have been installed here and are being used, but doesn't know the intervals for maintenance, and accepted by Apex Public Works. Commissioner Jensen asked when water passes through does it go through culverts down to the stream or is the buffer being used as a management zone? Applicant responded no, the unit is completely isolated and basically large barrel structure and as stormwater goes it, it swills around and causes sediment to slow down and drop to the bottom, leaves the chamber sediment free into the storage dampers for it to hold and then down to acceptable level where it drains out into the stream. Commissioner Jensen questioned under a big storm it by passes the buffer? Applicant responded under a big storm event – it would have to be a large one, but for the one and ten year storm event, it should handle it, and designed to do so. Commissioner Jensen questioned when it dries to sediment, it goes to the bottom and pumps like a septic tank, with applicant responding yes and is with any system, there will be some kind of sediment removal you would have to do.

Mayor Weatherly asked to discuss some of the concerns from the last hearing particularly private streets, asking the justification to enter into a private streets agreement when the board has had unfortunate history with allowing a residential area to have private streets which soon came to be the taxpayer's problem we had to pay for.

Cowles responded as far as history on private streets, referred to policy... with David Rowland, Director of Planning asking to be administered an oath before speaking to this. It was noted the streets would now be public streets, with Mayor Weatherly not needing to go into this again, and addressing further concerns from the last meeting.

Commissioner Schulze questioned the streets in general, width, asking if standard width was 23 feet, with Cowles responding it was a 50 foot right of way which is standard residential streets with a 27 back to curb. Commissioner Schulze was bothered there wasn't enough parking, with townhome allowing for two parking spots – one in front of the other, one in the garage and one in the driveway, obviously, moving one car out to get another in, and if there were a party, etc. then there's not any parking. Cowles responded public streets are like any other residential subdivision, and as far as what did go away in moving from the private area to public streets was the area which was on the old plan didn't have parking as required by the fire department, now along the whole strip, there's allowed parking and parking along other areas and along the street – all public streets. There are three parking spaces in another area. Commissioner Schulze still didn't agree this was enough parking.

Commissioners Schulze noted the garbage can system opposed to a dumpster with concern where it would be stored and if in the garage, he can see small garages and doubts one could fit a car and a garbage can in there at the same time; he envisions people putting their garbage cans in front of their house. Cowles responded staff asked the applicant to ensure garage was large enough for one car and garbage roll-out can; as far as handling it, some even if they do have enough room, might stick it out front and might be handled through their homeowners association as a rule.

Commissioner Schulze questioned the structure elevations; crawl space – with Cowles responding this is correct – on the elevations, there is language in the planned unit development plan that states it will be raised foundation, steps to the door, with roof ridge lines staggered – appearing as individual units and also, townhomes would be moved forward and back staggered. Commissioner Schulze asked if she were saying the front elevations don't represent below the ground floor, with Cowles responding applicant put a note steps would be there at the front door, and foundation would be brick. Commissioner Schulze stated obviously the garage would not have steps, with Cowles responding no, it will be raised of course, and the part not contained in the garage would be raised foundation with steps – like a single family home with a garage (ex. Her garage is on slab, and has steps up to the door from the garage and from the porch).

Commissioner Meckes commented on the parking concern, suspecting this will be more and more the case as housing units are brought closer together, seeking to have more open space in every development - this will always be the situation and he suspects it goes back to the neo-traditional neighborhood concept that there is on street parking and acts as a buffer for the traffic and someone insulates the home from that traffic on the street – that's certainly the case in his neighborhood in Scotts Mill. Commissioner Schulze agrees with the concept, but to him not even enough on-street parking, with Commissioner Meckes noting with a party even on a Sunday night, you would be parking at the Catholic Church; this is the way the neighborhoods work. Cowles continued she can't tell them as far as the timeline of Phase 2, but does include a Daycare Center and would have a parking lot, and whether it could be used for parking during parties, or such. Commissioner Schulze asked the frontage width on each lot, with Cowles responding 22/24 feet.

Commissioner Schulze went back to the garbage can, with car in garage, not getting can in front of the car, means putting it between the car and garage door – to him would discourage people from putting can in the residence, leaving it outside – he can see himself looking down the row of houses with garbage cans in front yards not appealing to him. Commissioner Jensen asked the dept of the garages, with Cowles responding 22 feet long and 12 feet wide. Commissioner Meckes asked if there would be homeowner covenants regarding keeping the garbage cans in the garage, with applicant believing so.

Commissioner Gossage noted part of the proposal was a request to increase the maximum height of townhomes from 36 to 48 feet and his concern was for some of the townhomes backing on what looks to him as future residential property that would be units 27 – 41, and 52 – 55 on the southwest side, which would tower over. Cowles responded these would be three story and thinks they were at 42 feet – reason saying maximum of 48' height was to compensate for the raised foundation, as it does raise the floor and ceiling height going from a slab and adding two/three steps to that raised foundation.

Also, the condition the roof ridge line would be staggered also; felt a 48' cushion realistically are looking at 40 to 44' – with the extra so they wouldn't have to come back for whatever construction reasons; normal height for single-family is 36' as far as maximum height in the UDO.

Commissioner Jensen in looking at the topographical lines noted houses next to medium density appears to him the streets would be down slope from the townhomes which would allow for the garage to be underneath and shouldn't have to be that high; thinking the garage would be set down. Cowles responded even the topography would even help on the roof ridge lines being ... with Commissioner Jensen interjecting they should be shorter along that edge, with Cowles agreeing, and noting they shouldn't have to go up that far, but was a cushion as far as construction – she's not sure but as far as staff was hoping as far as having a one car garage and not look quite like a parking lot in looking down the street – then you would have to park two cars – requirement for two cars parking off the street.

Commissioner Gossage asked if and when a neighborhood is built in the southeast plot of land, how much of a buffer minimum would be between the rear of the townhomes, with Cowles responding there's a 10' buffer and then past that another 10' from the lot line to the actual townhome building – there's a 10' landscape buffer, with Commissioner Gossage noting a buffer on the other side – a backyard presumably.

Commissioner Schulze asked the average square footage of each townhome, with Cowles responding 1200 to 1500 – with applicant responding 1900 feet including garage. Commissioner Gossage noted this 48 feet with a maximum height of any of those he read would be 42 feet, with Cowles responding the topography on most of these will help with the roof ridge line – thinking the only ones might be 56 thru 63 or 54 – 52 that might not have the topography to help step down; one of the reasons we see this again because it was at 36 feet with applicant coming to staff stating he couldn't do the garage and why do the extra cushion so if anything happens where it is not exactly 42 feet, they would not have to go through this again.

Commissioner Schulze wanted to reiterate his point, he doesn't see enough parking especially, asking the law about parking near a driveway – noting Dogwood Ridge issue – 15 feet. Commissioner Jensen recalled this – no one responded. Commissioner Schulze asked the lot width, with Cowles responding 22 feet – to him sees conflict – on street parking. Cowles responded on the previous plan – there's a drawing of a car, with Commissioner Gossage asking if his point was a car parked there would be in violation of town ordinance, with Commissioner Schulze responding it looked that way, with Commissioner Jones adding with the shared drive for each existing home. Commissioner Jensen noted if the driveway is 12 foot wide you would eat up most of the width of each unit, with Cowles responding the extra parking was kept in place – an extra 7 spaces at this location because it was switched to public right of way – the area had a lot of trees. Commissioner Schulze asked where the mail pick up was located, with Cowles responding the mail kiosk which is for everyone. Commissioner Schulze says he sees trouble ahead. Commissioner Meckes noted the on street parking to the north, west are its a long strip with on street parking on the backside of lots 42-51, there are no units on the backside, and the other parking places – you can park along the backside of that island, with Cowles responding this is correct, with Commissioner Schulze not disputing this, but saying parking would be allowed in front of the units too – to him seems in conflict with the room trying to get their mail.

Commissioner Jensen noted a lot going on with this piece of property – it's jammed tight, with Cowles agreeing he was right with the creek – it's about one-third of the creek buffer; once the daycare center is built you have parking – with Commissioner Schulze agreeing but most would not want to park at the daycare but in front of their unit or in their driveway, and he really didn't see people parking in the drive and in the garage because that means juggling the car; he sees one car in the driveway and one in front.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Schulze made a motion to deny this site plan with a second by Commissioner Jensen. Commissioner Schulze stated his reason, most importantly, the parking situation – not enough. Commissioner Jones didn't disagree with his questioning – it meets the requirements of the UDO, asking if this were correct, with Cowles responding this is correct, with Commissioner Jones continuing in absence of them giving some specific direction as to what would meet the requirements, he's having a hard time on this one. Commissioner Meckes asked how we could give direction above the UDO requirements.

Commissioner Schulze as not sure if it meets the UDO, it meets our laws in a sense buffer adjacent to the driveways – if you are suppose to leave 15 feet on each side – he sees conflict with that. Commissioner Meckes responded that's not the law, the law is you can't park, with Commissioner Jones adding we are not telling them you have to park there, with Commissioner Schulze understanding, and adding you can't park within 15 feet of a driveway and to him rules out parking in the street in most cases in front of the unit anyway – yes you can park along these empty strips but people aren't going to want to do that; he agrees usually he would follow the UDO in that regard but he sees extenuating circumstances here. Mayor Weatherly added this may ultimately be a marketing problem then if people do not proceed that there is ample room to park, but as far as – it's not a compliance issue, asking if he agreed, with Commissioner Schulze thinking it is a compliance issue – if you are not suppose to park within 15 feet of a driveway, with Mayor Weatherly interjecting a violation doesn't occur until someone parks there. Commissioner Meckes noted there are not violations now, they are in compliance with the UDO; there are not any violations.

Commissioner Jensen made his second as Commissioner Gossage had said in terms of elevations, it bothers him the elevations are still allowed to be up to 48 feet on the southwest side, because to him that is basically devaluing in all likely-hood if they go to that elevation, the property to the southwest and something we have to look out for the folks there.

Mayor Weatherly asked if there were further discussion. Commissioner Gossage asked to explain how many parking spots are in the development – the actual physical parking spaces in the development, with Mayor Weatherly adding that wouldn't be in violation, with Commissioner Gossage continuing that wouldn't be in violation if a car parked there. Cowles referred to the applicant, and added as far as parking, with Mayor Weatherly saying in excess of the two per unit, knowing two per unit, and on street is what's being talked about that would not be in violation of the 15 feet, asking how many cars could you squeeze in that wouldn't encroach on the 15 foot restriction, with Commissioner Gossage adding correct. Commissioner Meckes counted 30 spaces – between 32 and 31 and behind 51 to 42, with Commissioner Jones noting the few along the north side, with Commissioner Meckes adding that doesn't count - and ultimately the parking lot of the daycare. Commissioner Gossage stated his question would be, is it reasonable to assume if they approved this site plan and he builds this development that you could drive over to there any night of the week when someone is having a Tupper Ware party, or Bible Study and you are not going to find cars parked in violation of our UDO; is it reasonable to assume they are going to have enough, with Commissioner Meckes interjecting you could drive to any neighborhood in this community on any given night and find exactly the same situation, with Commissioner Jones agreeing. Cowles responded the 15 feet from the driveway is not a UDO requirement, its just the two parking spaces off street, but is what the requirement is; she notes she's not sure, but the 15 feet is a police issue, with Commissioner Schulze noting it an issue in Dogwood Ridge a year or two ago.

Attorney Fordham advised the board this involves a conditional use rezoning and master site plan; part of this is a legislative decision with respect to that they have a lot of legislative discretion, so they are not bound to the criteria of simply whether it meets the UDO, if you approve the rezoning, so it's a two part decision they must make – first part a legislative decision – you make the decision you think is appropriate in the public interest – second part is if the rezoning occurs, as a logical matter, although it happens in time wise contemporaneously the site plan is approved because it is made one of the conditions, but you are not in as a restricted position as you would be if it already had zoning and was a site plan coming before them. Mayor Weatherly noted this a good point, asking to elaborate a bit, asking are we at the point where we are debating whether we would turn down a site plan that would be otherwise in compliance with all of the guidance our UDO provides or are arguing that it would be inconvenient for the folks who will ultimately live there because they will have to park not in front of their units. Commissioner Meckes added it also seems to him we are trying to hold this particular development to an entirely different standard than what every other subdivision in our community is held – seems that way to him, asking could you say you could go into Dogwood Ridge tonight and not find a car parked within 15 feet of a driveway, with Commissioner Schulze responding he was not saying that, but he knew they had run into trouble in the past in the particular part of Dogwood Ridge, the townhomes section where there is limited parking in the street and limited parking in the driveway and it causes problems and he thinks what the Attorney had just said made him feel stronger to oppose this, because it gives us the ability to prevent trouble like that.

Commissioner Meckes asked what the ultimate resolution in the Dogwood Ridge issue, with Commissioner Schulze responding they had to park in their driveways, but he didn't make that decision to build that portion of Dogwood Ridge, but if he had, he would not have approved something like that because it does cause problems, lots of problems for the fire department because they had no parking on one side of the street – it makes it a headache for all people involved and in that case there were neighbors on both sides of the street and you had to pick one side where cars could park on; he asked how you make a decision like that – he thinks the resolution is to either have wider lots or side by side parking in the driveway.

Mayor Weatherly didn't want to labor this issue further he thinks the point has been made – he had made his point, but with the ultimate resolution be to amend the ordinances to require that in the future so developers wouldn't present something that wouldn't otherwise be in compliance and then come up and say well their parking is inadequate because we feel it would be... with Commissioner Schulze saying he would agree with that.

Commissioner Jones asked in regard to the height of the building and to the west, our current zoning is medium density residential to the area that was expressed concern about, asking if the 63 units qualifies as medium density, with Cowles responding this is under the 2025 LUP and was medium or high density.

Mayor Weatherly asked if there were further debate, there being none, he repeated the motion was to deny the rezoning and master site plan, calling for a vote on the motion. The vote on the motion in favor was three voting to deny, Commissioner Jensen, Commissioner Gossage, and Commissioner Schulze, and with Commissioner Jones and Commissioner Meckes voting no. The motion to deny was enacted three to two.

End of Public Hearing # 1

OLD BUSINESS

Kent Jackson, Director of Construction Management

Old Business Item # 1 – Developer Agreement

Possible motion to authorize a developer agreement that provides for a cost sharing arrangement for the construction of the Apex Peakway between Olive Chapel Road and South Salem Street; and possible motion to authorize the professional services agreement with Jones & Cnossen.

Kent Jackson, Director of Construction Management continued discussion regarding an agreement which would accelerate the timing of the installation of the 1.1 mile section of Apex Peakway which was part of the bond package approved in the fall, however, scheduled late in the bond schedule to be post 2010 which means built and usable in 2012, with this agreement will have it usable in 2006 if approved. Towns cost share is 64% of the total cost of the project (segments not within a developers project or 3800 feet or 55% of the total length – section from Whitehall PUD to Salem Street is the most difficult and most expensive section to build due clearing and steep grades); two developers proposing to enter this agreement with the Town BRG Construction – 26% and Peakway Village Development – 10%. Surveying has begun; design will start immediately upon approval of the agreement. Stuart Jones, Jones & Cnossen was present.

Commissioner Schulze asked if the town's cost would be reimbursed as development occurs, with Jackson responding there is opportunity through transportation impact fees over time of any undeveloped parcels. Attorney Fordham asked Commissioner Schulze if he were referring to parcels that are part of this contract or others along the Peakway. His response was it's a general policy question, but specifically these; as development comes, they have been building their section of the Peakway, and now if we complete the Peakway, he was thinking as development occurred – development would reimburse their section, with Jackson responding it's been policy; in this case estimated fees have been taken into account and would not pay transportation impact fees when parcels in the PUD are developed, but any other development later would pay the fees according to the ordinance.

Commissioner Jensen asked if transportation fees are charged because the road is in place, with Jackson responding he that's correct, formula being based on use and size. Commissioner Jensen asked if the road was not there do they build the road, which was correct; in affect when the town builds the road others that build along side of the road will be in a better economic position, with Commissioner Meckes adding they still have to pay their transportation impact fees.

Jackson stated the town's policy also contains why we require them to build the improvements, also the possibility of credits should we determine their requirement is disproportionate to what they are doing with the credits going against the impact fees. Commissioner Jensen asked if they build something greater than their impact fees would be then those fees effectively go away but they still shoulder the difference between what the impact fees are and what it cost them to build that section. Jackson responded the ordinance provides for full reimbursement of the credit, even if it exceeds the amount of the fee, giving developer option of banking the excess credit for future projects or requesting cash reimbursement, with Commissioner Jensen asking if the net cost to the developer is always the transportation impact fee, which it is – it's a wash.

Town Attorney Fordham advised he's in discussion with one of the developers attorneys, and may be some change in language and possible dates, not expecting any subsequent changes and if the board chooses to approve recommends town manager be given authority to change the language as long as it doesn't change the agreement, otherwise it would need to come back to the board. Agreement states to stages of letter of credit with first being to cover the design work of Jones & Cnossen – initial phase, with second being coverage of actual construction and the manager could fill those in. In respect to the Jones & Cnossen agreement recommends to strike the arbitration clause; not anticipating dispute, but if it does it moves to an arbitration forum which is more complicated then going to court – and better to deal with court; rare the town would end a dispute to be determined by a third party and not anticipated, and in the town's interest not to do arbitration agreements.

Commissioner Jones confirmed when bids are back on actual construction costs it would come back to the board (there will be an award). Attorney Fordham advised in the developer agreement if the bids exceed the estimate attached by 10%, then any of the three parties could say that's too much, and they would not loose discretion to decide it's not a worthwhile venture for some reason – just the timing, materials, expenses at the time of bid, you have an option. He also mentioned some language in the Jones & Cnossen agreement refers to the three parties as joint ventures – he recommends manager be given similar authority to change the language to say cooperating parties.

Mayor Weatherly called for a motion.

Action: Commissioner Jones recommends authorization of the developer agreement with the cost sharing arrangement for the construction of the Apex Peakway, and authorize the Town Manager to make minor changes in the language of the contract and to modify the agreement changing where it states from joint venture to cooperating parties or the term used by the Town Attorney, and excluding the arbitration clause. With Commissioner Gossage adding and subject to the outstanding agreement issues the other lawyer may raise, with Commissioner Jones adding that's authorized by the town manager to make those changes. Commissioner Gossage made the second to the motion. Motion carried unanimously.

End of Old Business Item # 1

Kent Jackson, Director of Construction Management

Old Business Item # 2 – Kimley-Horn Presentation

Presentation by Richard Adams, Kimley-Horn and Associates, Inc., (and Kent Jackson) of the findings and conclusions concerning potential closure of highway rail crossing locations in the downtown related to NC Rail Division and CSX to get new crossings, and analysis of proposed transportation network for Trackside north, street connections and traffic impact of the site (report is attached); further evaluation of the tie in from Trackside north to the Peakway – central point of negotiation of Peakway right of way through Trackside both with Trackside north development and also Guy C. Lee property (have placed strong emphasis of having intersection at this corner due to access and marketability and connection to Peakway). Kimley-Horn will verify this would be a working location when the bridge is placed over CSX line. Manager Radford noted they loose property if moved south of where it had been.

Trackside north: proposed construction of a piece of Peakway with Trackside north development will provide full-movement access, with proposed connection to existing right-in/right-out drive on US64 at Extra Attic (an extension of road to east of soccer field); access to Peakway is relative to future grade separation at eastern CSX tracks (future high speed rail line with an agreement to leave it at grade for now as long as it can be grade separated at the future) –

Reached an agreement on horizontal alignment with a 40 mph design speed; looked at vertical alignment; determined with proposed intersection on the Peakway and appropriate design have shown acceptable location for the intersection; grade separation is acceptable; spacing between at-grade crossings is acceptable; good planning to locate it at a parcel corner and appropriate.

Consistent with Transportation Plan, provision of collector streets achieving connectivity (collector street shown to the west to Salem Street feels this will not happen, CSX will not allow anymore railroad crossings and do not think this site should be required to make this connection); and the Peakway (thoroughfare). Capacity is constrained at intersections: Peakway at Salem Street and at site access. (Proposed at grade crossings cross both tracks with only one of the two being proposed as high speed rail corridor). Portion of the Peakway will be built out to the west from Salem Street, assuming completion 2006/7 with the next one in this vicinity over to Laura Duncan Road 2008/9/10 for completion – built out through the bond process.

Trackside south or Guy C Lee property: piece of land between the two railroad tracks including Guy C Lee and down to Hunter Street. Lacks development plans so utilized a concept plan to evaluate trip generations; access constrained due to railroad tracks – not looking at any new crossings – ideally would recommend crossings of the tracks to connect to Salem Street somewhere equal distance between Hunter Street and the Peakway – maybe between Abbey Oak Lane and Salem Town Court – that is not in the cards due to the restrictions with the railroad.

First assumed only one point onto the Peakway for the south area, given magnitude of development consider it problematic access – one accident would be a problem; further looking at considerable delay without a signal. Secondary access should be considered onto Hunter Street when development comes to this south area, basically between the railroad tracks with further access study with a real development plan in hand so this parcel will have multiple ways in and out. Would consider right-in/right-out or left-over where people can turn left in but not left out to avoid forcing a signal between the two track crossings; still needing a signal on Peakway at some point as Hunter Street intersection would not necessarily draw that much traffic.

SUMMARY: Site plan meets general requirements of transportation plan; access point on Peakway in appropriate location; believe signal at Salem Street would be warranted with Peakway 2009; Peakway capacity likely will require signal of new access point with development of Trackside south. (Signals should be coordinated with gates).

Downtown Railroad Crossings: new at-grade crossings needed for Peakway; agreement reached with CSX to close existing crossings in exchange for new Peakway crossings; three private crossings and two public street crossings (downtown) required to be closed. Five crossings, one Williams Street – grade separated; four at-grade crossings downtown Hunter, Center, Chatham, Moore Streets – two must be closed as part of this agreement. Moore Street obvious choice for closure – much lower volume of development; question other crossing to be closed Center Street or Chatham Street: Hunter newly up-graded carry high volume traffic – intersections were studied that would be most impacted by closure – Alternative 1: Close Moore & Chatham Street crossings would require signalization; Alternative 2: Close Moore & Center Street crossings - AM/PM Peak Hour findings were surveyed - (Center Street is hindered due to no traffic signal).

Long term considerations: result crossing space – Alternative 2 slightly better closing Center Street keeping Chatham Street open, downtown stakeholder impact shows this more favorable – two major churches on Chatham Street, storefront business on Chatham Street, Center Street doesn't have on-street business other than CSX office; potential east-west connectivity options: Alternative 1 with closing Chatham Street – possible extension of Center Street would require demolition of building, extending Center Street to the west to Chatham Street – cost, impact (further looked at Culvert Street and Chatham Street connection – should Center be closed and made this connection would allow for continuous east/west road). Recommendation of town staff was to add Alternative 2a which basically extends Chatham Street across the railroad right-of-way to future Peakway. Costs are slightly different, but could determine Alternative 1 is slightly lower. Impacts of Alternative 1problematic – tear down significant town structure – problem with running thoroughfare next to an historic building – not a good option.

Summary: Alternative 1 Close Chatham and Moore Streets crossings; Alternative 2 Close Center and Moore Streets crossings. Level of services even require signal at Center Street; crossing spacing slightly better for Alternative 2; impacts to downtown better for Alternative 2; long term alternatives slightly lower cost for Alternative 1. Street simulation of traffic scenarios was shown. ***Recommends Alternative 2: Close Moore Street and Center Street and leave the Chatham Street crossing open.*** Manager Radford asked the impact of the Peakway at Laura Duncan Road (was outside of the study area). Asked, if there was a count on Hunter in anticipation of the closing of Center (there was a two count and with the closure of Center projects a number of trips – looking at link capacity still well within its trips).

Commissioner Meckes asked if there is a concept of what will be on the south side of Trackside (large mixed use development with Hunter Street connection, land under contract - office and maybe some condominiums). Commissioner Meckes noted quite a bit of parking there. Manager Radford was not asking the board to make a decision about this; plan is to travel to Jacksonville Florida next week to meet with CSX – have not defined date or time and doesn't look like they will entertain them next week – did tell us they would like to have NCDOT Rail Division involved in any discussions – which stops the idea of going there. Mayor Weatherly suggested phone call with Manager Radford wanting to show the drawings, not sure NCDOT would let them go without them. Other issue: South Salem Street crossing: drawings show quiet zones – quad gates, media barrier and wayside horns, trying to use enervative safety techniques (way to develop a quiet zone whereby the only people who hear the horn are the people sitting at the intersection as opposed to a horn that must be blown from crossing to crossing that you continue to hear throughout town and physically sits at the crossing). Commissioner Meckes asked if this meant trains coming through Apex will not have a horn, with Commissioner Gossage and Manager advising correct with Commissioner Meckes at least seeing the need to have one – you can't give up that tradition! Commissioner Gossage added there would be the wayside horn, with Commissioner Meckes saying you would only hear it at the crossing, and he listens for the horn at night for the Amtrak; agreeing it's the history of the town.

End of Old business # 2

Marty Mitchell, Fleet and Facilities Director

Old Business Item # 3 – Town Hall 3rd. Floor Upfit Project

Progress report from Marty Mitchell, Director of Fleet and Facilities along with BBH, Doug Hall and Elizabeth Allen, and Dawn _____ concerning Town Hall 3rd. Floor Upfit Project and related lower floor modifications anticipate move in September for Phase 1, 3 rd floor: Training room, break room, storage, IT Department, and Engineering Department; Phase 2 HR to 1st floor, reception area in lobby; Admin and Planning expands into HR and IT. Phase 3: not in the scope of work was finance office renovation – further expansion of engineering on the 3rd floor and admin expansion in unoccupied space. Communication to the public to notify them of the renovation was discussed: render of drawing available in lobby. Costs are within the $493,393 budget.

End of Old Business # 3

Old Business: Consent Item # 10: Resolution authorizing Town Manager to sign documents related to the purchase of 58 acres from the Trust for Public Land

Attorney Fordham advised substitute contract committing to purchase the property will be provided, Seymour closing will be on the 24th, with town closure on the 25th., when documents will be provided for review; contract tells participants town is serious about moving forward so long as there is a revision to terminate the contract for some reason Wake County did not approve the grant – money from Clean Water Management Trust Fund has been committed. Should TPL run into some problem this would terminate; asked Town Manager be given discretion to make minor changes before signing of this.

Action: Motion by Commissioner Gossage to authorize Town Manager to sign documents related to purchase 58 acres from the Trust for Public Land and authorization is subject to final minor adjustments being made and final approval by the town attorney. Commissioner Jensen made a second to the motion. Motion carried. Manager commented the 113 acres had been acquired with two grants, with the last signatures today, and expressed appreciation for Director John Brown's determination to achieve this grant as well as the others who participated in this act.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Richard Nowak asked if the Peakway section would be divided (it will be single road with one lane in each direction).

NEW BUSINESS

There were no New Business Items to be considered.

WORK SESSION AGENDA

There are No Work Session Items to be discussed.

CLOSED SESSION

There was a motion by Commissioner Jones and second by Commissioner Gossage to move into closed session to discuss potential acquisition of the Bullock property, and to establish a negotiating position with respect to property across the street from Old Town Hall – Saunders Street. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Schulze and second by Commissioner Gossage to move out of closed session at 10:06. Motion carried

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Gossage and second by Commissioner Schulze to adjourn at 10:07 p.m. Motion carried.

The above minutes were approved on the 15th day of February 2005.

Georgia A. Scaggins
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, February 15, 2005
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus, Board of Commissioners Meeting Room (2nd. Floor). Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

The Invocation was given by Commissioner Jones. The Pledge of Allegiance was led by Scouts from Troop #226, sponsored by Apex United Methodist Church. Mayor Weatherly extended a welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly announced Cherie Poucher, Wake County Board of Elections would not be here since the proposal for voting by mail did not pass the Legislature; there was nothing to present.

Assistant Manger introduced this item and offered the folks to present the presentation by TJCOG Cable Television Consultant Catherine Rice and Time Warner Cable Andi Curtis, Public Affairs Manager: Rice reviewed Time Warner's proposed adjustment in Basic Service Tier and equipment and installation rates and finds the proposed adjustment to be within the FCC guidelines. BST rate would be $10.86 (lowered). In addition, the add-on network upgrade charge is proposed to remain at $1.89 (total $12.35). Consultants do not believe the $1.89 should be approved as it has been in effect for the past five years with no review or recalculation of expenses or growth. TWC refuses to provide a financial accounting, therefore recommends approval of Cable TV Report and approval of the Order for the BST rate and adjustments in equipment and installation rates.

Curtis from Time Warner strongly urged Town to ignore the unsupported recommendation of the consultant and instead approve the proposed BST rates; as any other action would result in an appeal to the FCC, and would probably be reversed by the FCC, just as all previous TWC rate orders recommended by the consultants have been reversed. TWC strongly urges Town to follow the FCC rules and approve their proposed maximum permitted rate calculation including previously-approved Form 1235 which allows TWC to recover costs incurred in connection with "significant" upgrades of the system over the life of the upgrade. Recommend adoption of the Report and approving the Rate Order. Assistant Manager noted the board should adopt the report and adopt the rate order which is drawn to reject the $12.35 and start the appeal process and what the other local governments in the consortium have chosen to do; if the board does not want to do this, there could be an alternative rate order prepared. He stated we have not had much success appealing the FCC; consortium takes the position to fight for the consumers.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the Report and approve the Rate Order as recommended. Commissioner Jones felt it correct, it's not been good with the FFC, and they are the regulatory authority having jurisdiction, however thinks due diligence is in order, with Commissioner Schulze agreeing, and Commissioner Meckes regardless, fight the good fight and do the right thing. Motion carried.

End of Presentation

CONSENT AGENDA

Mayor Weatherly present the consent agenda to be set and asked for a call for action. Attorney Fordham asked item 7 be pulled for separate consideration; and noted a correction to the introductory portion of item 9, leaving it on the consent agenda. Manager Radford asked to add Budget Ordinance Amendment #11 to item # 7.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the consent agenda excluding item # 7, with change as highlighted by the Attorney to item # 9, and to add Budget Ordinance Amendment # 11 for item # 7. Motion carried.

1. Minutes of the February 1, 2005 Board of Commissioners meeting.
2. Minutes of the February 1, 2005 Board of Commissioners Closed Session (separate cover).
3. Minutes of the February 2, 2005 Personnel Committee of the Board of Commissioners.
4. Minutes of the January 25, 2005 Board of Commissioners Special Meeting.
5. Budget Ordinance Amendment and Capital Project Ordinance Amendment.
6. Site plan – BB&T Beaver Creek Commons.
7. Authorize Town Manager to sign documents related to receipt of $712,500 from Wake County Open Space Preservation Program and closing documents related to the purchase of 58 acres located on Apex Barbecue Road.
8. Audit Contract with Mills, Rouse and Company to perform annual audit for year ending June 30, 2005.
9. Personnel Committee recommendation: Work Place Violence and Prevention Policy, Increase hours for Human Resources Specialist position (deleted the wording in Section 1. " by adding the double underlined text nd deleting the struck through text", and replaced it with " to read".)

End of Consent Agenda Items

John Brown, Director of Parks, Recreation and CR
Consent Item # 7: Motion to authorize Town Manager to sign documents related to receipt of $712,500 from Wake County Open Space Preservation Program and closing documents related to the purchase of 58 acres located on Apex Barbecue Road; and adoption of Budget Ordinance Amendment # 11

Seymour property survey reflects 60 acres vs. 57 which is additional cost; Wake County will appropriate additional increase in grant to the town. The Grant Agreement reflects this action, as well as additional language to put athletic fields on the property and named for the Seymour heirs, and if athletic fields (soccer and cross) are built, Wake County wants them to stay 300' off the stream which is not a problem. Recap of the costs for Land Purchase adjacent to Apex Nature Park which went from $1.7 million to $ 1.8 million (attached). Amendment to the Contract between Town and Trust for Public Land reflects same; Wake County will act on this on Monday. Budget Ordinance Amendment # 11 reflects this action. Attorney Fordham explained the modifications in the Agreement and the amendment to the contract. Brown gave additional remarks regarding the timing issue.

Action: Motion by Commissioner Schulze to approve the consent agenda # 7, and adopt budget ordinance amendment # 11. Motion carried.

End of Item # 7

REGULAR MEETING AGENDA

Mayor Weatherly present the regular meeting agenda to be set, with Commissioner Schulze asking to consider an Ordinance Amendment in regards to Old Business Item # 1. **Action:** Motion by Commissioner Jensen and second by Commissioner Jones to add this request for consideration. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

Director of Planning David Rowland stated the Planning Board met, however, did not have time to consider Public Hearings # 1, #2, and # 3, and recommends continuation of these hearings to March 15, 2005.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to continue the next three hearings as requested to March 15, 2005 meeting of the Board of Commissioners. Motion carried.

Dianne Khin, Senior Planner
Public Hearing # 1 – Amendment to the 2025 Land Use Plan *(I-540/S. Salem Street)*
Public hearing and possible motion regarding possible amendment to the 2025 Land Use Plan

Dianne Khin, Senior Planner
Public Hearing # 2 – Amendment to the Apex Transportation Plan *(I-540/S. Salem Street and proposed change to road network at Technology Drive/NC55)*
Public hearing and possible motion regarding possible amendment to the Apex Transportation Plan.

Dianne Khin, Senior Planner
Public Hearing # 3 – Amendments to the Unified Development Ordinance
Public hearing and possible motion regarding possible amendments to various sections of the Unified Development Ordinance.
(The above three hearings have been continued to the March 15, 2005 meeting of the Board of Commissioners).

David Rowland, Director of Planning
Public Hearing # 4 – Urban Growth Boundary
Public hearing and possible motion regarding possible modification or elimination of the Urban Growth Boundary.

Director of Planning noted the Planning Board met and were charged to recommend whether to modify or eliminate the Urban Growth Boundary; they recommend to extend the UGB and use the 2025 LUP taking this to the Chatham County line showing the area included in the UGB area, which takes into consideration the northwest area including a proposal by Toll Brothers. Mayor Weatherly asked the practical benefit of having an UGB. Rowland responded Planning Board considered stopping at the Wake County and Chatham County line and keeping the boundary taking into consideration the 2025 Land Use Plan. Mayor Weatherly asked the Manager if this encompasses everything in the boundary agreement with Holly Springs. Manager Radford reported on the area south of US; it does and also coincides with some area Holly Springs has interest.

Mayor Weatherly opened the public hearing at 7:35 p.m. and with no one addressing this issue, closed the hearing.

David Rowland noted a partial Annexation Agreement with Holly Springs; Holly Springs has encompassed some of the property; everything north of there is Apex, and reason to solidify the agreement. Commissioner Meckes noted this was a conceptual boundary; Rowland felt the Planning wanted to stake out our area. Mayor Weatherly stated he saw no practical need for UGB, as it sends a signal not interested in potential development, where town could consider all potential, not saying we are closed for business and sending it to the two adjoining towns, not sure he has an objection if the board sees a practical benefit to having an UGB that encompasses that area; he wouldn't want to go beyond that and doesn't think we would do so in the near future.

Commissioner Meckes noted the only thing in the air is the southern boundary, with Mayor Weatherly adding it might serve a practical value in actually having something we codify as our growth boundary to send a signal this is indeed what we consider part of Apex future growth boundary, with Commissioner Meckes adding to "back off", with the Mayor agreeing.

Action: Motion by Commissioner Schulze to eliminate the Urban Growth Boundary.

Commissioner Schulze was open to sending the signal to remove it all together. Gossage could see the value of having some sort of line as broad as it is, as the Mayor had indicated.... with Commissioner Meckes if we were in discussion, with Mayor Weatherly asking for a second.

Action: Second to the motion by Commissioner Jones to eliminate the growth boundary. Commissioner Schulze saw the intent of the growth boundary as a good one, that you do want to do infill first, but questioned how it works in doing that; if he were a developer he would not make a decision to do infill or outside the UGB thinking it comes down to location; being this UGB is so broad, he's not sure what purpose it serves, thinking it would send signal to the neighbors that we are staking claim to this area and this will be Apex some day; he could live with that aspect; our neighbors are not under obligation to abide by that.

Commissioner Meckes noted west of the county line belongs to the Corp of Engineers, and south you are closer to Shearon Harris, and there's no construction any this land, so the western boundary is a mute point and the northern boundary is a mute point.

Commissioner Schulze recalls with the Cary issue, there is room for them to come out west and then drop down. Mayor Weatherly noted they would have to go around Lake Jordan, with Rowland showing on the map the direction that could be taken, but one of the discussions had; some property shown is private land; could go west and drop south, with the Mayor agreeing Commissioner Schulze point was good if we don't want to send the signal to Cary that we have no interest in any of that. Commissioner Meckes didn't want the label we want to go into Chatham County with Commissioner Schulze adding he was not encouraging that but didn't want Cary doing it either. Rowland stated that was one of things considered when they adopted the boundary line agreement with Cary; eventually – we wanted to get it in place and at a later date take care of some of that that could happen coming around like that. Commissioner Gossage recalled that a direct question to the Cary Mayor, was there any plans to do that and his answer was there was no plan to do that, with Commissioner Schulze adding there was no denying it either.

Commissioner Jones thought in abolishment of the UGB, in affect, the Land Use Plan becomes our growth area; shown on the 2025 LUP minus the arbitrary growth boundary then becomes our planning jurisdiction and what's considered in making a decision; whatever shows on the LUP becomes our growth boundary.

Commissioner Gossage felt unless the Mayor saw a real value to having something there with Holly Springs, it was fine with him to abolish the UGB. Commissioner Meckes was concerned with what the developers think when they come to go into some of the southern portion, wondering where he's suppose to go, with Commissioner Jones interjecting we still have to work on this, with Mayor Weatherly advising there's no other municipality in the state of North Carolina that has an UGB, and basically UGB is not like a paramunicipal boundary or a ETJ, it actually sends a signal we will not send services beyond this line of demarcation, so, it's different than other planning jurisdictions; it's an arbitrary line that we would restrict ourselves. Commissioner Jones stated we still have work to do to develop and get approval for an Urban Municipal Agreement with Holly Springs, which may or may not alter what shows up on this. Commissioner Meckes felt if it were left wide open, whatever comes about through negotiations that ultimately becomes our ... with Commissioner Jones stating like we have north and east with Cary, with Mayor Weatherly adding as soon as we negotiate that it will be the ... actually what we see will be the line with Chatham County, because the north and southern western boundary will be established, it's who wants to encroach into Chatham County. Commissioner Meckes thought it interesting to see what happens west of that line, assuming the closer to Jordan Lake the wider the Corp land flairs.

Commissioner Jensen addressed the pros of some sort of growth boundary as it encourages preservation of open space, etc; seeing a growth boundary A & B - where we expect to expand; with A making services easier with idea to keep our utility costs down and prevent leap frog development; he thinks we are flipping over and he understands what Mayor Weatherly was saying, but there's no one else that has this and he doesn't want to see us restrict ourselves in anyway, but at the same time should have some sort of definition as to how we want development to grow within our town outward rather than leap-frog . He feels a modified boundary shows interest in development and that we would have a handle on it; the board has talked about large lots and high quality development, a developer says he wants a large-lot development and we see cookie-cutter development – asking how we get large lot development unless we send a signal that we want to see that in certain areas; maybe get from the 2025 LUP, he doesn't know; somehow we need to indicate that. Commissioner Meckes added to establish a boundary doesn't indicate a willingness on our part to go clear out to the southern most tip and put in utilities; that has to be a conscious decision on our part where the utilities go. Commissioner Gossage noted the four pros listed and could be accomplished by the board as opposed to a boundary; the board can consider them when discussing development and could avoid leap frog development.

Mayor Weatherly felt our planning document is the Land Use Plan and defines what we expect as future development; the UGB is an arbitrary signal and addressing Commissioner Jensen that all would be very restrained in seeking to go very far out; his point is the same as last time – what if we had a unique golf-course development or some 500 acres on the edge of where the growth boundary would be; not that one he hoped would not be outside; thinking the principle is the same, we would want to be able to consider it, whether we actually adopt it or not is another thing, but leaves options open for this board and the future boards five or six years in the future that may not get a nibble, because developers would see the UGB. Mayor Weatherly called for the vote on the motion to eliminate the Urban Growth Boundary, with the vote being 4 in favor of elimination and Commissioner Jensen voting in (1) opposition. Motion to eliminate the UGB passed.

End of Public Hearing # 4

OLD BUSINESS

Bruce Radford, Town Manager
Old Business # 1 – Rezoning #04CU19 and Master Site Plan Crown Builders
Possible motion to reconsider the Board's action of 02/01/05 regarding Rezoning #04CU19 and Master Site Plan.

Commissioner Schulze had voted in opposition to rezoning #04CU19 Crown Builders, with attached master site plan on February 1, 2005, and had been approached to reconsider his decision; he was willing to do this and felt there were some good ideas in possible future UDO changes. To reconsider there has to be a procedural change that would be in line with Roberts Rules of Order and would allow them to reopen the vote. This would allow for consideration of any vote during the meeting where the vote was taken or the immediate subsequent meeting assuming the previous meeting was adjourned. Attorney Fordham advised the present status to reconsider Sec. 2-36 of the Town's Code of Ordinances that allows a motion to reconsider at the same meeting where the action was taken on a ¾ vote and other motions to reconsider would be out of order except for an adjourned meeting that may be continued to a specific time and date which is considered a continuation of an original meeting. The idea to have a motion to reconsider at the next regular meeting is not permitted under the present ordinance. Mayor Weatherly under stood it's adoption was in 1972. Commissioner Schulze felt they were changing rules to suit a specific purpose, but know this would put us more in line with Roberts Rules of Order now is ok with it.

Attorney Fordham continued secondly he offered an ordinance with regard to adding ... the next regular meeting, as being in order if someone wanted to make the motion to reconsider. Mayor Weatherly added the rest of their meeting procedures is based on Roberts Rules ... with Attorney Fordham advising no all of them, there are several provisions that are slightly different, Sec. 2-29 does incorporate Roberts Rules of Order except where another rule is provided by ordinance or charter, and State law controls over any of those things; present rule to reconsider is an ordinance and are rules the board makes and can change. Mayor Weatherly confirmed no public hearing was necessary, with the Attorney advising this to be true, and continuing Roberts Rules of Order has three categories of motions to reconsider with respect to three different bodies and allows with respect to two of those types of bodies more leanancy than the current ordinance in terms of time. Commissioner Schulze understood the vote needs to be a super majority to pass, with Attorney advising any ordinance change at the first meeting being considered, or voted on, requires 2/3 majority to pass. Mayor Weatherly felt this would bring consistency and he couldn't imagine over the last 33 years the board has never had an issue that they would like to have reconsidered or at least brought up for discussion to reconsider. Commissioner Jones noted there had been. Mayor Weatherly hopes this would be a very unique situation to reconsider an issue, thinking it a good change. Commissioner Meckes clarified this current ordinance Sec. 2-36 we operate under and amending it to add the next regular meeting, with Attorney Fordham advising this is what's being considered and would become the new ordinance. Attorney Fordham further pointed out the motion has to be made by a person who had voted in the affirmative with the motion, with Mayor Weatherly confirming not to adopt another ordinance but if this adopted, with Attorney Fordham agreeing. Commissioner Schulze having voted in the majority now wishes to offer a motion to reconsider.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to adopt an ordinance to amend Section 2-36 of the Code of Ordinance. Commissioner Jones commented it would be a unique circumstance at any time 4/5 of the board feels something should be reconsidered; obviously some validity to that. Mayor Weatherly added at least one member has to be ... just the motion not the second has to be in the prevailing side, with the Attorney advising this to be correct. Mayor Weatherly felt there was a compelling need to reconsider, someone on the prevailing side and 4/5 super majority. Commissioner Gossage was satisfied checks/balances are still there and they are not setting bad precedent because of the Roberts Rules that already exist and aligning ourselves with those. Vote on the motion to change the ordinance carried unanimously.

Mayor Weatherly then recognized Commissioner Schulze for reconsideration of the issue at the previous board meeting. Commissioner Schulze noted the vote from the previous meeting February 1, 2005 meeting (vote was 3 – 2 to deny the request of Crown Builders their site plan and due to the split vote and one considered to be controversial, as the site plan followed the UDO to the letter of the law, but he had some circumstances where he was not comfortable with approving it, so he voted against it. Since then, he has been approached to reconsider consider and was happy to do so.

Action: Motion by Commissioner Schulze to reconsider the agenda item from the last meeting with no action being required, but for further discussion his goal is to give some guidance to the Planning Department concerning possible UDO changes so this situation doesn't happen again and sure others had ideas as well. He understood the applicant may be open to consider further changes.

Mayor Weatherly restated the motion was to reconsider the Board's action of February 1, 2005 regarding rezoning petition #04CU19 and the Master Site plan attached to that rezoning.

Action: The second to the motion was made by Commissioner Jensen. Mayor Weatherly extended this was to allow this matter to be brought up for further discussion. Attorney Fordham advised action would return it to the exact situation prior to the vote being taken. Commissioner Gossage asked if there were an option to take action or to just discuss it. Attorney Fordham further advised the action was after a public hearing and if there were some substantial change in the direction taken, or substantial additional evidence there would be a need to reset a public hearing to consider it since it was a conditional use rezoning petition. Mayor Weatherly asked if all the findings of facts were consistent with what was found during the public hearing, then they would not need to do that, with the Attorney advising this was correct; they would be in the position they were before except for not in compliance to have a public hearing tonight... a public hearing has not been noticed so if they do anything that spills over into being of a public hearing nature, then you would need to stop and publish notice. Mayor Weatherly asked if this includes taking any comments or questions from the petitioner, with Attorney advising they need to be sworn and he would say yes, for them to make comments would need to be advertised to reopen the hearing. Mayor Weatherly stated if they couldn't resolve this internally, would need to readvertise, putting the question to the board, on the matter to reconsider the issue asking if all board members were comfortable with this, otherwise this was the motion. Asking all in favor to vote eye. Motion is agreed too; so the question reverts to the issue of the rezoning petition # 04CU19 and in discussion that would normally have occurred after the public hearing.

Mayor Weatherly recognized Commissioner Schulze for questions or comments. Commissioner Schulze then stated his issues with the whole rezoning and site plan specifically was the parking, particularly on-street parking, not having enough room between driveways of the properties, he foresaw a traffic nightmare under the best of circumstances even if it were daily traffic, but with a get together, he saw lots of congestion, and people looking at the design issue; he wants to alleviate this and saw opportunity to improve upon the site plan as far as parking and traffic standpoint. Further to pursue some avenue of amending the UDO to address this to either mandate wider lots or have in cases with narrow lots implement side by side driveways, basically giving options – he would like to give staff directive to investigate avenues so we don't run into this kind of congestion and traffic problems.

Mayor Weatherly asked the Attorney if they could ask staff question, with Attorney Fordham advising at this point they are in the area of leading to sworn testimony, and it being a part of the hearing. Commissioner Schulze was lead to readvertise the hearing so they could talk openly and have staff input, otherwise felt they were tip-toeing around the issues and time better spent. Mayor Weatherly added this could be advertised for the March 15 agenda, asking if all were in agreement. Commissioners Jones asked if he had heard there might be some changes offered by the petitioner, if so would give him opportunity. Commissioner Jensen was in agreement with the public hearing and give petitioners opportunity to look at this and maybe mold it to something Commissioner Schulze is interested in as well as himself in terms of views of the site from properties, that Commissioner Gossage had brought up. Mayor Weatherly asked for a motion to readvertise public hearing for March 15, 2005.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to reschedule a public hearing for March 15, 2005 to reconsider the rezoning #04CU19 and master site plan for Crown Builders. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

Lee Smiley, Director of Finance

New Business Item # 1 – $35,000,000 Wastewater System Bonds

Possible notion to adopt a Resolution of Introduction and passage on introduction of a Bond Order authorizing $35,000,000 Wastewater System Bonds of said Town, and the filing of the Sworn Statement of Debt, and the calling of a public hearing upon such bond order scheduled for March 15, 2005.

Mayor Weatherly presented a resolution of introduction of the bond order authorizing $35,000,000 Wastewater System Bonds. Finance Director Lee Smiley advised the bond order hearing was scheduled for March 15, 2005, and $35,000,000 would be the maximum amount for providing funds. He would further file the sworn statement of debt with the Town Clerk as required by the Local Government Bond Act, and to be filed after the bond order has been introduced and before the public hearing, and in the presence of the Board as directed. The forgoing order will be published in the Apex Herald as directed.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt a Resolution of introduction and passage of introduction of a bond order authorizing $35,000,000 Wastewater System Bonds of the Town of Apex, and the filing of the sworn statement of debt with the Town Clerk, and the calling of a public hearing upon such bond order scheduled for March 15, 2005. Motion carried unanimously.

End of New Business Items

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a possible motion to move into Closed Session to discuss and evaluate the performance of the Town Manager. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session at 8:05 p.m. for the purpose stated. Motion carried. Closed session minutes are recorded separately. There was a motion and a second to move from closed session into regular session. Motion carried.

ADJOURNMENT

With no further business to come before the Board, with a motion and a second the meeting adjourned.

The above minutes were approved on the 1st day of March 2005.

Georgia A. Evangelisti
Town Clerk

Mayor

TOWN OF APEX, NORTH CAROLINA

OFFICE OF THE TOWN CLERK

Minutes of the Board of Commissioners Annual Retreat
February 18, 2005

The Board of Commissioners, Town of Apex, North Carolina held their annual Retreat on Friday, February 18, 2005 beginning at 8:00 a.m. in the Apex Community Center Summit Room, Apex Town Campus, 73 Hunter Street.

Mayor Weatherly called the meeting to order, with Commissioners Jensen, Gossage, Jones, Meckes and Schulze present. Manager Radford, Assistant Manager Mike Wilson, and Directors of each department were present.

The 2005 Annual Retreat Agenda was presented with presentations by staff as follows.

Vision Statement
Manager Radford presented a draft Vision Statement which will return to the Board of Commissioners for consideration at a later date – page 3..

Growth Forecast *(Director of Planning David Rowland)*
Director Rowland Review of Growth Forecast includes population projections affected by a 4% Growth Rate; build-out of previously approved residential units complete and continued growth beyond 2013 dependent on completion of the regional WWTP – Chart on page 5. A handout of Developments Approved July 1, 2003 to December 31, 2004 was distributed showing 36 total non-residential developments and 8 total Residential developments. The handout also shows Pending Residential developments and potential population increase with these developments - 1,728; estimated population projections with approved and with pending subdivisions; 2004 Residential Sold Data from Wake County; Tax Base Percentages for Apex (4 year trend – Wake County Data) ; and Tax Base Percentage Comparisons (4 year trend – Wake County Data) – both tax base charts are for Residential and Non-residential development. Recommends striving to get a more balanced tax base with better commercial/industrial component. Recommends with the regional wastewater facility and the I-540 coming together, the town look an area plan for residential and non-residential development for this corridor. Commissioner Jensen commented on the potential for bus parks along the corridor. Commissioner Meckes felt it was not too soon to begin the study of the I-540/S. Salem Street area. Commissioner Jensen commented on the demographics of Holly Springs and having industry, and not having the residential base Apex does.

Construction Forecast *(Director of Construction Management Kent Jackson)*
Director Jackson gave a review of the Construction Forecast: 2004 Highlights, 2005 Outlook, Residential Sector, and Growth of Infrastructure – page 6 and 7; a chart of the residential building permits issued over the past 3 years (projected and actual) – page 8. Building Construction Forecast by Sector 2005 reflects 33% Commercial, 55% Residential, and 12% Public – page 9. 2004 Highlights reflect shopping centers: Beaver Creek Commons, Peakway Market Square and Haddon Hall Commons Center.

The 2005 Project Schedules reflect sidewalks along Laura Duncan Road and Olive Chapel Road, Peakway and Haddon Hall Connector which is part of the Bond package, SR1010 Peakway Signal should be on line in June – traffic pattern with right-hand turn separated, and sidewalks. Commissioner Meckes was pleased with the restaurants that had located in the area.

Financial Review *(Lee Smiley, Director of Finance)*
Director noted a challenging period for financial needs. Projected Fund Balances are shown on page 12 reflecting operating funds available for FY2005-05 – General Fund - $8,837,000 (lender of last resort); Electric Fund $ 0.00 – 2 major projects depleted these funds: substation and transformer at Olive Chapel and NC55; anticipates fund balance building up over the next two years, and with the future substation project; Water/Sewer Fund $4,959,000.

Projected Reserve Funds available for FY2005-06 reflect Capital Reserve Funds and shown on page 12. Water/sewer needs are roughly $20 million, with $35 million bond indebtedness. Historic building fund reflects both Town and Wake County funds over a period of years. Library Fund is ongoing for library maintenance. Some of the Eva Perry land is available at US1 and affords opportunity for the four corners to develop - funds will be placed in the Library fund. Capital project funds are shown on page 13 and reflect their current financial status. Outstanding bond indebtedness is shown on page 14. Notes: final payment on Public Works building, lease purchase of 911 system; 2 more years to pay on electric bond funds.

New Capital Projects *(Manager Radford)*
Manager Radford reported on the new capital projects: downtown parking facilities, public safety center – NC55 south, police building retrofit.

In order to expand ***downtown parking***, there is potential for acquiring public properties. He presented a review and update of the status of these efforts. Efforts continue along Seaboard Street to incorporate right of way property (38 spaces). Buffering was discussed regarding potential properties where there would be parking lots. Additional parking was noted at the Chamber lot, bank lot, fire station and west of Salem Street, with additional parking spaces behind the buildings for parking along Salem Street. Commissioner Meckes would like to see "no parking" along Salem Street in the future, to allow for planters, benches, trees – maybe one way parking. Commissioner Jones added there was a need for additional parking downtown for the proposed cultural arts center and the restaurants (page 16 – 19).

Chief Mark Haraway reported on the proposed ***public safety center – NC55 south,*** noting the significant growth in this area of town, and need for services to extend to give better geographic coverage into this area which is currently outside the standard level of care at this time. Town of Apex Police, Fire, and Apex EMS favor a combined public safety center which would consist most significantly of a fire station, police substation, and allow for bays with a separate office and quarters for EMS. Examples of public safety centers and costs for construction were shared, with preferable one comparable to Wilmington facility $1,119,950. Along the US1/NC55 corridor you find primary commercial property area, with an affected residential population of 974 properties - Miramonte, Sunset Hills, and Reunion Park.

Proposes: The current property located at 1547 NC55 (Williams Street) consisting of 2.8 acres that currently has an existing building be used as interim Fire Station # 4, units could be placed there now with minor renovations (property located across from Apex Veterinary Hospital). Chief noted this area was a prime location for ISO ratings, that would overlap in services – the 1 and l/2 mile response area; could be set up within the next year to provide services for the commercial and residential citizens in this area.

Commissioner Schulze could see the need for this facility due to the growth and would address this in the upcoming budget, as he supports citizen's level of services being maintained.

Manager Radford noted the need, the ISO response time, an opportunity to have a building on the land, which was large enough to handle the needs - the list price for the 2.8 acres is $695,000. Time restraint: 3 months to acquire and 3 months for minimum renovations. Another land owner has offered a 2 acre tract for free located further south, however, would take much greater time for construction, and there are not enough current finances for a new building, however, the proposed interim facility and location is affordable. EMS has some money's available to assist in retrofit of the building. Manager Radford will work on a plan to acquire the interim facility. Commissioner Jensen expressed he would like for staff to pursue the free land, and maybe lease the existing facility and land, with Manager Radford stating he would check into all alternatives.

Police Building Retrofit (Marty Mitchell, Director of Fleet and Facilities)
Director Mitchell addressed the condition of the police building lacking and not acceptable, while presented the executive summary of 2004 of the facility. Sidewalks, and porches need repair; there is a desire to do away with the court setting; up-fit the lobby and landing at the front entrance of the building. Mayor Weatherly addressed the police availability and the arguments to maintain the court setting in Apex, and what the officers would loose if the setting changed from here. Interim Chief Fortson explained how difficult it is for staff on court days, there being no security, seeing the inconvenience for officers to travel to Raleigh, and for the citizens, at the same time most cases are heard during the time officers are off duty. Mayor Weatherly noted the court setting had been by invitation, and asked the amount of income received for holding court, and what the court system would say, with Chief not knowing. Mitchell stated there was an informal willingness to abandon it from a judicial stand point.

Attorney Fordham shared the court officials would probably prefer to stay in Raleigh due to security as most Judges are happy within their confines. Mitchell was seeing a trend where other towns were doing the same thing. Mitchell continued heat systems were outdated, parking lots needed repair, and office space was over crowded. Recommends Option 2: revamping the police building for utilization of space at an estimated $1.6 million. As far as the public service facility, the main police department will stay in the downtown business district. Option 3 would add an additional 8800 square foot of space to the existing facility. Study and Probable Cost analysis are attached.

Capital Projects: Parks, Recreation Facilities, Greenways (John Brown, Director of Parks, Recreation & Cultural Resources)
Director Brown reviewed the 2004 projects completed and on-going - page 40; gave an update on the bond referendum projects: Cultural Arts and Performance Center - page 41; Community Center Expansion – page 42; Beaver Creek Greenway – page 43; Land Acquisition / Athletic Complex – page 44; Beckett Crossing Greenway Renovation – page 45; Haddon Hall Greenway Expansion / Renovation – page 46; Nature Park – page 47; Phase II Nature Park – page 48; Phase II Beaver Creek Greenway – page 49. Review of park priorities are listed on page 50. Highlights: Cultural Arts Center project should begin July 06 with construction phase complete in 12 months. Community Center should be complete mid 2006, and Town Hall renovation of the Cultural Arts Center would begin.

Commissioner Jensen addressed the timing of the bond issue and the purchase of lands that may go away – asking for a purchase agreement of good faith money to lock-in lands in Walden Creek and Barbeque Road. Brown expressed concerns with the property that borders I-540 at Walden Creek as its prime property. Commissioner Jones felt they should accelerate as much as could be afforded. Commissioner Jensen felt they should push for grant money. Brown noted Trust For Public Land folks were willing to contact property owners regarding a tax benefit with land value. Commissioner Jensen noted cost to tie up the land was less than buying it later at a higher price, thinking its money well spent and critical.

Transportation Improvement Projects (Kent Jackson, Director of Construction Management)
Director Jackson reviewed the status of 2004 projects, page 52 - signals at Olive Chapel/NC55, Peakway/Center Street (SR1010), Utilities and Sidewalks: Lynch Street, Zeno Road Paving, N. Salem Street Pedestrian Enhancement. Transportation Priorities are detailed on page 53, and begins lists of projects for proposed 2005 bond referendum and continued on page 54 and totaling $2,812,000. Projects for proposed 2008 bond issue are listed on page 54 and 55, totaling $2,378,000. Projects for proposed 2010 bond issue begin on page 55 and total $3,824,000; a breakdown of each project is listed on page 57 and includes design and construction costs. Improvements deal with 18 parcels, affording opportunities including Trackside development, building a section of the Peakway, and construction of sidewalks.

Trackside development deals with the west side of Laura Duncan Road, and opportunity will be afforded to deal with individual property owners to construct sidewalks, filling in gaps to create a sidewalk connection ultimately from the center of Town to Apex High School; yards are more generous on the west side of Laura Duncan Road with less utilities. Adam Stephenson, Engineer for the Town, reported there's not a significant difference in right of ways, both sides are comparable; relocations would be more significant. Options were considered, with one being to continue sidewalks down from Oak Gate Subdivision and cross over Laura Duncan near Pinewood and continue to the high school. Nothing has been finalized on which side is preferable. It was noted proposed three lanes would have to be crossed; there will be a gap from existing pavement to the sidewalk. Commissioner Jensen asked if these were throwaway sidewalks, with Jackson responding the look at the life of the sidewalk; temporary could become permanent. Since Laura Duncan Road is a NCDOT street, NCDOT requirements were discussed; condemnation would create more financial issues; Khin responded NCDOT was not building three lanes, it was put back as two lanes. Manager Radford asked if he were hearing for the two lane road, the board's desire was for sidewalks to be constructed beginning on the east side of Laura Duncan Road and crossing over at an appropriate place, and continuing to the high school.

Discussion continued regarding the distance from the edge of the pavement and availability for them on the east side; it was noted that it may be worthwhile for staff to look at cost estimates for the improvements to include curb/gutter on the same side, since it was closer to the street and further from the front doors, and may not become permanent and not done away with; ditches and drive connections would be reconstructed, and in case of permanency should be done right. It was the consensus of the board to continue the study of sidewalk installation on Laura Duncan Road.

Capital Projects: Wastewater

Jeanne Bonds, ElectriCities, advised ElectriCities had been charged and have agreed to partner with the Town of Apex in an effort to educate voters about the May bond referendum, and further will support that effort financially. Tom Fetzer of Fetzer Stephens, is a public affairs and political strategy firm that will manage the project with ElectriCities. The recommended action plan is attached. Mayor Weatherly noted if needed an additional group could be organized to help with the education; suggestions were offered.

Tim Donnelly, Director of Public Works continued the Wastewater project would provide sewer facilities for the upper Williams Creek drainage basin, page 59. Three site options were considered. Recommends: Option A - location within the community park off Laura Duncan Road (options B and C would include additional land costs and line costs); Option A is most desired due to lower costs, accessibility and electric availability. Disadvantage is its location on town park property; estimated total project cost $2,562,000; town would have to ask for conversion of site for pump station. Easements for sewer line would have to be acquired; all property would be enhanced in value to acquire easements and could be used as a negotiating tool; appraisal would show minimal damage. Site would basically be located at the entrance of the park, and follows creek behind lower ball field; would need access road and would be as un-intrusive as possible; restrooms would then be supplied for the park which would take sewer off Cary and would be sewered by Apex. Discussion continued that to establish set up, Board would need to act quickly by establishing a budget ordinance amendment to start the capital project ($250,000 for design and to acquire land/easements); after award of bid, a capital projects budget amendment would be brought forward for the entire project. Manager Radford reported with the regional wastewater pump station, sewer impact fees would mount up from the site and up Davis Drive; folks have visited the town anticipating services in this area, and as tied in, would give immediate return on the town's investments. Estimates of the project costs are listed on page 61. Review of the three options are listed on page 62. Project schedule is on page 63.

End of presentations

Manager Radford noted the price tags of the projects were tremendous amounts and required prioritizing those projects in the upcoming fiscal year budget. Summary of directions: find the facts to determine if the existing site proposed for the public safety facility can be leased and simultaneously pursue the free land; tie up property if possible financially, for long term projects; begin I-540/S. Salem Street corridor study similar to the N. Salem Street study; study construction of sidewalks along Laura Duncan Road.

Other

Commissioner Meckes announced this may be his last retreat and that it was a privilege to have served with the staff.

Commissioner Gossage wanted to hear discussion regarding finance, debt service, general fund balance, tax rate, budget and capital and operating expenses. He had reviewed the audit report and over a few fiscal years; he noted it good when budgeting to be conservative with estimates of what comes in and what is expensed, and was surprised at the large differences. He wanted to hear the board's thoughts regarding the large differences. He referred to the expenses mentioned, but when looking at the tax rate projections – two of those years brought in one-half million dollars more - noting $238,000 would take a 2% tax decrease to close the gap; he would like for the board to consider it for discussion and think about this in our debt over the next decades. He also wanted the board to look at the fund balance, having asked the auditors questions concerning this. General fund balance was approximately $9 million and was 50/60% over the State requirement of 8%; he reported the finance director was comfortable with 20/25%. He asked the board's thoughts about this information.

Mayor Weatherly's response was, we need to now what our obligations are going to be in the future and obviously a good thing to reduce taxes, but not if we have to reverse that and raise them back – more negatives than a net plus, if we had to do that with a fairly optimistic plan ahead for us, we want to be sure we would not have to reverse ourselves if we cut taxes. He asked Manager Radford if he would be prepared to justify the tax rate in the upcoming budget, that would be the time to discuss this and see how much we are putting back into general fund, and if we need to be rebating it back to the taxpayers; whether we need to put more away for savings account to take care of what we anticipate will be going out in the future.

Manager Radford's response was that he would not be advocating a tax decrease in this upcoming budget year; he would demonstrate to them the available general fund – fund balance would be exceeded by $1.5 million over the next five years in the event they took on some of the proposed projects. Commissioner Gossage interjected that was assuming the general fund – fund balance does increase over the next five years; with Commissioner Meckes adding with the proposed 4% growth rate.

Manager Radford responded at the same time, that would not add up to an additional 8% existing amount; reducing the fund balance, noted the encumbered fund balance; and the growth rate would make up for the difference and make an additional 8% if we extended the things that are on our wish list.

Mayor Weatherly noted that was the point; we would need to reduce – we are talking about spending in the future - our wish list and needing the $ .40 tax rate to pay for it, but obviously, he would agree if we are generating more revenues than we need plus a reasonable socking away in the general fund, then we need to be giving tax relief; we don't need to be saving an absorbent amount just because we can do it. Commissioner Meckes added a way to get around it is maybe a two year moratorium - $ .02 so you can say for the next two years we are giving a nickel off their taxes. Mayor Weatherly added when it works back, its' an increase to everyone. For a temporary deal you say a one time cash rebate or something. He continued when the draft budget is presented, that's the time to justify the tax rate and he puts that question to the Manager to be alerted, they will be asking him to justify the point Commissioner Gossage is making will depend – that our tax rate is appropriate. Commissioner Meckes suggested a credit on their utility bill – it was noted those are different funds; he said general fund would have to pay it back.

Manager Radford added as difficult as it is to explain that you are adding an almost in some cases an increase in general fund – fund balance each year, it's much easier to live with that than to explain a single negative number, when talking checks and pluses, with Commissioner Gossage interjecting audits are always good – it was the seven figures behind that. Manager Radford understood that; he had gone way out on our budget to see to it that we under anticipated our revenues and over anticipated our expenditures to a point that the money we save is the money that pays for building such as the one that we were in, in cash money when the time came; it's the money that will pay for overnight the downtown parking; it enables for Tim or John to come in and have a need – we all agree – and we write a check. The ability to have 60% in fund balance may sound like we are taking advantage of our tax payers, but at the same time they derive a tremendous benefit – instant gratification when someone says there's a need in our community – this is what it is, let's do that. Commissioner Meckes noted it a direct reflection of how fortunate the town has been with everything we have experienced over the last ten years; in 95 Director of Planning started with the same chart of the population growth and said we would probably get to 20,000 people by 2010 and none of us could anticipate what we would experience and he's sure the same scenario exists for the budget surpluses; it's hard to comprehend the things that has taken place in our community over the last ten years; he doesn't suspect it will always be that way, at some point in time we would reach a Plato and these years will be long gone.

Mayor Weatherly added as much as he would like to say Apex is the lowest tax rate in Wake County, we are only one-half step behind Raleigh and the economies of scale can't even be compared as to what ... how we are able to keep ... we talk 56 or 60 cents – there are communities in Wake County in the 64 range – Holly Springs 55 or 56 – he's not hearing any great call from the citizens to reduce taxes although that obviously should be at the forefront when looking at the budget every year, justify the tax rate as opposed to what revenues we really need to do these services.

Commissioner Schulze stated maybe not 2 cents but 1 cent or – he thinks there's room ... with Mayor Weatherly interjecting in the Manager's budget, we need to justify whatever tax rate he recommends, and when it will come to us – revenues and expenditures and at that point – give him the degree as to how much surplus there is ... unless anyone wants to talk about cutting the spending program – we are talking about the surplus that will be generated by the tax rate.

Commissioner Schulze questioned the budget – the access – does it revert back to general fund, with Manager Radford responding it does, any thing that's received over and above our real expenditures goes into the unreserved general fund balance. Commissioner Jensen asked how it was invested – with Manager Radford noting the many ways. Commissioner Meckes noted the other side is that we have demonstrated repeatedly our willingness to share the bounty with our citizens through our electric rates; 20% increases that we've never passed on to the citizens of Apex; he thinks we have shown that we are interested in the financial burden they bear.

Mayor Weatherly added also borrowing the money on the bonds reflects our precedent bond rating for a community of our size and related to fund balance to a large degree; we have one other town our size that matches, Huntersville, have the bond rating so we can borrow money, a direct savings to our tax payers because of our bond rating. As conservative as he would like to be, and always wants to be, there is a good thing to be said for maintaining a margin because it directly reflects in other things we like to do, we spend on a dime and buy a piece of property for parking rather than whether we want to raise tax rates $ .02 to pay for everything we want to buy; it does have a plus, and he's glad we are not sitting in one of those towns we were talking about in 60's tax rates; when the governor took our money three years ago, we didn't have to raise taxes or cut anyone off payroll, we absorbed over $2 million because the governor took that money and still stayed in the black – we added two spots on payroll. Some communities are still struggling.

Commissioner Jensen responded the citizens have asked for sidewalks, etc., and we could put it into actual physical infrastructure – if you have that it raises the value of a person's property and to him, tax rate is important, but it's how efficiently you run the town, and thanks to staff, it a very efficiently run town and critical, and if there's money left over, we should either give back or see what we can do with the extra and not jeopardize ourselves; give the people the infrastructure they are begging for – they pay for it. Manager Radford responded he was talking about brick and mortar infrastructure; he passed out the five year projections of general fund based capital improvement projects we anticipate – the $10 million of the $8.8 million general fund balance and without continuing to add funds to that un-appropriated general fund we want be able to continue to do the things we have said we want to do if something comes up over night that requires us to make a large expenditure. These are the things over $500,000.

Commissioner Schulze commented most projects would be budgeted, example – public safety building would be included in the fire fund, with Commissioner Meckes noting the point is, it's not already set aside, this is all new money required. Commissioner Gossage stated there would be $200,000 set aside already for the public safety center, again this is taking existing fund balance and five years worth of expenses. Assistant Manager Wilson noted next year, they would think of new things that needed to be added.

Mayor Weatherly noted if the Manager recommends a tax rate of $ .40, and can't find current year spending or we are putting too much back into general fund then what we need to do is tax rate reduction – priority would be to cut spending; cut spending and then we can reduce the tax rate. Mayor Weatherly asked if he was seeing this growth of fund balance at such a rate and his point, what do we expect beyond this immediate physical year; what we are saving for – we built this campus on this basis – we were able to do this without going back to our folks saying we need $ .02 more that we would like to build. Commissioner Gossage wanted to take into accounting upcoming capital and operating budget, with Mayor Weatherly stating when the Manager submits the draft budget then we could look at that.

Commissioner Gossage also on the list of the public works facilities at $2.1 million – an idea had come to him – we are asking citizens for $35 million in bonds, $20 million may or may not come from the state, in the form of a loan – he asked if the state comes through with all or part of it, would we want to consider wording the bond language so some of it could be used for the public works facility? Donnelly stated one of the issues would be he doesn't thinks the public works facilities could wait that long; two things drive it – the availability of the land adjacent to the existing facility is time limited as the family who owns it has a need to sale – you have to make a choice, and second – they are busting at the seams – the same pictures you see of the police station is the same condition.

The retreat was adjourned at 1:30 p.m.

Georgia A. Evangelista
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, March 1, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.
Mayor Weatherly offered the Invocation, led the Pledge of Allegiance, and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Schulze asked item # 3 be pulled for separate consideration. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to consider item # 3 separately under Old Business. Motion carried.

1. Minutes of the February 15, 2005 Board of Commissioners meeting.
2. Minutes of the February 15, 2005 Board of Commissioners Closed Session (separate cover).
3. Adopt Resolution authorizing sale of Hwy 64 property for $135,000.00 subject to Upset Bid Procedure.
4. Adopt Resolution approving municipal agreement with North Carolina Department of Transportation for a traffic signal installation at Apex Peakway and Center Street (SR1010).
5. Budget Ordinance Amendment and Capital Project Ordinance Amendment.
6. Wake County Tax Report.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve the consent agenda as amended, pulling item # 3 for separate consideration. Motion carried.

End of Consent Agenda Items

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford asked to add item to consider request from local merchant to temporarily close a portion of Perry Road for a car show under new business. Attorney Fordham asked to add a closed session item to receive legal advice regarding potential condemnation.
Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the requests to amend the agenda. Motion carried. The meeting agenda was set as amended.

Personal News
Commissioner Gossage announced he was expecting a child in mid September.

PUBLIC HEARINGS

June Cowles, Planner

Public hearing # 1 – Rezoning Case #05CU01

Planning Board recommends unanimously the approval of the rezoning having met February 14, 2005

Public hearing and possible motion regarding Rezoning Case #05CU01 Lawrence Crossing, Lee Toler, petitioner, seeking to rezone from Planned Unit Development to Planned Commercial-Conditional Use, 15 acres located at the northwest and southwest corner of Hwy 55 and Perry Road.

Town Clerk administered an oath to Planner Cowles prior to addressing this item.
June Cowles, Planner oriented the board regarding conditional use rezoning case #05CU01. Staff report is attached and incorporated as a part of the minutes. Adjacent zoning and land uses are noted on page 1. Site is currently under construction with commercial uses. Auto Zone, two multi-tenant commercial and office building and Carolina Car Wash which has an approved site plan. Applicant proposes uses allowed in the Planned Commercial zone – attachment 2 of the staff report; and Lawrence Crossing architectural standards – attachment 4 of the staff report. Street buffers on Perry Road and Hwy 55 are installed and will remain the same widths if rezone is approved. RCA is at the rear of the property and adjacent to the existing residential subdivision and will remain at the same location and size which is 20% of the site and consistent with the UDO. Uses allowed in PC district but not in the PUD district are communication tower, commercial with special use permit, entertainment outdoor, retail sales, bulk goods, vehicle repair and maintenance general, vehicle inspection center, and vehicle sales and rental light. Proposed Planned Commercial Conditional Use rezone is consistent with the 2025 LUP. Planning Board reviewed the proposed project at the February 14, 2005 meeting and recommended unanimously to approve the Lawrence Crossing rezone.

Commissioner Jensen questioned the buffer widths along NC55 and Perry Road; Cowles responded NC55 is 20' wide buffer and Perry Road is 10' wide; meets the zone change for PUD and received a 10' reduction along NC55 (vs. 30') and Perry Road is 10' consistent with UDO; no additional plantings are required – is in construction with multi-tenant along NC55 with Auto Zone open. Is in compliance with previous PUD zone but does not meet the PC-CU zone as there was a 10' reduction along NC55. No additional plantings have been requested, with remaining buildings will be built to planned commercial zone district, same set backs and height requirements; there is no additional buffers along any of the other lots as commercial backs to commercial.

Commissioner Jensen questioned the 55 buffer reduction to 20' vs. required 30' and his question – we are not going to ask for any off-setting buffer or plantings in the parking lot to tone development down and into the more type compliance we would request; why can't we? Cowles responded this project had already been approved with plantings already installed; one lot at the northwest corner along NC55 does not have a site plan approved; she guessed there could be a condition, but it would be 20' along and then all of a sudden come out 30'. Commissioner Jensen wasn't saying that, he was thinking something within the parking lots on the front – additional to offset – he was thinking more islands within the parking lot to get a better view from the highway. Mayor Weatherly felt staff had not discussed that with the petitioner or the planning board, and Cowles had answered his question whether the condition would be and said no. Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one speaking to this rezoning request, closed the hearing.

Commissioner Meckes called attention the buffer associated with the Planned Commercial, asking if it would be a type D buffer, only thing given up is the 10' so the buffer is exactly the same as would be only 10' reduction from what it might have been, which was correct. Commissioner Jensen was suggesting if the parking lot had not been built back, then maybe they could find places for 5/10' wide islands to offset what was lost in the front to break the parking lot, so you don't see this mass - with Commissioner Meckes responding he guess he would rather see more plants in the 20' buffer, with Commissioner Jensen responding he would accept that too, with Commissioner Meckes continuing at this point, all that could be done is to suggest. Commissioner Jensen responded it hasn't passed yet. Commissioner Jones referred to the site plan at the northwest corner, asking when it came in was there opportunity to – will it be held to the standards of the PUD or the Planned Commercial Conditional Use that's being considered.

Cowles explained except for the width, it would still be Planned Commercial as far as type; even prior to the buildings going in the owner planted the landscape along NC55 and Perry Road; as of now he's sold two of the lots – one to Auto Zone and one to Carolina Express; multi-tenants are still underneath his control; to do additional plantings you would have to get with the lot owners. Commissioner Jensen asked if this could be requested; it has passed yet, we could require. Commissioner Meckes reminded him there's already a CO and can't require any additional buffer, with Commissioner Jensen thinking there could be on the one's that do not. Commissioner Meckes asked if it were lot #5 not sold, with Cowles stating the one on the corner had not been sold and then the one other belonging to the owner; Auto Zone is on the opposite corner and Carolina Express the northern lot. There are four lots fronting NC55 – two sold; Auto Zone has a CO, and Carolina Express is in construction plan review now - already approved. Commissioner Jensen wanted to request the last two lots be required to upgrade their lots in some manner to offset the difference in buffer if the requester is the owner.

Action: Motion by Commissioner Meckes to approve to change the site from PUD to Planned Commercial Conditional Use development, with a second from Commissioner Gossage. Commissioner Jensen wanted to add to that motion, with the addition of plants within the two lots that have not been sold; plantings to offset. Mayor Weatherly asked if it were just to request, with Commissioner Jensen responding if it's a request, it never gets done. Commissioner Jones didn't want to say never, but do not have as much leverage, but it couldn't be a condition unless the petitioner was present to offer that condition as a part of his proposal and didn't think the petitioner was present. Attorney Fordham agreeing to add an additional condition, the petitioner had to be present to agree. Commissioner Jones felt somehow they should impress this upon him. Commissioner Jensen felt in the future, they should look at any of those where something like this comes up to try to off set in some manner – staff, he thinks should do this. Vote on the motion was 4 in favor, with 1 (Commissioner Jensen) voting in opposition. Motion carried to approve the rezoning.

End of Public hearing # 1

June Cowles, Planner

Public hearing # 2 – Rezoning Case #04CU05 (Item *pulled from the agenda)*

Planning Board recommends unanimously to deny the rezoning having met February 14, 2005

Public hearing and possible motion regarding Rezoning Case #04CU05 Seagroves Farm, MacGregor Development Company, petitioner, seeking to rezone from Residential Agricultural District to Planned Unit Development District, 65.76 acres located at 1617 Center Street (SR 1010).

Manager Radford advised Mike Whitehead, McGregor Development Company, asked this item be pulled to allow for opportunity to amend the plan. He has asked the amended plans be submitted to the town by Friday, March 4, 2005 by 5:00 p.m. in order that he meet the Technical Review Committee deadline which would put him in the proper schedule that he be heard in front of the Planning Board on April 11, 2005 and if on schedule and comes out of the Planning Board for consideration by Board of Commissioners on April 19, 2005. Mayor Weatherly asked for a motion to accept the petitioner's request to pull the item.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to honor the request of the petitioner to consider this item at a later date. Motion carried.

End of public hearing # 2

June Cowles, Planner

Public hearing # 3 – Amendments to the Unified Development Ordinance

Staff requests item be continued to March 15, 2005 Board of Commissioners meeting

Continued public hearing regarding proposed amendments to the Unified Development Ordinance, Article 5.2.
June Cowles asked the public hearing for amendments to the UDO be continued to the March 15, 2005 meeting to allow time for the Planning Board to review them and make a recommendation.
Action: Motion by Commissioner Jones and second by Commissioner Gossage to continue this hearing to March 15, 2005. Motion carried.
End of public hearing # 3

End of Public Hearings

OLD BUSINESS

Consent Agenda Item # 3 pulled to be considered as Old Business item # 1

Adopt Resolution authorizing sale of Hwy 64 property for $135,000.00 subject to Upset Bid Procedure

Commissioner Schulze made one last plea to the board, seeing this property at US64 and Lake Pine Drive a gateway into Apex, not wanting to sell it because we can, but if there was a reason to sell – land being used for something the town wanted or we needed the money, but had rather hold on to the property to such time it would increase in value and we would not loose any money. His preference hold onto it until such time they desire to sell it. Mayor Weatherly advised it was the last piece adjacent to Cary. Manager Radford updated the offer to purchase was made by Steve Sebastian for $85,000, and the board having declared the property surplus. Commissioner Schulze had asked the appraised value of the property which was $135,000 and didn't think the property should be sold for less than the appraised value and no less. Sebastian returned with a verbal offer of $135,000, and further, the written offer of $135,000. The language of the written offer did not meet the Attorney's language and the town's attorney's had worked out acceptable language, and are in receipt of the offer for $135,000 for the .46 acres.

Commissioner Schulze feels the property should be reappraised since it had been two years ago and due to its location. Commissioner Jones stated he would probably agree if it were not for the upset bid process, and the reason for the process to hopefully receive fair market price for the property; if they vote to do this, he asked if there weren't a mechanism if they decide not to sale, with Attorney Fordham interjecting, this is true, they reserve the right not to accept any bids until there they sign of on a contract and agree to accept a bid, you are not obligated to do so. Commissioner Jensen added this language is in the provision and confirmed they do not have to accept anything, with the attorney agreeing. Commissioner Jensen shared he would have Commissioner Schulze's same concern, other than we do not have to sell if we wish not too, but agrees once they get down the line should get an updated appraisal. Commissioner Schulze asked the upset bid process, asking if the property were advertised, or if signage would be placed on the property, so public would know it's for sale, so we would maximize potential offers. Attorney Fordham advised there was no requirement there be something posted on the property, but nothing wrong with it, a good idea, further the law requires it be published in the newspaper which will be done and then 10-days after the publication to upset the bid. Commissioner Schulze stated he's sure the guy wanting to purchase it would be willing to wait a month or two and proposes there be a sign put on the property for at least one month – this being a high traffic area, is sure there would be lots of people interested in that property, and to just publicize in the newspaper he feels limits the amount of prospects; if they are going to sale it, get the highest value for it.

Mayor Weatherly added he certainly agrees with this, and thinks they should move forward with accepting the offer; he thinks the unique aspects of this property will almost require it to be a very unique use, and this maybe one in a million potential for that price, based on the acreage and the encumbrances that are on that property; it will be a tough sale, he would think, but certainly if it's out there can certainly try it, but can move forward tonight with this action, subject to obviously the upset bid process. Commissioner Jensen asked if we would put a sign there for one month before we begin the process; he agreed thinking we should advertise it in some manner. Commissioner Schulze asked if they could make it a condition, with Attorney Fordham advising if they want to do this, should include in the motion to start the upset bid process 30 days from now.

Manager Radford asked if he understood, and would be the one drawing the sign, and would be in Cary. Commissioner Schulze wanted to assure what the sign would read, basically typical seen on vacant property, .46 acres available for commercial use, and the phone number. Commissioner Jones stated he would agree with Commissioner Schulze relative to it being the entrance into Apex, if the other three corners of that intersection wasn't Apex, and if this weren't just .46 acres that's going to look like whatever happens in addition to Bennigans there anyway. Commissioner Schulze saw this as a valid argument. Commissioner Jensen felt the value certainly had gone up since Bennigans had gone in he would expect. Commissioner Schulze added he would think so too, and thinks it would continue to go up. Commissioner Meckes added the Mayor was right, and only a finite number of uses that can go in on .46 acres, with Mayor Weatherly noting there are encumbrances on that .46 acres too, with Manager Radford noting there are at least two easements across it – that would restrict even further. Commissioner Jones added and a significant buffer requirement along US64 – 100 foot.

Commissioner Gossage wanted to note it was Commissioner Schulze's keen eye that pulled this off an earlier consent agenda where it was listed at $85,000 that has benefited the town in $50,000 by noting that. Mayor Weatherly asked for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the resolution authorizing sale of the US64 property for $135,000 subject to the upset bid process to start in 30 days after placing an appropriate sign on the property noting the property is for sale. Vote on the motion was 4 in favor, and 1 (Commissioner Schulze) voting in opposition. Motion carried.

End of old business item

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

There was an add-on New Business item to be considered

Request to close a portion of Perry Road for a car show

Manager Radford offered a request from Mr. James Bullock, owner/operator of Apex Auto Zone, and proposes to close a portion of Perry Road on April 16, 2005 throughout the day for a car show – Mayor Weatherly shared to park the cars; this will do two things, one, make contributions to local charities, and recognizing the opening of the business. Police Department has reviewed the request and recommends approval, as well as the zoning officer. A portion of the roadway will be used to park vehicles against the edge of the store (250' deep from the NC55 intersection out to NC55 or 15/20' inside the road would be barricaded).

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the request to close a portion of Perry Road on April 16, 2005 for a car show (rain date April 30, 2005). Motion carried.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

There was a request to amend the agenda to include a closed session with the Mayor asking for a motion to go into closed session to discuss potential eminent domain litigation related to the possible extension of Beaver Creek Commons Drive. **Action:** Motion by Commissioner Jones and second by Commissioner Schulze to move into closed session at 7:30 p.m. as stated. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Schulze and second by Commissioner Jones to move back into regular session at 7:47 p.m. Motion carried.

With the Board now in regular session the following action was taken.

Action: A motion was made by Commissioner Schulze and second by Commissioner Jones to adopt a Resolution authorizing entry upon lands to conduct investigations of site conditions related to the possible routing and acquisition of right-of-way for the extension of Beaver Creek Commons Drive and the giving of notice to landowners of the Town's intent to do such investigations. Motion carried.

ADJOURNMENT

With no further business to come before the Board the following action was taken.
Action: Motion by Commissioner Gossage and second by Commissioner Jones to adjourn at 7:48 p.m. Motion carried.

The above minutes were approved on the 15th day of March 2005.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, March 15, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.
Invocation by Commissioner Jones.
Pledge of Allegiance and welcome by Mayor Weatherly.

PRESENTATION

John Brown, Director of Parks Recreation & Cultural Resources

John Brown, Director of Parks and Recreation, introduced Steven Schuster, Clearscapes Inc. for a brief presentation regarding arts facilities. Board then awarded design/project administration contract to Clearscapes Inc. for renovation of original Town Hall into a Cultural and Performing Arts Center. Mayor Weatherly commented on the preservation of the building and the demand for this type facility in the Western Wake County Area, not only for Apex, but a regional facility. Manager Radford commented the town was in receipt of $1.2 million for this project, and recommended award to Clearscapes for the project. Commissioner Jensen asked about the design character of the building, with Schuster responding it's within keeping of the request of the town. **Action:** Motion by Commissioner Jensen and second by Commissioner Jones to award the contract as detailed in the proposal for design services. Motion carried.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. **Action:** Motion by Commissioner Gossage and second by Commissioner Meckes to approve the consent agenda. Motion carried.

1. Minutes of the March 1, 2005 Board of Commissioners meeting.
2. Minutes of the March 1, 2005 Board of Commissioners Closed Session (separate cover).
3. Minutes of the March 8, 2005 Personnel Committee meeting.
4. Minutes of the February 18, 2005 Board of Commissioners Annual Retreat.
5. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU01, Robert L. Toler, et.al., petitioner, 15.554 acres located at NC55 (E. Williams Street) and Perry Road; zoning classification of lands Planned Commercial Conditional Use District.
6. Minor site plan: Town of Apex Electric Substation on Laura Duncan Road.
7. Accept conveyance of street/ utility easements: Olive Chapel Road and NC55 improvement project; BellSouth Telecommunications, Inc., and L.G. Jordan Oil Company, Inc.
8. Approve three parties Reimbursement Agreement for construction of roadway and signal improvements on NC55 and Olive Chapel Road; project partners Town of Apex, MC/CP-Apex, LLC and McIver Family Holdings, LLC.
9. Award contract to Laughlin-Sutton Construction Co. for construction of Kelly Road Pump Station Improvements at a total project cost of $1,797,749.00, and associated Budget Ordinance Amendment No. 13 with Capital Project Ordinance Amendment; bid tabulation attached.

10. Submittal of Governor's Highway Safety Program Traffic Grant, authorizing Officer Dondi Day as Project Manager, and authorizing Town Manager to sign supporting documents; total grant $290,620.000 with Town match $82,200.
11. Approve request from Apex Lions Club to conduct 5K Run in/ around Shepherds Vineyard/Knollwood Subdivision May 7, 2005 beginning at 8:30 a.m. and assisted by Apex Police Department.
12. Approve street closing for 2005 Peak Fest, 4th of July, and Today & Yester Year Festivals.
13. Submittal of Governor's Commission on Crime Grant, and Apex Police Department authorizing Officer Dondi Day as Project Manager, and authorizing Town Manager to sign supporting documents; grant amount $19,000 – no matching funds for Town of Apex.
14. Contract with Stewart Engineering , Inc. for design, permitting and public bidding of Apex Peakway Extension between North Salem Street and Hillcrest Road and authorize Manager to sign contract documents.

End of Consent Agenda Items

APPOINTMENTS

Mayor Weatherly recommended the appointment of Craig Hardy to serve as an Alternate member to the Apex Board of Adjustment for a three year term to expire in 2008. Mr. Hardy is an in-town resident. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to approve the appointment of Craig Hardy as recommended. Motion carried.

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. There were no amendments to the agenda, so the agenda was set as printed.

PUBLIC HEARINGS

Lee Smiley, Director of Finance

Public Hearing # 1 – Wastewater System Bonds

Order was introduced at the 02/15/05 Board of Commissioners Meeting, with said Order having been published in the Apex Herald and calling for the public hearing

Public hearing and possible motion to adopt a Resolution regarding "Order Authorizing $35,000,000 Wastewater System Bonds", with bond referendum hereby called to be held Tuesday, May 3, 2005 between 5:30 a.m. and 7:30 p.m. at places provided by Wake County Board of Elections; notice shall be published in the Apex Herald; and the adoption of a Resolution designating the Finance Director to declare the Town's official intent on behalf of the Town to reimburse expenditures under United States Department of Treasury Regulations.

Mayor Weatherly introduced the Order authorizing $35,000,000 Wastewater System Bonds, and offered a Resolution calling for a bond referendum to be held on Tuesday, May 3, 2005, and offering the notice will be published in the Apex Herald, and further offered a Resolution designating the Finance Director to declare the Town's official intent on behalf of the Town to reimburse expenditures under United States Department of Treasury Regulations. Lee Smiley Director of Finance offered brief comments regarding the reimbursements.

Mayor Weatherly opened the hearing at 7:18 p.m. and with no one addressing this item, closed the hearing and called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adopt Resolution regarding "Order Authorizing $35,000,000 Wastewater System Bonds", with a bond referendum to be held Tuesday, May 3, 2005 between 5:30 a.m. and 7:30 p.m. at places provided by Wake County Board of Elections; with notice published in the Apex Herald; and adoption of Resolution designating Finance Director to declare Town's official intent to reimburse expenditures. Motion carried.

End of Public hearing # 1

June Cowles, Planner

Public Hearing # 2 – Rezoning Case #O4CU19 and Master Site Plan

(Planning Board recommended approval with conditions; Town Board continued hearing to address concerns regarding private streets; Town Board denied rezoning and site plan – split vote; Town Board adopted ordinance to allow for reconsideration of decision; Town Board asked hearing be readvertised to consider changes in master site plan).

Public hearing and possible motion regarding Rezoning Case #04CU19 and Master Site Plan, Crown Builders & Developers, Inc. petitioner, seeking to rezone from Planned Unit Development Conditional Use District to Planned Unit Development Conditional Use District and a Master Site Plan to include 63 townhomes and containing 8.33 acres located north of Salem Street between Sugarland Drive and Lynch Street.

Town Clerk administered oaths to all those speaking during this hearing.
June Cowles, Planner presented a revised site plan for Crown Builders & Developers, Inc. as outlined in the staff report which is incorporated as a part of the minutes and to include:

- Salem Street Landscape buffer shall be 30 feet wide, and consistent with UDO,
- Townhome unit maximum height shall be 42 feet, and reduced from 48 feet,
- Townhomes units are reduced from 65 units to 63 units, and
- Additional 29 parking spaces, in addition to the parallel on-street parking (does not include daycare parking).

Commissioner Jensen asked the distance of the townhomes that borders property to the west: about 21 feet – 11 foot landscape buffer and 10' required buffer in the UDO – lot line is 10' from townhomes; asked about buffer materials - concern with building height and sitting close to the property line, and noted the large wall of cypress at Beaver Creek and would like to see this here as a buffer and larger at the beginning, with Cowles noting there would be a Type B buffer – semi opaque. He further asked how soon development would take place next to this project, and could possibly be looking into windows of three full story buildings and felt this was a degradation to the property. He further noted the typical buffer is talked "full grown", with Cowles explaining the plantings, Commissioner Jensen noting we generally ask for six feet, and hopes whatever is put there takes into account the next door neighbor to the greatest extent possible, maybe more than Type B upgrade it because of the taller buildings and that's a visual shot down – he's not seen a line site plan and the affect looking into houses – it appears to be three story and could look down. Commissioner Gossage noted in his thinking about the buffer, there was no – one there now, and this would allow time for the buffer materials to grow, and whoever ends up there will know ahead of time as opposed to being there already and having this built, which was the case by Beaver Creek Commons and was a different situation.

Chris Roberts, BBM spoke in favor of the rezoning and revised master site plan; as far as landscape he could upgrade to a better buffer, but the fact is he doesn't know what will be next door – could be another high density subdivision or individual homes, thinking the line of site would be ok with the lob-lolly pines that would be planted that are tall and grow up fast.

Commissioner Schulze saw the increased parking he likes but to him it was not enough, especially between 32 and 41 – the same issues he brought up before, with Roberts explaining the amended parking, with parking across the street from units 32 – 37, and also from 52 – 55 with more off-street parking places; in total - went from 126 spaces originally to 178 spaces, or 2.8 parking places per unit not including the daycare parking; total off-street spaces 29 and along street spaces 25.

No one spoke in opposition to the rezoning and revised master site plan. Mayor Weatherly closed the hearing at 7:32 p.m.

Commissioner Meckes commented the additional parking was 52 spaces, and met the requirements of the UDO when first presented, and now had more parking spaces per unit than any other similar development in the community, asking Cowles if this was correct, with Cowles responding yes. Commissioner Jensen was satisfied with the parking and in regards to buffer he hopes tree spacing is close enough to create a more opaque buffer; it would be good for the townhomes here – what they see from this side, the other side will look back. Commissioner Jones commented however the land develops adjacent to this would also provide buffer. Commissioner Jensen took this into account as well; only trouble they stick in 2 l/2" diameter trees and it takes a while, but satisfied. Commissioner Schulze pointed out his issue was not so much the amount of parking, but the location of the parking, the same problem he had before was not resolved for examples 19-26 would not go around the corner to park, so his issue with the parking was not resolved from last time. Commissioner Jensen added his issue was not resolved either, but was a lot better than before and now satisfied. Commissioner Gossage was appreciative with the petitioner's work, and thinks they have a good development. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Meckes to approve rezoning case #04CU19 and master site plan. Second by Commissioner Jensen. Commissioner Meckes believed the Board had acted capriciously in this effort; the applicant came to the board and met every requirement that was put before them, and the board turned him down, and held them hostage to do something different than what their own UDO said had to be done. He didn't have a problem doing that, but if they are going to treat people that way, they need to have them know from the get-go, and the only way to do that is to change the UDO, but people can't come to this board and meet all the requirements that are expected of them and then have them make decisions that will significantly change what they brought before them that is in compliance. The proper manner that this is to be dealt with is to change the UDO; if they want additional parking requirements they need to go to the UDO, they can't have folks coming in here before them, and making decisions or changes based entirely upon a whim they may have at the moment.

Commissioner Jensen responded he agreed, except this was a conditional rezoning and leaves subjectivity and whether the parking was the problem or the buffers were the problem, or the bigger height – it was a problem to him, and if it was not conditional, they are basically required if they meet all the things, but it was conditional. Commissioner Meckes responded the point was they have to convey what their desires are to people before they go through everything to get here; they needed to do this through the UDO, it was not the right manner in which to act. Commissioner Schulze added he agrees 100%, but for some reason, this case he saw things wrong with the plan, and didn't want to move forward with it and end up with something and end up with something he calls the "white elephant", but he foresees problems with this plan; he hopes they don't have problems, but thinks they do need to change the UDO, so the yards are wider. Commissioner Meckes felt he had been held to a different standard, and Commissioner Schulze agrees, he didn't like doing it, but to him this was an exception, and nothing against the developer, he sees problems here, and doesn't want to make this big step and say they could have prevented it.

Commissioner Jensen felt the density of this development caught a number of people's attention; we need to look at the widths, at the same time this is so unique, that the amount of stuff going on this property is really substantial, and thinks they need to meet every letter we could possibly require them, so yes, he doesn't like to hold them hostage if that's what they did, but at the same time it was conditional and is subjective and they made that decision last time.

Mayor Weatherly called for a vote on the motion. Vote on the motion was 4 in favor and 1 in opposition, with Commissioner Schulze voting in opposition. Motion carried to approve the rezoning and site plan.

End of Public hearing # 2

June Cowles, Planner

Public Hearing # 3 – Amendments to the Unified Development Ordinance

Continued from March 1, 2005 Board of Commissioners meeting

Continuation of public hearing regarding proposed amendments to the Unified Development Ordinance, Article 5.2 *General Measurements.*

Cowles noted the proposed amendment to the UDO to include a definition for lot width, noted on page 1 of the staff report which is incorporated as a part of the minutes.

Mayor Weatherly opened the public hearing at 7:37 p.m. and with no one addressing this item, closed the hearing, and called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the amendment to the UDO. Motion carried.

End of public hearing # 3

Dianne Khin, Senior Planner
Public Hearing # 4 – Amendment to the 2025 Land Use Plan *(I-540/S. Salem Street)*
Public hearing and possible motion regarding possible amendment to the 2025 Land Use Plan.

Dianne Khin, Senior Planner reported the I-540/South Salem Street Small Area Plan was adopted by the Board in December, 2004, with purpose of the plan to guide development at the interchange area rather than development occurring in a piecemeal fashion. One of the first implementation measures is to update 2025 Land Use Plan according to the I-540/S. Salem Street Small Area Plan. Changes to the Plan are proposed as follows:

- Designating a school site at the intersection of South Salem Street and Apex Barbecue Road.
- Designating a public park along Apex Barbecue Road.
- Designating a mix of medium and high density residential uses between the activity center and the Apex Peakway instead of having one section be high density residential and the other medium density residential.

Staff and Planning Board recommend approval of the amendments. Planning Board had two descending votes were in regard to the park and school sites and felt it more appropriate to strip the entire area with all designations, parks, school, commercial, office, and institutional, high density residential and medium density residential (showed the map of the area and is attached).

Commissioner Jensen questioned school site thinking it was small, with Khin stating it's an urban style development and could be public or private; there's an urban elementary school built at Briar Creek in Raleigh; this is about a 7 acre site – smaller than Apex Elementary. Manager Radford noted the parcel at S. Salem Street and Apex Barbecue was zoned commercial and someone walked in and wants to do something within the commercial designation, asked how they handle this, with Khin responding it's currently zoned O&I, and allows schools; should someone wish to do something because the zoning is there and not under their discretion for rezoning, thinks they would be allowed to do whatever is in the UDO for O&I; however if the area were to be combined by a developer with additional properties, then would ask them to look at possibly finding a private school to go in this location, or to figure out some way of being true to the intent of the plan. Commissioner Meckes noted the sign on the site was for commercial development, and recalling the Board having been animate at the time when they changed the zoning, with Commissioner Jensen making further comments that it was a single story and somewhat limited for what they may want to do, and well want to combine and go to a school, which may be a good application.

Mayor Weatherly opened the public hearing at 7:40 p.m.

Herman Jaffee addressed protection for the small town concept, noting approval of Beaver Commons, and the extension of it, with developers building a bridge connection. He understands US64/Jenks Road is proposed for a Wal Mart, with land zoned residential, and with experts saying we are not being served. He objects to the Wal Mart due to closing down main street stores, leaving big box stores empty since they didn't generate enough profit in spite of their low wages, and why he feels Wal Mart should be controlled by the board; they put a huge burden on the state, and every other state they are in of workers and their families not having enough money for medical coverage – reference California; lost of taxes and people earning a living in the state forced out of business. He considers this an up-coming problem. The facts are there; if they put in Wal Mart they will claim it's needed; to say yes or no, he knows their track record in N.C. and hurt by them more than any other state in the union; by coming in and closing out and closing down main street stores. Realize there are hidden costs of having big-box stores in the neighborhood.

Mayor Weatherly thanked him for his comments, and asked if there was anyone else who wished to address the 2025 Land Use Plan revisions. With no one addressing this item, he closed the hearing and called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the amendments to the 2025 Land Use Plan. Motion carried.

End of public hearing # 4

Mayor Weatherly excused himself at 7:50 p.m. turning the gavel over to Mayor Pro tempore Jones to chair the meeting, as he had a planned work commitment.

Dianne Khin, Senior Planner

Public Hearing # 5 – Amendment to the Apex Transportation Plan *(I-540/S. Salem Street and proposed change to road network at Technology Drive/NC55)*

Public hearing and possible motion regarding possible amendment to the Apex Transportation Plan.

Dianne Khin, Senior Planner noted the map for the I-540/South Salem Street Small Area Plan; a new proposed collector street network map and one change to a thoroughfare which is S. Salem Street, with three additional maps: where Technology Drive is located; and the Transit Plan; and the Laura Duncan thoroughfare which was discussed at the board's retreat. Each map is attached and described in the staff report and incorporated as a part of the minutes and provides modifications staff recommends.

Staff and Planning Board recommended the amendments. Khin answered questions regarding the Transit Plan and its coordination efforts between the town and TTA and other transit authorities and if they were in agreement. She advised members of their advisory committee are staff members of TTA and plans to use Apex plan to other communities for thought, and other to get our plans in order the CAMPO will start their comprehensive transportation plan – the first plan that will have an overall transit element – they will think of alternative means of transportation other than roads; staff felt it's good to get the Apex Transit Plan in order to show them what Apex would like to see and hopefully some or all of it end up on the regional plan.

Commissioner Jensen noticed there were no rails towards Holly Springs, asking if we had coordinated with Holly Springs – as she said are any other towns doing anything because they come through our town, with Khin advising there were no rails to Holly Springs south of US 1, there use to be a trestle, with efforts by David Rowland having tried with CSX to turn over the rail line for "rails to trails" so it would be a trail in the interim and if transit were to become reality it could be converted back to rail, but decided it was not worth their while and let the property convert back; people have on either side been able to claim part of the right-of-way and pretty much gone and too bad; Holly Springs understands and wants to assure good access to the I-540/South Salem Street park and ride area.

Mayor Pro tempore Jones opened the public hearing, and with no one addressing this item closed the hearing and called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the amendments to the Apex Transportation Plan, and commended staff for being ahead of this. Motion carried.

End of public hearing # 5

Dianne Khin, Senior Planner

Public Hearing # 6 – Amendments to the Unified Development Ordinance

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

Dianne Khin, Senior Planner presented amendments to various sections of the UDO, noted in the staff report which is attached and incorporated as a part of the minutes, affecting Articles 4, 5, 6, 7, 8 and 13. Staff recommends approval. Planning Board reviewed the proposed UDO amendments and unanimously recommended approval of all of them except:

8.1.2(C)(5) and (6): Remove Urban Growth Boundary as geographical designation for determining the size of RCA. Planning Board agreed UGB can no longer serve as line demarcating 25% and 30% RCA requirements, but wants a new line around watershed area to retain 30% RCA . Staff doesn't disagree, 1) 30% RCA was to encourage people to not go outside UGB, but doesn't exist anymore, and 2) 2025 LUP shows low density residential on lots 1 to 5 acres sizes which are already exempt from RCA requirements, and doesn't make sense.

8. 2.2(C)(2): Allow planting of small trees and large shrubs within overhead utility easements. Planning Board did not have a problem with over-head utility easements but believed Town-imposed (dedicated, purchased, or condemned) public utility easements should count in the riparian buffer width and RCA area calculations. Staff does not propose to change that requirement – currently those utilities are not allowed to count within the RCA calculations but are allowed to be in the riparian buffers provided they don't count as RCA calculations; feel with reduction of the RCA from 40 to 20/25% to allow these utility easements to crisscross through RCA would further degrade what little vegetation they are not disturbing at this time and felt this would not be a good proposal.

8.7.1(A): Add bracket as sign type. Planning Board believed bracket signs should be allowed within all zoning districts, as they are attractive. Staff does not agree 9' bracket size should be placed in all major thoroughfares as they are not readable along major thoroughfares and a push to increase their size, and had rather keep the small town character and the small town appeal of these signs in the downtown area.

Staff did not agree to the three changes the Planning Board wanted to make.

Commissioner Meckes addressed Article 7.2.1(A)(2)(b) and refers to Transportation Impact Analysis and noted it points to ingress/egress to required subdivisions in providing additional access onto a thoroughfare as not to burden existing subdivisions with proposed subdivision traffic – if there's no access onto a thoroughfare, asked for ex. Waterford Green East and did not have access as noted. Khin responded there would require a Board of Adjustment variance in cases where a hardship could exist such as in this case – connection may have been to connect to McGregor in Cary – couldn't make that connection due to land use issues we have no control over). Noted: Abbington West to have ingress/egress connection made onto Apex Barbecue. Commissioner Jones noted most of our recent subdivisions would have had an impact analysis done and this would not apply, with Khin agreeing.

Commissioner Gossage referred to Sec. 8.2.2(C)(2)(a) Protection of Utilities to allow plantings within overhead utility easements, and to count as a portion of that planted easement within a required highway, thoroughfare, street front, or parameter buffer, asking if some perimeters could be set up for this - with the idea of what would be planted with permission of Public Works Director. Khin responded and noted it depend on the width of the easement, with Commissioner Gossage agreeing even if it specified this, with Commissioner Jensen agreeing to allow for azaleas etc, and there should be some sort of guidelines, with Khin noting currently nothing is allowed to be planted in the utility easements, with Commissioner Jensen thinking it would be a good idea to allow certain smaller plantings. Commissioner Meckes added the only issue would be for repair work which might disturb the plantings and owners would not understand, with Commissioner Jensen thinking they might need to sign an easement agreement, or something along that line... with Khin asking if it would be acceptable to say without permission of Public Works Director per an accepted list of plants; could bring back a list of plants for review.

Public Hearing # 6 continued
Amendments to the Unified Development Ordinance

Manager Radford asked Article 7.2.1(c) not be considered, in talking with Town Attorney asked it be brought back at a later date with a clarification.

Commissioner Jensen referred to 8.1.6 Retaining Structures as elements of site design referred to (D) asking if the minimum was 3' horizontally, with Khin responding they could add that. He referred to plant spacing on non-residential, but none on spacing for residential, with Khin responding it was not required to do plants for residential, but if they don't want to do decorative posts and finials then they could do plants and could specify, with Commissioner Jensen proposing they have a guideline, and if there was a checklist, with Khin responding yes, and it could be the same as stated for non-residential.

Commissioner Jensen asked Khin on page 15 referring to ...whichever is greater regarding Traffic Impact Analysis, with Khin responding the office park that was not greater than 1000 trips per day, but was greater than 100 am or pm peak hour trips would be required to do a TIA even though they didn't meet both standards; they could word it differently whichever standard is met, and would be covered under either one.

Commissioner Meckes asked what was allowed under indoor entertainment with the manager responding space at plaza for performance, concert, festival, and Khin read what was allowed bowling alleys, indoor tennis facilities, indoor swimming pools and racket clubs (not adult establishments). He had no problem with them.

Mayor Pro tempore opened the public hearing at 8:25 p.m. With no one addressing the proposed amendments the hearing was closed. Mayor Pro tempore Jones called for a motion.

Action: Motion by Commissioner Meckes to approve the amendments to the UDO, excluding Article 7 and including modifications by the Planning Board. Second by Commissioner Schulze. Commissioner Schulze agreed with staff on the points made regarding the Planning Board points and disagreed with the Planning Board, with Commissioner Meckes noting if the bracket signs get too large, you would have a telephone size pole to hang them and if on the Peakway or US64 it's a different deal. Commissioner Gossage noted it a unique aspect if they are downtown, with Commissioner Meckes agreeing. Commissioner Schulze was ok with the growth boundary issue.

Mayor Pro tempore repeated the motion to approve the proposed amendments to the UDO with modifications that have been recommended and suggested by the board, excluding section 7. Motion carried.

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 Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Mayor Pro tempore stated to those wondering about the potential of a Wal Mart was not included in the item being discussed at the time and has not come to the board at all.

Steve Swamp, 2701 Southwinds Run in Westwinds Subdivision, and off Kelly Road between Holland Road and Old US1, just south of the proposed I-540. He addressed the 2025 Land Use Plan for this area, and one of the residents for this area is a concern that Apex is a very rich are and desirable area for builders to come and possible the 2025 Plan could turn into a five year plan. He noted a lot of work by the Planning Department and done well, asking to keep the small town appeal; he rarely sees any town policy on growth rates, and while they can't discriminate growth and who comes in, they can regulate it and can be more publicly said. He noted it up to the board, and the number of people protesting what happens in town or a very unrepresented area because of the nature of the land there, he asked they be judicious as to how growth goes forward in the future.

End of public forum

NEW BUSINESS

Commissioner Gossage, Chair of Personnel Committee

New Business # 1 – Reclassification

Commissioner Gossage, Chair of the Personnel Committee, recommended reclassification of two existing positions: 1) Engineering Technician/Inspector to a Transportation Engineer, and 2) Code Enforcement Officer III to a Planner focusing on Transportation planning.

Manager Radford noted both positions were needed – and two inner related positions. Commissioner Schulze asked if it would pay for itself – to not get outside forces with Commissioner Gossage noted some of the money currently paid to firms like Kimley Horne, could be done in house. Commissioner Jensen offered as an example Center Street crossings could be done by a traffic engineer, with Commissioner Gossage noting the point with the bond that was passed those funds going into transportation issues would see an increase in those items coming before town staff and it's probably wise to create a position that would be able to focus on that exclusively. Commissioner Jensen noted staff is not as well represented at the regional transportation planning meetings and if we have an in-house engineer could get information to them before planning meetings which is what Cary does, and has been somewhat successful. He thinks this would be a plus, with Commissioner Schulze agreeing. Commissioner Jensen noted transportation engineers are specific, and there are not many civil engineers.

Mayor Pro tempore Jones called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the reclassifications of the existing positions. Motion carried.

End of new business # 1

Bruce Radford, Town Manager

New Business # 2 – One Stop Voting

Manager Radford called attention to the request from the Wake County Board of Elections to conduct One Stop Early Voting in advance of the May 3rd Bond Referendum. This gives ample opportunity for one could vote here and thinks it's important; absentee ballots are available, but at the same time convenience is important; would host them here at the community center and prescribed dates April 22-23 and 25-29 – 11 a.m. to 7:00 p.m. each day – total cost $2,400. Have spoken with Cary and they do not intend to have one stop early voting available on as many days as we propose; they propose 2 or 3 days. Mayor Pro tempore Jones asked if it would be similar to the one stop voting for the previous election where Cary Precinct could vote here and vice vs. with manager Radford assuring that is correct. Mayor Pro tempore called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to honor the request for one stop voting. Motion carried.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

There were no closed session items to be discussed.

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Gossage and second by Commissioner Jensen to adjourn at 8:45 p.m. Motion carried.

The above minutes were approved on the 5th day of April, 2005.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 5, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order with Commissioners Jensen, Gossage, Jones, Meckes and Schulze present. Invocation was given by Commissioner Meckes. Mayor Weatherly led the Pledge of Allegiance and extended a Welcome to those in attendance.

PRESENTATION

David Winslow of Winslow & Associates presented a proposal to prepare a feasibility study to assess the potential for success regarding private fund-raising for the Apex Performing and Cultural Arts Center (old Town Hall on Salem Street). He reviewed similar projects, outlined the time frame for the study and expects 9 to 15 months to raise the money after the study, and further stated reasons the town should consider private funding to supplement what funds have already been allocated for the project: would identify substantial money, and who would be in the leadership positions, and would be used to enhance this project. Total proposal cost to prepare the feasibility study is $19,000. He noted construction prices are going higher, and the more that can be done now would be better; this would allow them to partner with another organization (tax exempt organization – as done in Clayton). Winslow & Associates has been in business for over 20 years and are licensed by the State as a professional fund raising counsel, providing materials, strategy, advice, coaching, etc. to make the projects succeed. Board discussed need for the study; Winslow advised there are a lot of "unknowns" about Apex; whereby this would lay the ground work for the second phase should this project move forward; with the approach to be determined in the study. Winslow stated he would not proceed without this study; further he would advise the board if the fund raising efforts would work or not. Winslow agreed with Commissioner Meckes it is more viable to complete the 4,000 square foot addition and renovation to the town hall simultaneously and would save money in the long run because of the dramatic rise in construction costs.

Action: Motion by Commissioner Meckes to contract with Winslow & Associates to conduct a feasibility study for the purpose of raising funds, and for the additional 4,000 square foot addition to the back of the existing Town Hall structure during the remodel of the Town Hall, and not to exceed $19,000; second by Commissioner Jones. Commissioner Jones asked if the motion needed to be this specific; perhaps there may be other things to be done with the money raised – furnishings, artwork, or other extra, that would not be included in the 4,000 square foot addition. Commissioner Meckes amended his motion by adding, "and to supplement what has already been allocated for the project." Winslow advised costs after the feasibility study would vary depending on the findings, and had been hesitant to take on this project, as they like to have million dollar projects or more; they are paid per state law by time, and do not raise money on a percentage basis, and stating it could take as much time to raise one-half million dollars as it does to raise a million dollars, and why he wants to see what they can do to enhance this project as much as they possibly could; similar fund raising project costs have been 1%, some 10%, but doesn't know until they find out what they enter into, and would be a part of the proposal and a benchmark for the board to determine what they desire to do at that point.

Manager Radford advised the board of his findings and reasoning why Winslow & Associates should be the firm to conduct this study. He had spoken with Steve Shuster of Clearscapes and he believes to have a $400,000 to $500,000 shortfall, and bases this on construction bids received from other projects could see this cost increase dramatically. Shuster advised him the best person to help raise additional funds was David Winslow. Manager Radford checked reference with Steve Biggs in Clayton regarding a similar project; Biggs noted Winslow to be realistic in the amount of money he could raise; he didn't receive any complaints about his efforts that he had put forward in Clayton. Manager Radford has known Biggs for a long time and understood what he had told him, and was what he needed to hear.

With Commissioner Schulze not being sure this was the firm to conduct the study, Commissioner Meckes noted a comfort level with the projects he has been associated with; Schuster had shown photos of those projects during the presentation. Winslow advised if they were to take bids, they would be close to what they will be doing. Commissioner Schulze voiced he was now comfortable with the choice based on the Manager's comments. Vote on the motion was unanimous. Motion carried.

End of presentation

RECOGNITIONS

Mayor Weatherly recognize the Apex Appearance Commission Award Winners:

Jean & Jose Vega, 201 N. Mason Street was recognized for all around pleasing appearance.
Joe & Lise Zublena, 317 N. Salem Street was recognized for their Elegant weeping Dogwood.
55 Automotive (Stewart White) NC55 Highway was recognized for the Biggest aesthetically-pleasing change to a Downtown Corner.

End of recognitions

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve the consent agenda. Motion carried unanimously.

1. Minutes of the March 15, 2005 Board of Commissioners meeting.
2. Findings of Fact and Conclusions of Law, Decision and Ordinance regarding rezoning #04CU19, Crown Builders & Developers, petitioners, located at the 600 Block of S. Salem Street between Lynch Street and Sugarland Run subdivision; changing the lands described from Planned Unit Development Conditional Use District to Planned Unit Development Conditional Use District.
3. Annexation Petition # 370, Andy and Susan Mullins, owners/petitioners; petitioning to annex 2.927 acres into the town's corporate limits; property located at 1548 East Williams Street and known as Williams Street Station; 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and, 3) Resolution setting date of public hearing for May 3, 2005.
4. Adopted Resolution of Intent to Annex 0.071 acres owned by the Town of Apex, and located on the north side of Green Level Church Road (SR1600) near the Kelly Road intersection, and setting date of public hearing for May 3, 2005 (Annexation # 371).
5. Budget Ordinance Amendment # 14, and two (2) Capital Project Ordinance Amendments: appropriates funds to the General Fund recognizing private contributions and increasing funding by the same amount to the Police Canine Program, recognizing an appropriating grant funds from Wake County to purchase a thermal imaging camera for the Fire Department, authorizing the additional design work to reconfigure the front counter and reception area for the Finance Department. Amendment to the Street Improvements Project Fund receives a developer contribution and transfers funds form the Transportation Reserve to complete the intersection improvements at NC55, Hunter Street, and Olive Chapel Road, and to begin the traffic analysis for the bond-financed relocation of the Lufkin Road/SR1010 realignment. The amendment to the Recreation Project Fund transfers funds form the Historic Building Reserve to fund the approved contract with Clearscapes to begin the design work for the planned Cultural Arts Center.

6. Adopted Resolution authorizing an Easement to Progress Energy to allow it to provide wholesale electricity to the Town's Laura Duncan Road Electric Substation.
7. Adopted Resolution Accepting/Authorizing Purchase of Easements and Appurtenant Property Interests Related to the Olive Chapel Road Widening Project (MD/CP-Apex, LLC & McIver Family Holdings, LLC (Grantors) and Walgreen's Inc. (Tenant)).
8. Ordinance to amend the Town of Apex Code of Ordinances: Article VIII. Parking. Section 20-175(b)(2). Three-hour areas during certain hours... and including the two existing parking spaces located at 104 W. Chatham Street.
9. Request to close portion of Salem Street from Hunter to Chatham Street, April 30, 2005 – 10:30 a.m. to 11:30 a.m. for Amran Shrine Center "Keystone Kops" Parade.
10. Revised contract between Town of Apex and Wake County Board of Elections whereby the Board will conduct all elections for the Town with a base retainer cost of $3,125.00.
11. Wake County Tax Report.

End of Consent Agenda Items

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford asked to add an update of the town-owned land at Lake Pine/US64 (Old Business). Attorney Fordham asked to add two items for closed session related to pending litigation of an administrative nature.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to amend the agenda to include the requests as noted. Motion carried. The agenda was set as amended.

PUBLIC HEARINGS

David R. Godfrey, Attorney at Law

Public Hearing 1 – Closing of Unopened Portion of Alley / Sturgeon Property

Public hearing for the purpose of considering petition to close an unopened alley fifteen (15) feet in width extending between Hughes and Ferrel (now Mason) Streets as shown on that plat of Block D, "Sturgeon Property".

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

Attorney David Godfrey was not aware of any objections to the petition for the proposed closing of the alley and like the one done a couple of months ago; he identified the alley's location. The adjoining land owners were a part of the petition. There are no other easements included in this alley. No one else addressed this item. The hearing was closed.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to adopt a Resolution and Order Closing the Alley – Sturgeon Property. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Bruce Radford, Town Manager

Old Business: Lake Pine & US64 Property

Manager Radford had been asked to place signage on the town-owned property located at Lake Pine and US64, noting it was available for sale, and he was the contract person. Signs have been up for three weeks, and to date received eight inquiries for possible purchase of the land for a variety of uses. An offer had been made today for purchase, however, he felt it wise to ask direction to proceed.

A statutory process would be followed to sell the property which includes declaration of surplus property, accepting bid deposit of 5% and establishing up-set bid process and a period of time the process would end as a result of there being no additional bids.

Attorney Fordham advised under prior action the board had taken, will advertise to begin the upset bid process, and this person could formally upset that bid with the existing contract, and move into the additional upsets. Declaration of surplus has been done for this property.

Manager Radford advised the money would be placed in general fund and could be ear-marked in any way the board so chooses. Commissioner Meckes asked if it could be used for town hall and could that be an amendment. Manger Radford stated once sold, any sum of money more or less, or same amount could be used in any manner the board so chooses.

Manager Radford noted staff would proceed with this direction.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public comment.

NEW BUSINESS

John Brown, Director of Parks, Recreation & Cultural Resources
New Business # 1 – Wake County School System Use Agreement
Possible motion to approve Level 4 Use Agreement with Wake County Public School System for use of Salem Elementary/Middle School Park.

John Brown, Director of Parks, Recreation & Cultural Resources introduced Zach Davis, Community Joint Use Administrator with Wake County Public Schools. Both addressed a proposed 25 year use agreement for Salem Elementary/Middle School Park giving Town of Apex priority use of the campus and outdoor athletic facilities when not used for school activities; in return Town will take over maintenance of those areas similar to what would be done at any town-owned park at a cost similar to what it would cost the town to maintain any similar town-owned park and on an annual basis. Town would coordinate with the principal for scheduling use of the facility and meet with him twice/three times annually. Similar arrangements were made in the past years; this agreement comes into play as a result of several years of discussion between Wake County School System and communities of Wake County over how best to partner to allow use of the school facilities after hours when not in use by the schools and addresses needs of the school system in regards to maintenance and campus improvements, while helping both the school programs and the local municipalities with the programs offered. Town has spent considerable amounts of money on the school campuses in Apex, and for most part has been able to use the facilities, working with local principles and athletic directors in cooperative agreement. This 25 year agreement allows town to use this campus, and further as other use agreements arise at other school sites, staff may propose to do the same with those sites. Money and maintenance costs will be included in town's annual maintenance contract as is with other parks. Attorney agrees with the proposed agreement.

Mayor Weatherly addressed picking up trash/debris, asking if Town would be obligated after a school event, and if it were addressed in the agreement, with Brown responding no, obligated only after a town event, and didn't know if it's in those exact words, but the intent of it.

Mayor Weatherly referenced one section regarding clean-up, with Brown stating if the town was not using the facilities, they would not go over there every day, and giving an example of the use at the high school games. Mayor Weatherly referenced trash from one use to the next, expressing this will be the town's problem having to clean up from whatever time of the event, with Brown responding if it were to be a major problem staff would work with the principal and their staff to help to police the area after their events, and would work jointly, this being the intent.

Zach Davis, Community Joint Use Administrator with Wake County Public Schools, stated his responsibility is to assure the school fulfills their portion of the agreement, and each party polices after themselves, however, the scheduling of this field for both town and community is through the town, therefore, the school would clean-up after their games, activities, with anything scheduled through the town would be the town's responsibility. Mayor Weatherly noted this understandable, with Commissioner Jones noting there will be trash left over from each event that the other would clean up.

Mayor Weatherly asked if we pay the utilities, with Brown responding we do, with the only utilities being lights at the ball fields and the middle schools do not use those lights at night; high school being different. Commissioner Meckes was with the Mayor, everything to be done has a "T" by it, meaning the town does it. He noted it a win-win situation for both – town uses the facilities without expense, and school system gets assistance in maintaining all the site – seems town is a bit over burdened with some of the maintenance and expense; kids run on the fields, we sod them, even so, thinks we are ahead. Brown agreed and feels we are ahead, knowing there have been frustrations with use of school campuses in the past – feels since Davis has been on board, have made significant improvements and strides towards trying to do things cooperatively; feels good principals in Apex have good working relationships with staff and feels the more we work with the principals and more dialogue with them, better we will be; doing some things with Salem already - feels confident this will be a good situation for all of us and with town doing maintenance, the facilities will be maintained better than now to a higher level and benefits town and school programs as well. Commissioner Meckes agrees it makes sense – having those facilities sitting idol 80% of the time, with kids in school most of the day – this maximizes the use of the facilities while minimizing expenses associated with them, with Brown agreeing. Brown added there are lots of user groups in Apex that are not associated with the town programs and by town having scheduling control will be able to work with those groups freeing time with them that are primarily Apex residents that have a hard time finding places to practice and place to do things; with town being clearing house for schedules will be able to help keep them from traveling far off to practice or play games, another benefit to execute this agreement.

Mayor Weatherly was in favor of the suggestion of prioritizing for Apex groups, with Brown agreeing, and then others, and then allows development of a fee schedule – a user fee – 50% of participants are Apex residents in town and tax payers gets priority use and fees to offset maintenance cost would be nominal, - group with less than 50% Apex residents would be a different fee similar to resident and non-resident fees. Brown will take some type fee schedule to the Advisory Board next month, with this taking effect July 1, 2005 with the new budget. Fees will be brought to the Board for approval.

Commissioner Schulze asked if this would be a boiler-plate agreement for other towns to use schools, with Brown stating it was, with the responsibilities being the same; over the years frustrations occurred due to lots of different agreements and this one gets all operating under the same agreement. The Apex Elementary Agreement is similar and expires 2007, as other agreements expire, this agreement will be brought forward for those parties. Commissioner Jensen would like to assure we recoup our costs, not to make money, but since its a mutual situation.... with Brown responding staff will do their best, feeling there is a significant amount of money for maintenance and the groups, whether in our programs or others groups in Apex not in our programs, we need to take care of them first and if we could help outside groups, that's fine, but it's important to look at a tied system (resident and non-resident fees).

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the Level 4 Use Agreement with Wake County Public School System for Salem Elementary/Middle School Park. Motion carried unanimously.

End of New Business # 1

Fire Chief Mark Haraway

New Business # 2 – Funding Agreement Fire Apparatus

Fire Chief Mark Haraway led discussion to approve a funding agreement for the purchase of combination Pumper/Tanker jointly with Wake County replacing two fire apparatus: a 24 year old Pumper and 1986 Tanker (already surplus as it does not meet ISO standards). A combination vehicle will save money: vehicle reductions, insurance costs, and utilization of vehicle will benefit department and citizens. Wake County in 2004/2005 had targeted to give Apex Fire Department a proportionate amount of money to purchase a Pumper and another amount to apply to the tanker. Staff asked Wake County to pool this money to apply all those funds to purchase the combination vehicle with Wake County agreeing to do. The agreement states Wake County will give the town $175,000 for the purchase price of this vehicle, then will be titled to the Town and upon surplus of the vehicle 15/20 years Wake County will get a proportionate percentage of the sale of that surplus vehicle equivalent to the proportionate amount of the purchase price that they are putting toward it. Staff asked the board to consider approval of the proposal, allowing staff to complete the specifications of the vehicle as it's a joint purchase with the county on other vehicles, and town receives cost savings due to the number of vehicles being purchased through this Wake County Agreement. Attorney approves agreement. Town's share $95,367.00. County looked at the past five years, as town has covered the rural area of New Hill through Station 2. Apex built the station, and since the merger took over capital costs, not asking county for any funding other than operational costs. County felt Apex should get some capital money to help support the town's efforts.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes approve the funding agreement with Wake County.

Other facts: vehicle will be placed in New Hill Station 2 replacing Tanker and Pumper, bringing 2002 Pumper from New Hill into town and place it in Station 1 to off set call volume in town. Benefit of new vehicle gives alternative water supply here in town: ex: Buckingham drives are off road not close enough to hydrants. Response time for this vehicle to come from New Hill would be about nine minutes about the same as now – truck brings additional water. Chief explained the way calls are performed under ISO requirement with this truck being in town more use to volume of calls vs. rural area calls.

Mayor Weatherly recalled the merger agreement and concerns with using Apex taxpayer resources to subsidize the rural fire department in New Hill and under the volunteer program, with merger causing town to assume that station, asking if we were using taxpayer resources to subsidize the fire fighting capability of the rural fire station. Chief responded in all truth, the County is actually using rural taxpayer dollars to fund the services of the town. There is one full time staffed engine in Apex – running 2000 calls a year – 12/15 calls a day with 12 being in-town calls. County funds the cost of staff at Station 2 Monday-Friday 8:00 a.m. to 5:00 p.m., however, 70% of the time those folks are running calls in-town for citizens of Apex vs. being there, and when they leave the station there is no coverage in the rural Apex Fire District area (only 3 people there). Town gets best end of this, as County funds town $435,000 in operational costs for the general operation of Station 2 to include part-time staffing, funds maintenance of the equipment, fueling, utilities, and electric; truck in-town more than out-of-town.

Commissioner Schulze feels we are ahead. Commissioner Meckes asked if truck returns to Station 2 after each call, with Chief responding as quickly as possible it gets back to Station 2 service to serve second and third calls and also cover that end of our district. Apex covers the second largest fire district in the county and this truck will get back in service as quickly as possible; occasionally it gets caught up in-town on back to back calls, but an exception more than rule.

Vote on the motion was unanimous. Motion carried.

End of New Business # 2

Bruce Radford, Town Manager

New Business # 3 – Construction Update of I-540

Bruce Radford, Town Manager led discussion to adopt a Resolution regarding proposed delay in construction of I-540. Mayor had talked about recent publicity given to budgetary concerns of the state and its affect on our transportation plan, particularly the 540 segment – Western Wake Expressway. Mayor asked staff to come up with a resolution; earlier conversation with other Mayors will probably come from the Mayor's Association. He felt it would be good for town to be on record expressing similar sentiment that he could go to the Mayors and show what we've done, and speak with some authority that we are together on this, believe it is a priority.

Manager Radford advised town had tried to enlist the support of other members of the TJCOG and Region KCOG in the Fayetteville area to allow those more rural entities in Johnston, Harnett, Lee, Chatham Counties to weigh in with their concerns as well. Rationale NCDOT has used to take this $350 million of which $297 and one-half million is for the I-540 extension, is that the rural areas have been shorted funds that have gone to Wake and Mecklenberg or other larger urban areas.

Discussion was heard about where roads are built due to volume of cars, with Commissioner Meckes asking if this resolution is harsh enough? Commissioner Gossage noted the paragraph about what the town has done in anticipating this. Commissioner Meckes noted the I-540 /Salem Street, NC55 corridor – in anticipation. Mayor noted the town has been cued up for NC55 for a long time, with I-540 – Raleigh got their segment built, now we wait for ours and now are being kicked back. Mayor Weatherly feels sure Western Wake would be an important component to the whole loop, and sure Raleigh would be supportive. He noted excess of $1 billion of unmet transportation needs in wake county and will get worse; then we see Hwy 12 Outer Banks being rebuilt every year – several million dollars.

Commissioner Gossage feels this will come up at the next TJCOG meeting and he would bring back whatever. Commissioner Meckes asked if there were any hope of this having any impact, with Mayor Weatherly responding we can go on record and express our dismay but then in joining together – Mayor of Charlotte is making noise about some urban moneys they are loosing; thinks urban areas will have to join together. Mayor Weatherly talked about the disproportion believing use of transportation funding is because traditionally legislature has been controlled by rural interests in North Carolina, and now is gradually changing – balance is moving toward rural, so we may see changes, until the equity formula is changed in the way the allocate funding we will see a dis-proportionate allocation.

Commissioner Meckes pointed out at the Rotary meeting – NC State Highways, Mass Transit and Environments representative noted the essential part of I-540 is egress and ingress to the Research Triangle Park and thinks this could be a potentially strong deterrent to additional corporate development within the park – if people can't get there, or spend hours in traffic trying to get there, they will look at some other form of corporate development. Mayor Weatherly noted a big tract in Holly Springs that will bring residents onto NC55 through Apex into the park; until the Western Wake Expressway is built, Hwy 55 couldn't have enough lanes to solve our problems. Commissioner Meckes noted another point made is that we are literally the footprint to which additional lanes can be added is full; talking about a double deck on 40 – thinking this is ludicrous – cost prohibited, we need to look – this is another idea of alternative mass transit; 540 will help quite a bit. Mayor Weatherly knew he chaired the committee for the NC55 trestle issue for the last ten years and sees no great progress.

Mayor Weatherly this thought will not make anybody change, but something we can do tonight. Commissioner Jensen agreed with the resolution concept but has trouble with the section ... and trust, not thinking it buys us anything where we are trying to head with this, thinking it's an in your face situation. To folks who have less control than we do, he'd like it to see regional equity and trust dropped.

Commissioner Meckes thinks regional cooperation has become more difficult because we are unable to have an issue we can work with one another on; he sees this between Holly Springs, Apex, Cary and those along the NC55 corridor. Commissioner Jensen was seeing between municipalities and NCDOT. Commissioner Jensen had problems with cooperation and trust – we have to keep going on with these guys and cooperating one way or another and trusting them and hates to see those two words there; everything else is positive, this is negative.

Mayor Weatherly read it and assumed we were talking about the fact we have a transportation improvement plan and the I-540 was in true regional cooperation – everybody's number one priority list for ten years or more and we are all moving towards that, and then when talking about transportation, we breathlessly give update of the I-540 and when it will get here; that trust connotes the fact we have been in the pecking order and now it's been jerked out from under us and we have to start five or six years later.

Commissioner Jensen again thinks those two words could be changed to regional planning and basic – that's what it is. Commissioner Jones noted the entire resolution goes towards cooperation and he's not in favor of omitting that word; we've been planning on doing this and it's being delayed. Commissioner Jensen could agree with cooperation, but not trust – change it to planning.

Action: Motion by Commissioner Gossage to adopt the resolution and substitute the word planning for the word trust. Second by Commissioner Jensen.

Commissioner Jensen recalls California and most an unplanned area, looking at highways as patches to bad regional planning and what we are looking at here. He thinks this is an opportunity to say we need RTP satellite towards Holly Springs and change – put the companies where the new homes are going and put the people where the companies are. Commissioner Meckes agrees to get traffic headed south daily. Commissioner Jensen thinks somehow this board could ask this; say to the state you need to do regional planning that makes this better for us, and we are getting screwed with all this traffic coming through us from Holly Springs and Fuquay going to this one regional park – we need something down here and would make our life better and quality of life would be long term. He asked if we could think about that – board has capability to push this; someone has to start. Commissioner Meckes noted this would require a complete shift in mentality for the good roads state; we have capability to visualize this. Resolution will be forwarded to authorities as needed. Vote on the motion was unanimous. Motion carried.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

Possible motion to move into closed session for the purpose of considering and giving instructions to the Town Attorney concerning pending litigation before the Board of Adjustment regarding a penalty assessment.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to go into closed session at 8:18 p.m. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move back into regular session at 8:37 p.m. Motion carried.

ADJOURNMENT

With no other business items to come before the board, there was a motion by Commissioner Schulze and a second by Commissioner Jones to adjourn at 8:38 p.m. Motion carried.

The above minutes were approved on the 19th day of April 2005.

Georgia A. Evangelisa
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 19, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones, and Meckes were present. Commissioner Schulze was absent. Mayor Weatherly led the Invocation, Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Town Manager Radford asked item # 11 be pulled from the agenda. Attorney Fordham asked to consider item # 10 separately (Old business).

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the consent agenda with the modifications as noted. Motion carried.

1. Minutes of the April 5, 2005 Board of Commissioners meeting.
2. Minutes of the April 5, 2005 Board of Commissioners closed session meeting (separate cover).
3. Annexation Petition # 372, Town and County Day Care, Inc., owners/petitioners; petitioning to annex 40.00 acres into the town's corporate limits; property located off the northwest side of Holland Road (SR1187) Wake County; 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for May 17, 2005.
4. Annexation Petition # 373, Howard E. Macon, owner/petitioner; petitioning to annex 17.773 acres into the town's corporate limits; property located at 7220 Apex Barbecue Road (NCSR1162); 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for May 17, 2005.
5. Budget Ordinance Amendment #15 and Capital Project Ordinance Amendments.
6. Resolution authorizing Finance Director and Purchasing Manager to declare surplus property valued at less than $5,000.
7. Contract Change Order # 1 for Mangum Asphalt Services related to the NC55/Olive Chapel Road intersection project.
8. Proposal to engage into an engineering services agreement with Kimley-Horne and Associates, Inc. and authorizing Town Manager to execute documents.
9. Developer Agreement with APX Haddon Hall, LLC resolving all credit/reimbursement issues related too public facilities construction.
10. **Old Business:** Proposed revisions to Developer Agreement concerning design and construction of Apex Peakway between Olive Chapel Road and South Salem Street.
11. **Pulled:** Authorize Town Manager to conduct a business bench-marking study.
12. Contract with New World Systems for Records Management System Police/Fire Departments, Town of Apex.
13. Contract for construction of POD #2 Substation be awarded to Red Simpson Inc., subsidiary of Pike, Inc.
14. Wake County tax report approved April 4, 2005 and accepted for Town of Apex.

End of Consent Agenda Items

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. The regular meeting agenda was set with consent agenda item # 10 being considered as Old Business.

PUBLIC HEARINGS

June Cowles, Planner
(Staff requests rezoning hearing be continued to May 3, 2005)
(Planning Board recommended denial of this rezoning at their April 11 meeting)
Public Hearing 1 – Rezoning Case #04CU05
Public hearing and possible motion regarding Rezoning Case #04CU05 Seagrove's Farm PUD, MacGregor Development Company, petitioner, seeking to rezone from Residential Agricultural District to Planned Unit Development District 65.76 acres located at 1617 Center Street (SR1010).

Manager Radford asked this item be continued to May 3, 2005 meeting to allow for a full board to participate in this action.
Action: Motion by Commissioner Jones and second by Commissioner Gossage to continue Rezoning Case #04CU05 to the May 3, 2005 meeting at 7:00 p.m. Motion carried.

Dianne Khin, Senior Planner
Public Hearing #2 – Amendment to Site Plan
(Planning Board recommended denial of this amendment at their April 11 meeting)
Public hearing and possible motion for an amendment to major site plan to allow changes to the Kohl's elevation at Beaver Creek Crossings, located on Green Level Church Road.

Dianne Khin, Senior Planner advised Beaver Creek Crossings major site plan was approved with conditions on November 16, 2004 with location of the shopping center on Green Level Church Road (Phase 4 Kohl's at I-540). It was approved with an elevation for anchor 11 and not known as Kohl's located on the left hand side of the first line of buildings; rest are front facades of adjoining shopping center. Applicant request amendment to the approved major site plan for Beaver Creek Crossings Phase III & IV development to allow a different elevation for the Kohl's building than was originally approved (request attached March 23, 2005; with important elements of the Kohl's identity included). Conditions to the site plan # 1, #2, and #3 are listed in the staff report attached and incorporated as a part of the minutes.

Staff report is incorporated as a part of the minutes, with their comments listed throughout the report including the staff analysis on page 3, noting compatibility with the shopping center on page 4. Staff believes breaking up boxes with facade treatments that the neighborhood shopping center feel could be achieved even though the size of the boxes would not be limited (96,000 sq. feet). Staff believes Kohl's requested elevation goes against the design characteristics and against Apex's unique character; further styles that have been altered were noted. Staff feels though this elevation was not 100% finalized at the time the major site plan was approved, do feel the look and the feel of the elevation was on the right track. Staff does not recommend approval of the proposed amendment for reasons listed on page 10. Planning Board considered this item at their April 11, 2005 meeting and unanimously recommended denial of the proposed amendment for reasons outlined on page 10.

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

Chris Erb, Developers Diversified spoke in support of the Kohl's application for the amendment to their elevation.

David De Vos, Director of Store Planning for Kohl's, spoke in support of the amendment: he's hearing the plan does not match that of the Beaver Creek Crossing; do not provide a neighborhood scale; project is not unique to Apex. Original elevations of Khols are not official and are in agreement for an extension with Developers Diversified; have invested $20 million in the project and asked consideration for their request – requests are not arbitrary. Character of the Beaver Creek Crossing: same materials and architectural designs, parapet details are similar to the balance of the shopping center and more in scale than the other buildings than the approved elevation (frames scale 25 foot vs. 17 feet – entry designed more to human scale and builds upward carrying eye up rather than out. Neighborhood scale: lowered parapet from 35' to 32' (10% drop and more in scale with the balance of the center and more residential scale with feeling more intimate); entry ways are lowered from previous proposal. 4x4 grid in front works with the piers in the face of the building dropping them in height; 24" planter benches are proposed between entrances for seating. More brick on elevations than on the approved elevation and to human scale; lighter entrance vs. dark entrance is more inviting noting other store fronts of lighter colors.

Unique character of Apex: other stores shown were pre-existing buildings taken over by Kohls; notes this store is different and Apex stores should not look like other store fronts in Vegas or California. Identity is tied to their regional business; stores are similar in appearance with cascade entrance and fountain; are attempting to complete the unique features to Apex and pick up many details and elements of the shopping center. The plan meets all design criteria – using materials and colors of the approved pallet and requests approval of the elevations.

Judy Ward, Walden Creek, spoke in opposition: addressed marketing, perception, nurture of the small town feel with the community events - defined zonings and development without loosing small town and its impact to its future assuring best planning and not loose property values; consistent changes in the land use plan define to developers and business Apex is unique and we define how its developed. She respects Kohls identity to the community; noted shopping centers built here (Harris Teeter – special) – with national known brand stores Apex doesn't have to go to Crossroads. This is opportunity that shows uniqueness and offers dependability of a department store that is based on customer service, quality products. Opportunity to embrace Apex uniqueness with the facade and follow planning board recommendation and work with the community to be a small town; plans today impact Apex's future.

Ken Russell, Walden Creek, spoke in opposition: noted the cascade – looks like treadmill program; light entrance goes up and like a massive hotel a cascaded mountain; noted Hilton Head darker colors: everyone loves the earth tones and hasn't stopped development there. Kohls if they go along with the Planning Board and does it as is, shows the company is working with the community, keeping the Apex character, and help them in their next development – they could adopt to the community; thinks the approved elevations (not officially signed on – have heard it throughout the presentation for this approval) thinks best in character with the community.

Mayor Weatherly closed the public hearing at 7:32 p.m.

Commissioners discussed the following:

Commissioner Jensen addressed the lighter structure: there had been four elevations looking middle ground, all included the cascade on the front and to staff long-gates the building rather than the original broken elevation feel of a series of smaller shops; staff doesn't have a specific recommendation, however understood in the process it could be changed, but desires more like the original plan and not their typical Kohls having giving them specific recommendations; did raise the parapets over the entrances; other suggestions didn't work. Staff feels the approved elevation was more in keeping with the center and should go to something close to this and not have the typical cascade on their front facade.

Commissioner Jensen addressed the planter benches: are not incorporated in the shopping center; was in the original comments; staff stopped the discussion feeling a little more landscape was not the end – planters were not in keeping with the entire center – extra plantings are fine.

Commissioner Gossage addressed sign colors on the existing elevation Kohl's sign: master sign plan is not approved – proposed is the same colors of Beaver Creek Commons which were blue, red, white and black – can have their signature sign and must meet the sign requirements – with the background color they can do brick – they can do a white sign; some modifications have been done in the past – Linens and things at Beaver Creek Commons (white color doesn't show up well) – staff will work with Kohls.

Commissioner Gossage addressed the white columns: was not one of their approved colors; staff is not saying good or bad; he didn't like the micro-management here – thinking white southern style columns may look nice and would give them a two out of three "sacred cows" to quote their letter. Staff's main concern was with the cascade and the scale of the building not appearing to be small shops but appearing to be one large building – not the entry – keyhole feature – white columns – just pointing out it was not approved (materials); should the board desire to approve it fine. Commissioner Gossage personally would like to see this.

Commissioner Jones noted what is seen is not in keeping with the character of the initial approved center and criteria and agrees with Commissioner Gossage if we are into micro-management of this – noting staff and Kohls have worked long and hard to get to this point.

Commissioner Meckes noted three issues to consider:

1) can't look at Kohl's building alone – it has to be a part of the entire development and considerations applicable to the remainder of development

2) struggles with aesthetics issues and not comfortable with commenting and looks for guidance from staff and the planning board

3) issue of trust: this was a two year process to see drawings before them in this development and feels its imperative and incumbent upon the board to be consistent in what's been done and said and that is approve a concept and to come in at the 12th hour and modify what they have envisioned and what the surrounding communities have envisioned would not be an acceptable course of action for the board.

Mayor Weatherly agreed with what had been said and referenced the Kohl's letter in that Apex would be excited about welcoming Kohls into the business community and wanted to assure them Apex certainly are; site plan was adopted and hoped they could conform to that and certainly hopes and feels they will be a very profitable addition to the Apex business community; but, his opinion we stick with the original site plan as worked out through a long laborious process and does have features unique to Apex and what was intended.

Commissioner Gossage wondered if there was chance for staff and Kohls to continue to work together, with Mayor Weatherly asking if the Board wanted to defer decision to see if there are opportunities for reasonable compromise with the board being in consensus – further they had heard folks express sentiment and with opportunity to massage this further. Khin stated there is opportunity and with this being agreeable to the board, Attorney Fordham advised if the next proposal is substantially different a public hearing should be held – if there's not a time certain, should be readvertised. Khin stated it would be readvertised. Mayor Weatherly added unless there could be a time certain, with Kohls looking at four weeks, with Attorney Fordham advising this does not have to go back to the planning board unless there's a complete difference.

Mayor Weatherly called for a motion to move this forward to May 17, 2005 meeting.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to move this forward to May 17, 2005 meeting at 7:00 p.m. Motion carried. Commissioner Jones noted he did agree with the landscape planter.

End of Public hearing # 2

OLD BUSINESS

John Brown, Director of Parks, Recreation & Cultural Resources

Old Business # 1 – Apex Community Center Renovation

Possible motion to award a construction contract in the Amount of $3,959,207 to Centurion Construction Company for the expansion/renovation of the Apex Community Center.

John Brown, Director of Parks, Recreation and Cultural Resources reported bids were received and summary attached regarding renovation of the Apex Community Center and having been significant more than set aside in the budget. Approved bond referendum authorized $3,500,000 for the project, with revised construction amount of $3,959,207. Smith-Sinnet & Associates representatives noted construction markets are at all time high, with a 14% increase in the base bid, with prices being competitive given the market. After bids were submitted, staff and architect met to review bids and consider possible alternatives to bring the proposed costs more in line with the existing budget. Feel confident after several alternates and several deducts form the contractor, the proposal while more than would have liked; give the product that will meet the needs of the citizens. Recommend award to low bidder, Centurion Construction. Request $40,793 be set aside for purchase of furnishings. Manager Radford advised the difference from the budgeted amount would be taken from fund balance for the project.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to award construction contract in the amount of $3,959,207 to Centurion Construction Company for the expansion/renovation of the Apex Community Center. Commissioner Jones commented if they were to bid again, it could be more. Commissioner Meckes asked about omitting the reception counter, with Smith Sinnett and Brown both in agreement they would like to see it but it was more costly to build than the straight line.

Commissioner Meckes noted it the first thing you would see and was distinct in character, with Commissioner Jensen being in agreement. Commissioner Meckes added to his motion to leave the reception counter in as conceived rather than simplifying it. Commissioner Jensen agreed. Motion carried on the amendment to the motion. Motion carried on the original motion as amended.

Consent Agenda Item # 10: Proposed revisions to Developer Agreement concerning design and construction of Apex Peakway between Olive Chapel Road and South Salem Street.

Attorney Fordham advised the board had previously authorized this developer agreement and presented a revised agreement for consideration noting changes to the deed of trust and construction start time; further restrictive covenants will disappear after the four lanes of the Peakway are built out; and no change orders exceeding 10% of the contract amount shall be approved by the Town without the written consent of the partners. Commissioner Jensen assured this does not prevent bike lanes, with Attorney Fordham advising they can, however it would be extra.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the revised developer agreement. Motion carried.

End of consent agenda item # 10

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

NEW BUSINESS

Ken Raber, ElectriCities, Inc.

New Business # 1 – Energy Adjustment Surcharge

Presentation by Ken Raber, Director of NC Eastern Municipal Power Agency Operations, ElectriCities of North Carolina regarding a potential Energy Adjustment Surcharge to be added to the Town's wholesale power cost beginning May 1, 2005. He addressed how coal prices affect electric rates with fossil fuel prices at an all-time high and causing hike in prices. Board of Directors from ElectriCities and rate committee will look for initiatives to help ease the impact of the cost increase; however rate hikes cannot be avoided. New agreement has been established with Progress Energy; intent is to defer costs at coal plants; coal projections escalated; expecting a peak in 2005. Increased costs in coal and transportation have resulted in a significant unbudgeted increase in costs to NCEMPA; based on PE contract $15 million unbudgeted just for coal. NCEMPA didn't forecast coal increase; had reviewed reports, models over last couple of years; at budget review definite contract prices were not available from PE. Merging economy (China and India) placed huge demands on energy resources as more coal is being shipped to foreign countries deleting coal piles with prices escalating putting physical constraints on transportation. NCEMPA will implement an energy adjustment rider effective May 1 which will impact Apex by 5.6% and will arrive on the June 10 bills. Rate increases do not change total distribution costs; federal legislation is more stringent on emissions limits. He cautioned I/2% rate increase on a $5 million budget is $2.5 million. He recommends Town of Apex implement an energy adjustment rider similar to NCEPA & PE to all retail customers.

The key talking points are noted on the handout. Costs are expected to level in 2006 and 2007. Discussion evolved around nuclear generation, coal pits number in India, concern with projections. Manager Radford noted the town is locked into the contract with ElectriCities, but have no contract with customers and have the ability to change rates. Town had absorbed the last three rate increases, however can't absorb this one ($750,000), but still will absorb some of the increase. Average household increase $3.60 per 1000 k.w with average 2000 k.w or $7.20 increase per month per average household. PE Base rates are frozen however will file in June guessing 3to 4%. Manager recommendation is for an energy adjustment rider, not a rate change, effective June 1, 2005, and not to absorb the next two months. Consensus of the Board was to follow the recommendation with the Manager's concurrence.

Lee Smiley, Director of Finance

New Business # 2 – 3rd. Quarter FY04-05 Financial Summary

Lee Smiley, Director of Finance gave the positive review of the 3rd. quarter FY04-05 financial summary and answered questions. Benchmark for the third quarter financial performance was 75% for revenues and expenditures. Significant variances were noted. Report is attached.

End of New Business

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

There were no closed session items to be discussed.

ADJOURNMENT

With no further items to come before the board, there was a motion by Commissioner Jones and a second by Commissioner Gossage to adjourn at 8:45 p.m. Motion carried.

The above minutes were approved on the 3rd day of May 2005.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 3, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall,
73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2 nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting of the Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present. Invocation was given by Commissioner Gossage. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

RECOGNITION EMPLOYEE ACHIEVEMENTS

Manager Radford recognized employees for achieving special education: Chief Mark Haraway – NASA Collapse Specialist School, San Jose California; Dianne Khin – UNC Chapel Hill School of Government – Municipal Administration Program; Sergeant Jacques Gilbert, FBI National Academy, Quantico, Virginia

RECOGNITIONS

Mayor Weatherly recognized 2005 Volunteers of the Year for Athletic (Eileen Flores) and Non-Athletic (David Shirley) Programs Parks, Recreation, and Cultural Resources Department.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda. Motion carried.

1. Minutes of the April 19, 2005 Board of Commissioners meeting.
2. Resolution Supporting the Drinking Water Reservoir Protection Act and Jordan Lake Nutrient Plan.
3. Award construction contract to ALS of North Carolina for installation of a traffic signal at the intersection of Apex Peakway and Center Street (SR1010).
4. Award the construction contract for Phase 1A of Beaver Creek Greenway to encompass areas between Town Side Drive through Pearson Farms Subdivision and to approve Construction Administration Agreement with Haden-Stanzial to oversee the project.
5. Personnel Committee recommendation approving a new position of Police Captain (contained in the Manager's recommended budget for FY05/06 effective immediately).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set; with no amendments; the agenda was set as printed.

PUBLIC HEARINGS

June Cowles, Planner

Public Hearing # 1 – Rezoning Case #O4CU05

(Planning Board recommended denial of this rezoning).

Public hearing and possible motion regarding Rezoning Case #04CU05 Seagroves Farm Planned Unit Development, MacGregor Development Company, petitioner, seeking to rezone from Residential Agricultural District to Planned Unit Development District the 65.76 acres located at 1617 Center Street (SR1010).

June Cowles, Planner, gave sworn testimony and highlights of the staff report: Rezoning Case #04CU05. Staff report is attached and incorporated as a part of the minutes; notes from the staff report followers:

- Planning Board reviewed proposed project April 11, 2005 and recommended to deny the rezoning case; Vote was 4 to 2 with their focus on density and traffic issues.
- Applicant requested Board of Commissioners allow time to revise the plan; plan has been submitted with revisions listed on pages 2 and 3 of the staff report.
- Density Analysis: listed on page 3 of the staff report.
- Request to rezone is consistent with 2025 Land Use Plan.
- Project Data: listed on page 4 of the staff report.
- Parks and Recreation Commission recommendation is on page 5 of the staff report.
- Access and Circulation: page 5 and 6 of the staff report; Traffic Impact Analysis was completed by Kimley Horne & Associates and incorporated in the minutes; applicant agrees with all traffic impact road improvements with exceptions of the following:
    1. Intersection of Center Street and US 1 Ramp at Waterford Green Drive northbound right turn lane on US1 exit ramp a continuous right turn lane merging back into eastbound Center Street prior to bridge.
    2. Intersection of Old Raleigh Road and Vintage Grove Lane re-stripe existing pavement to provide westbound left turn lane on Old Raleigh Road.

Board of Commissioners must find standards are being met to approve the rezone and PUD plan as listed on page 9 – 11 of the staff report. Planning Staff recommends approval of the rezone and PUD plan based on consistency with 2025 Land Use Plan and Apex Transportation Plan, as well as the conditions placed on the project and specified in the PUD Plan for Seagroves Farm.

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

All those addressing the rezone and PUD plan gave sworn testimony.

Speaking in opposition:

1. Robin Oke, 607 Samara Street, Surry Meadows, addressed the process, traffic infrastructure, safety, retention ponds, time frame, sale of land, negotiations between the citizens and developer Mike Whitehead and causing withdrawal of the protest petition, impact of development on quality of life.

2. Peggy Pearce, 825 Green Passage Lane addressed highlights of the parks and recreation meeting, public dedication of park land vs. fee in lieu, the parks and recreation plan, desire for a public park and town's position to not acquire the land, land proximity to surrounding communities, connectivity and walking trails, child safety (playing in the streets vs. park to play in), and existing and increased traffic on Center Street.
3. Joe Balue, Waterford Green, addressed traffic, Waterland Drive connection becoming a major thoroughfare, child safety (playing in the streets), speed on existing roads particular Watersglen Lane and level of service; requested Waterland Drive not be connected until SR1010 is widened; increased traffic on Schieffelin and realigned so three roads want come to a "T" intersection; Apex plans should be coordinated with state plan and developer for road planning; the 2025 Land Use Plan and lower density.
4. Rhonda Ford, 1001 W. Abberly Lane, Waterford Green, addressed additional traffic and growth issues due to denser populous - SR1010 Road area, proposed townhouse development - not opposed to multi-family development; survey by NC Association of realtors showing existing home sales for 2005 - stating newer townhomes are easier to sell vs. older townhomes which become non-owner occupied; census shows attached housing units more likely to become non-owner occupied vs. unattached units; urges board to weigh carefully the rezoning of this property not letting growth surpass community profits.
5. Gary Green, 1909 Misty Water Court, Waterford Green, addressed noise and traffic on SR1010 and stacking issues, growth, need for parks to access by foot, disagrees with the rezone and PUD plan.
6. Laurie Johnson, East St. Helen Place, Vintage Grove, addressed small town feelings, family values, child safety when crossing streets and waiting for bus stops on Old Raleigh Road and with cars not stopping between Surry Meadows and into Vintage Grove, the major issue: safety and cut through traffic; increased traffic; asked to vote no as roads do not support the current traffic, much less additional traffic.
7. Dave Horton, President Home Owners Association, and resident of 1001 W. St. Julian Place, Vintage Grove had spoken with the neighbors with no one supporting the development as planned, as it will magnify existing problems; increased traffic, 4 way stop issues at Vintage Grove Lane and W. St. Julian Place; cars running stop signs, cut through traffic, speeders, child safety.
8. Carlious Reins, 1504 Center Street – SR1010 is a 40 year resident; addressed traffic and not being able to get out of his drive onto the road, speeding, children needing a place to play and thinks this location is sufficient place for a park; has had good relations with his neighbors the Seagroves; urged all to tell the truth or it would catch up with them.
9. Female resident of Waterford Green addressed safety, Unified Development Ordinance and how it governs development and use of the land with specific - Article 2.3.3(f)(16) adverse affect on health, safety and welfare of town citizens; lack of configuration specifically townhomes, alleys, and streets that feed and dump traffic onto Waterland Drive; safety of children and families in Waterford Green, cut through traffic, increased traffic and being unable to turn left, children being placed at risk at the bus stops in the more populated sections of Surry Meadows and Vintage Grove, no street parking at the townhomes; asked board to refer to the Unified Development Ordinance as this development doesn't heed the ordinance.
10. Dan Loche, 1407 Rainesview Lane, Surry Meadows addressed failure of the development to meet the legal requirements, nor did it comply with ordinances and plans and asked the board to reject the plan; solutions offered fail to correct the problems asking board to deny the rezoning and development.

11. Mark Mendenhall, 408 Samara Street, addressed the Apex Comprehensive Plan and its vision for Apex's future regarding development decisions; PUD being inconsistent with the plan as far as preservation of small town character; preservation of the historic property, protection of natural resources (permits before drilling) – no conservation easements and minimum buffer requirements under the Unified Development Ordinance; land use and government managing development; ex. Development of Waterford Green and Waterford Green East; infrastructure and road improvements; bike routes and facilities (Wake County special plans for bike routes), walking, greenways (application doesn't show greenway connections or trails) and need for improvement; and the traffic circulation is a danger and impact on the homes.
12. Fred Stancil, President Waterford Green Homeowners Association, 716 Hillsford Lane, addressed the Kimley Horne Traffic Impact Analysis and the calculations for levels of service, traffic safety, trips per day generated from the development on SR1010 and Waterford Green; ins/outs from the proposed development, delays of traffic, traffic being a nuisance and hazard and his findings and conclusions; the PUD design and requiring changes before approval as it will incur additional traffic; elevations of town houses and alleys being more conducive to the neighbors; construction traffic, bus traffic, EMS and fire crews not being able to get into the development if the intersection was blocked (noting Center Street as the main evacuation route for Shearon Harris).
13. Bill Collins, 502 Vintage Grove Lane, Surry Meadows, addressed the Unified Development Ordinance stating the development did not meet sections specifically from Section 2.3; the adverse impacts on the community not seeing the need for this development; not adequately served by public facilities and not in the public interest; cut through traffic and increased traffic being a nuisance and hazard; environmental issues; standards should be approved by appropriate conditions of the ordinance; addressed alleyways behind townhomes and where he lives are no alleyways; wants to improve on the town's logo, "Peak of Good Living".
14. Gail Vonce, Satinwood Drive, Surry Meadows, addressed historic preservation, and Planning Board's decision regarding Capital Area Preservation Society deeding house and buildings to the society with negotiations being considered as conditional use; she has not heard the outcome of this issue.
15. Sarah Harris, Raleigh, stated her grandfather was a Seagroves and now that he's gone, it was a shame to let anything happen to this land since it was the agricultural heritage of the area.
16. Erica Layko, 1001 Thorncroft Lane, President of Surry Meadows Home Owners Association, addressed the Unified Development Ordinance, specifically Art. 2.2.3.3.(f)(16) health, safety and welfare; increased traffic issues with cut through traffic and the Kimley Horne Traffic Impact Analysis and trips per day; lack of sidewalks (needed on Samara and Rainsview); safety of children while the bike or roller blade, etc, and while waiting at bus stops; felt these reasons were viable to deny the rezoning and PUD plan; petition was presented for sidewalks in Surry Meadows Subdivision.
17. Leilani Mendenhall, 408 Samara Street, addressed current outer lying subdivisions; laws required for denial of PUD plan (UDO and 2025 comprehensive plan); anticipates petitioner will have a new plan since the plan of April 17, 2005 and notes multiple reiterations and variations with acknowledgement of the efforts on the defects of the plan; noted standards of the UDO and urged board to deny the plan as submitted; request time be reserved for rebuttal since citizens had not had opportunity to review the plan and asked board to acknowledge what's best for Apex and referenced review standards with Apex being held accountable to its published standards and agreed upon goals; stated composition of the board will change, however town will bear the results of their decision and leave a legacy they can't undo, with option to developer to comply with the ordinance and to include the "non-negotiable" points.

18. Tim Carley, former Surry Meadows Home Owners Association President, 301 Satinwood Drive, noted this a two year process; he was not against growth but pro Apex; there were issues with the UDO and how it applies to this development; noted standards for this to pass or not pass; anticipates changes in the plan and that the board should not approve it as presented; land should be turned into something as there was money to be made, estates settled, land transferred at some point; wants voice of concern heard; heard negotiations had failed between residents and developer and that he could not tell them they couldn't talk; conditions should be understood and enforced; roadway improvements must be done on SR1010 and US 1 and for the developer not to pay was unfair while noting proper turn lanes and signals should be made at Waterford Green at US1 stating this was an Apex problem not NCDOT problem; property is a gateway into Apex; noted Capital Area Preservation and Whitehead were discussing a one year lease and then would revert back to Whitehead if not deeded; noted Whitehead had agreed to pay for sidewalks that had failed; increased traffic and cut through with the road that will be put in place; not for or against connectivity as it is reality; wants to see sidewalks constructed on Samara Street, Rainsview Lane and Waterland Drive; knowing developer can't be asked to pay, urged the board to not connect the roadways until the sidewalks are constructed and there are proper road connections, and further when 75% of the project receives Certificate of Occupancies; noted the planned nine retention ponds on site with the developer paying for those, however, homeowners association would have to maintain and care for them and felt there's a better way to do this asking for redesign.

Mayor Weatherly called for a recess at 8:30 p.m.; meeting reconvened at 8:42 p.m.

Those speaking in favor: Clyde Holt, Attorney, Holt York McDarris and High spoke on behalf of the applicant relying upon engineers Tommy Craven, Priest, Craven and Associates, and Mike Horn, Kimley Horne & Associates to address the plan.

Tommy Craven, land use consultant for the project, gave points of development plan: fronts on Center Street; installation of recommended turn lanes and widening. Background information on the surrounding neighboring properties: Buckingham: 0.82 units per acre lower density and built prior to extension of sewer to the area has one entrance from Old Raleigh Road and one street stub north extended later in time and no street stub to the Seagroves property; Surry Meadows: 3.15 units per acre has one entrance onto Center Street and one tie to the north into Vintage Grove, and one stub to Seagroves property; Vintage Grove: 2.85 units per acre has one entrance off Old Raleigh Road and one stub to the south that goes to Surry Meadows. Waterford Green: 3.1 units per acre and has one entrance onto Center Street with one street stub to the Seagroves tract or Waterland Drive. Land was designated agricultural with significant part of the tract cleared, some woods, existing pond and streams run throughout the property, with smaller streams all being part of the RCA. Proposed: 123 single family detached houses and 42 garage town houses total165 on approximately 65.7 acres or 2.52 units per acre (overall low density). Notes: town houses are low density and good planning requires all housing types with town houses complementing the plan and an appropriate place for them to be used as a transition to the residential area from the commercial, industrial and office and institutional uses; town houses are buffered by the streams between the Seagroves tract and Waterford Green, internal stream buffers the single family homes on the Seagroves tract, and the pond and historic preservation area and park areas.

PUD allows townhomes and offers opportunity to put measures and restrictions in place, that affords quality if granted, that would have a one car garage and parking space, rear loaded with alleys to take drive connections and street parking off public streets and locates them behind the units. A number of units will be garage under units with two spaces and drives wider to accommodate more parking; alleys afford overflow and guest parking taking traffic off streets. Assumes emergency service vehicle access to town houses is made off the public streets; each town house fronts the street with vehicle circulation areas behind the units.

Architectural standards agreed to: hardi-plank material with stone or brick accents, covered entrances with front porches for all homes and town homes, staff requested crawl space with raised foundation allowing vertical separation at the front and incorporated in the plan; minimum of three steps from finished grade at front of building to finished floor of home; staggered elevations of town house roof lines for more variety and higher quality creating visual relief (see this along US64 McGregor Downs). Quality of town houses: will be at the front door of the development with no one having a greater commitment to aesthetics of the front door than the developer. Transportation: Center Street will be widened to town standards with curb/gutter and sidewalks; there will be a west bound turn lane off Center Street into the Seagroves development; also an east bound left turn lane off Center Street into Seagroves; allows traffic to be taken off Center Street and safety into the entrance. Street stubs: Surry Meadows and Waterford Green have access stub extended for reasonable extension of town infrastructure; pattern connects out to Center Street and will provide additional access for emergency vehicle. Additional private cross access will be provided to the Pharmacy and are currently trying to amend drive permit to get full access off Center Street; currently: right in/right out; if the current status remains developer has agreed to provide a private cross access easement that brings a connection to the parking lot and through the town house development and out to Waterland Drive; if Pharmacy gets full access then the agreement would call for pedestrian cross access between the Pharmacy and the public sidewalks out on Waterland Drive. Traffic calming measures are included in the design of the project: revised connection at Rainsview for cul-de-sac and route through development to get to main streets of the development and the round-a-bout out to Center Street (traffic calming measure); round-a-bout at the entrance; right and left turn lanes out of Seagroves Farm (ample stacking and storage for cars waiting to get out onto Center Street. Transportation Impact Fees to Town of Apex: $50,000 (to be used as town sees fit for off-site transportation improvements). Recreation: private recreation area located at the front with pool/clubhouse noting it unusual for a development of this size to provide this type amenity (165 units), however appropriate and have committed. Stormwater: complies with towns water and watershed protection measures that requires two components: 1) water quality measure that requires treatment of the first inch of rain fall and 2) Unified Development Ordinance requires water quantity provision that requires stormwater retention to predevelopment release rates for both the two and ten year storms – a new requirement of the UDO and not one that existing neighborhoods are subject to. Public recreation dedication: town requires for 165 homes using the 1/35th acre rule equates to 4.7 acres of public park dedication and proposes to meet this with restrictions on type land that can be dedicated; the pond is not part of this dedication nor the Neuse River riparian buffer that is 50 feet wide and surrounds the pond; in addition the 2.9 acres in the pond and the 2.26 acres in the Neuse River riparian buffer that surrounds the pond are being designated as RCA and dedicated to the town. Total dedication to the town for public recreation uses: 9.86 acres which is more than double the 4.7 acre requirement for public recreation dedication. Historic preservation: over one-half acre .68 acres will be dedicated for historic preservation and gifted to historic preservation and received full support with the recreation advisory commission for an alternative for public open space – farmhouse and structures contained in this area; McGregor has committed to lease to Capital Area Preservation or other preservation group for one year and at the end of one year will give the property to the preservation group and if for some reason conditions of the contract are not met and the preservation group chooses not to accept the property, the land/buildings will be gifted to the Town of Apex to develop as they see fit; if town does not accept this responsibility, it then reverts back to McGregor Development with all applicable federal, state, and local regulations that deal with historic preservation; if it does revert back to McGregor it will have the historic preservation restrictions of all the applicable regulations.

Cycles of review: each time plan was revised, it was better. With the outstanding issues some have been addressed: steps and grate changes were made in front of the town homes, resolution on the park and recreation requirement, routine improvements to the dam, consideration of the timing of the connection to Waterland Drive and Rainsview – McGregor will construct the streets with appropriate phase of the development and then barricade them until town determines the time for them to be removed. Comments in regard to compliance with the UDO: there have been several cycles of review and modification and meetings in TRC; staff recommends approval of the development as it is in compliance with the Unified Development Ordinance.

Stormwater ponds: current design has nine storm water ponds, however may be reduced as plan moves into preliminary subdivision plan and construction drawings; the detail becomes clearer and design becomes more refined; it's left to accommodate these nine with smaller basins that are less difficult to build and maintain; there may be some combinations to reduce this number. Town's regulations will govern design and stormwater capacity of the ponds.

Mike Horne, Kimley Horne and Associates, 3001 Weston Parkway, Cary, was tasked to assess the potential traffic impact of the Seagroves Farm development and to identify roadway improvements that may be required to accommodate the impacts of both background traffic and new development traffic: Intersections US1/Center Street (SR1010), Schieffelin Road intersection, project entrance on Center Street, Investment Drive on Center Street/ and entrance of Vintage Grove and Old Raleigh Road. Traffic Impact Analysis is attached and incorporated as a part of the minutes.

Reference: Staff report states applicant is unwilling to accept financial responsibility for the recommendations for road improvements on Center Street US1 ramp and Old Raleigh Road at Vintage Grove Lane. Developer is responsible for widening Center Street to construct right and left turn lanes as the Seagroves Farm traffic is the one responsible for needing those.

Other traffic improvements: 1) right turn lane on US1 exit ramp a continuous right turn lane merging back into eastbound Center Street prior to the bridge, and 2) re-stripe existing pavement at Vintage Grove entrance and Old Raleigh Road to provide for west bound left turn lane on Old Raleigh Road. Horne referenced page 1 Executive Summary: Developer is not responsible for these two traffic improvements. Noted: these two improvements would accommodate background traffic for US1 and accommodate background traffic for Old Raleigh Road and it does not state background traffic at Center Street site access. Town of Apex ordinance requires calculation of vehicle trips per day shall be determined according to the current ITE and trip generation manual or alternate generation approved by the Town; TIA shall indicate average daily and peak hour vehicle trips generated by the proposed development and shall indicate the trip distribution allocation on all roads and intersections within the study area approved by the town – he has done this.

Critical point: TIA shall indicate any proposed road improvements which will be required to prevent traffic generated by the proposed development Seagroves Farm from causing any intersection or road segment to fall below average level service D as defined by the highway passing manual.

Traffic study page 18: Table 7.1 summarizes the accepted levels of service as it exists for Center Street & US1 Ramp/Waterford Green Drive (signalized) (B & C) and showing build-out date for Seagroves development 2010. Note: without Seagroves development – B goes to D and C goes to an E), and with Seagroves Development – stays D and E.

Horne continued this tells that the development does not create this, it's the background traffic the approved development he was asked to look at and the growth traffic on the road that has created this; both the US1 Ramp and Vintage Grove entrance and why they are not committed to do these as it's not fair and equitable use requirement; traffic is being added by the Seagroves Development but not much.

"T" intersection Center Street & 1010 alignment: he met with NCDOT Brandon Jones regarding placement of entrance for Seagroves subdivision; he doesn't see this project entrance warranting signalization and NCDOT has agreed; this development will not generate enough traffic to warrant a signal. NCDOT saw that if it were realigned with Schieffelin Road, then Schieffelin might become signalized but if a fourth leg from Schieffelin came abut, even though the Pharmacy is now in the way, would be too close to the ramp signal; they were in favor of moving the proposed entrance up and tying it in across from Investment and could possibly drive the need for another signal. They do not see need for signal after signal; there will be multiple drives along SR1010, Schieffelin, proposed Seagroves development, Investment – he sees signals at the ramp and the Peakway.

Commissioner Schulze questioned the level of service, with only one of the road improvements recommended being done, and asked was he to assume levels of service would not be acceptable. Horne responded Vintage Grove entrance is not a level of service question – it's more an operational problem than capacity; he can't say that's based on level of service – it's a good idea to stripe it and have a left turn lane – why it's not that way he couldn't say – there's plenty of pavement for it. Horne responded in regard to the ramp at US1, if nothing happens – no improvements at this intersection, it will fail; he advised he had looked at 2010 and saw Apex growing. Seagroves project will add traffic to it but an insignificant amount – in looking at the table 43 to 46 and 72 to 74; existing 2004 traffic with Seagroves added to it - he would still have a B and C. The Town's ordinance says he shall identify the improvements but has to go through the analysis to identify whose responsibility it is to do those improvements. Commissioner Schulze felt he was saying level service will not change whether they do the improvements or not, with Horne responding no, if we do the improvements, the right turn lane, it will help the intersection now and for sometime to come, however, if they don't do the improvements, it will add more and more problems to it. Commissioner Schulze continued whether its acceptable or not is whether the improvements are done, with Horne responding 2010 without the project there, it will go to level service D in the a.m. and E in the p.m. Commissioner Schulze had trouble with the term – using the summary "acceptable levels of service when the improvements are done" yes, but if not done its not acceptable, with Horne responding the TIA shall also indicate any proposed road improvements which will be required to prevent the traffic generated by the proposed development; he had to identify them. Commissioner Schulze noted the question was acceptability- Horne interjected if they did nothing it remains a D and E, and in the town's terminology E is unacceptable. Commissioner Schulze stated this answers his questions. Horne continued it will be D and E regardless. Commissioner Meckes stated the fourth line of the table states with the improvements and the build-out the service will be better than it would if the build out of Seagroves farm didn't take place and no improvements were made, with Horne responding this was correct, this was a drop in the bucket.

Commissioner Jensen asked to look at table 7.2 which is the Old Raleigh Road and Vintage Grove and that it did not have grades – looking at background traffic 2010 short delays from street approach and build out 2010 with improvements moderate delays, which indicates cut through traffic.

He noted this would not be re-striped by the developer yet to him this table indicates the subdivision is going to have a big impact on that intersection. Horne responded looking at figure 6 a.m. and p.m. volume, the left turn lane today – background traffic 25 left turns with Seagroves adding two – making 27 a.m. and p.m.; p.m. peak hours 113 and thinks some of those are cut through; they will add 10 to it to make it 123 asking he understand while there is no level of service on this table, it's still a moderate and acceptable level of service and again the ordinance says he has to say what is required if you take it below level service D; it's not going to take it below level service D and this will have an insignificant impact. This improvement was put in with the traffic study that they were told they had to say what the improvements are and try to not get involved in who should make what improvements as this is better left to the board; he stated they do have specific wording in the ordinance and why he had to say what traffic it's based off of.

Commissioner Jensen compared the two charts, one with three lines and one with four lines asking what the situation was for build out 2010 without improvements. He didn't see that line, with Horne responding the analysis would still show that there are moderate delays at that intersection; there is no change. Seagroves development has a very insignificant impact; this is not a level of service.

Commissioner Meckes asked about table 7.2 – change from short delays to moderate delays being almost entirely contributable to background traffic and the reason you can't turn out from Vintage Grove, because of an increase in background traffic on Old Raleigh Road. Horne responded he couldn't compare signalized intersection level of service and criteria to un-signalized; he would be happy with an un-signalized intersection at a moderate delay – most are long delays due to the make-up of un-signalized capacity and a fact of life in Wake County; problem was how does he make an un-signalized intersection better – you signalize it, if he doesn't warrant signalization; there are many drives along major routes that don't fall in level service for un-signalized, you look at operational, and was why they made the recommendation for a striped left turn lane; that need is there today even with short delays; he still recommends for them "town" to go out and stripe the left turn lane – it needs to be done today and now; the pavement is there – it's not a capacity problem, its an operational problem.

Commissioner Gossage asked if the Center Street widening includes a center lane out of the Seagroves development to make a left hand turn where you are crossing over one direction of traffic and waiting to merge over. Horne responded the recommendation is for a right turn lane and left turn lane into the site and a separate left and right turn lane out of the site. One trying to get out onto Center, can he turn left and instead of turning through the through lane of Center Street is there an area of refuge, with Horne saying no. With ultimate Center Street widening there will be that possibility, there may be a median in the middle, or there would be an island and median, however with this widening there's not enough room – a shadow, but not be of any substantial width / length to allow someone to turn in to it and think they could continue going and weave over – they will have to wait for a gap in the traffic both ways and the safer way to do it.

Commissioner Schulze noted on page 17 the level of service summary, asked Horne to explain why the conditions are rated for Center Street and US 1 Ramp, but not the other intersections, with Horne responding level service for signalized intersections – A, B, C, D, E, and F – for un-signalized intersections, it's like comparing apples to oranges. Ex. Major thoroughfares – one left turn classifies it as a long delay.

Commissioner Gossage went back to the Center Street widening; coming from downtown and wanting to go into the proposed development, asking if there was a dedicated left turn, with Horne responding absolutely. He didn't understand why the widening didn't accommodate that on the other side, with Horne responding there would be some, but it tapers down fast enough you can't use it with a car, with Commissioner Gossage being concerned they would, with Horne stating this is done throughout the state and this is the proper way to do this; NCDOT requires it and normal.

Commissioner Jones asked if there would be a left turn lane onto Investment Boulevard if traveling west on Center Street – there's a right turn lane into the development – would there be a need based on volumes projected, with Horne responding – there's 44 and 62 and at this time they do not see this need. Commissioner Jones was addressing the background traffic and not traffic generated by the development. Horne responded Center Street does need to be widened; he doesn't deny that. He has met with NCDOT Brandon Jones and handed over the traffic study and is waiting for his review comments – he first stated to him they do not require traffic studies for 1500, their threshold is 3000 cars per day; he thinks that's why they are taking a while to review this as it's not on their radar screen – his comment to him was he felt the improvements that were being offered as far as the widening of Center Street – left and right turn lanes were more than what NCDOT would require and they would not be looking from them to do improvements at the ramp or at Vintage Grove/Old Raleigh Road; again that was his preliminary discussions with NCDOT.

Commissioner Meckes commented Vintage Grove and Old Raleigh is an easy solve – put the paint down. He addressed connectivity and cut through traffic, and that he strongly supports connectivity and understands the intent behind it and the reasoning; however, in this situation there will be more than connectivity, it will support/promote cut through traffic. In his neighborhood it happens and understands the basis in which travel is able to move off the main thoroughfares and into lesser traveled areas. He asked the idea behind this connectivity asking if it's feasible to wait until 75% of the completion, and asking what if it were built with no connectivity how would it impact the Seagroves development. Horne responded as hard as it is, connectivity is the proper thing looking at Waterford Green you see what happens when you don't. Horne responded when hearing the number of cars per day, bottom line is all these streets have the capacity to accommodate not only "cut through – he calls it neighborhood traffic" that wants to get to Old Raleigh Road or get to US64 and those roads can accommodate them. They will see more increase in traffic, but the roads can accommodate it from a capacity standpoint.

Commissioner Jensen asked from a capacity standpoint Samara Street could take it, with Horne responding yes. Pedestrian situation, he asked if he would suggest sidewalks on Samara Street and Rainsview, with Horne responding sidewalks are difficult – his neighborhood has sidewalks but people still walk in the street and sidewalks are not the cure-al; people run in the street; he has children but doesn't let them play in the street. Commissioner Jensen continued with no sidewalks and they go to the bus stops, asked do they walk on lawns – he doesn't understand. Horne responded better with sidewalks than without, and he would say better with sidewalk, but doesn't know that's the issue here.

Commissioner Meckes asked what this development would do with no connectivity. Horne had not specifically studied this, but would tell him with one point of access for Seagroves Farm assuming the one on the front door, there would be long delays associated with it and people wanting to go to other subdivisions would impact and be back onto Center Street to get around to Surry Meadows, Vintage Grove or Waterford Green.

Holt asked Horne to clarify one point as it relates to the land use development ordinance requirements for roadway improvements, asking does the plan as proposed by the applicant and explained by Craven satisfy the ordinance requirements for street improvements. Horne responded yes it does.

Representative Paul Stam, 714 Hunter Street, recalled Eva Perry assisted by Carl Holloman had left her entire estate in a charitable trust to build a library and the town is owner, sold lots of land, the Perry Farm Subdivision and other with some left. He recalled a track of land that needed to be sold to gather enough money to finish the library and was in a wooded area – lots of concern regarding selling it for development; some wanted it for parkland, that Mrs. Perry would have wanted it for a park; there were concerned the development traffic would dump into a single exit onto Center Street and the other end would flow into Vintage Grove – that subdivision became Surry Meadows – sold by the town as capacity of charitable trustee for the Eva Perry estate and are glad they are here. Today, as Co Trustee for the Womble Charitable trust, lived here for 92 year and watched Apex grow around her, welcomed her new neighbors and even with traffic congestion lived there on Center Street – noise and new people with section of Waterford Green part of the Seagroves Farm. She didn't have any children, a widow and by will created the Womble Charitable Trust and directed it be sold to develop with the proceeds to be shared with Raleigh Rescue Mission, Durham Rescue Mission, Salvation Army, Samaritan's Purse, Bill Graham Evangelistic Association and Apex Baptist Church. When sold these charities will benefit likewise while the property lies fallow or remains open space for horse farm as someone suggested the ability of the charities trust to perform is grossly impaired. When zoning and land use decisions are made, public benefit is always a consideration and in this case is an example through graciousness and generosity of Lela Seagroves Womble, public benefit will concretely follow a positive vote and the co-trustees of her charitable trust urge support of this proposal.

Mike Whitehead, McGregor Development, stated it had been a long/hard battle and wishes it weren't so. McGregor has built quality subdivisions for 35 years in the triangle area; some 5000 homes. McGregor Down's Country Club, McGregor Park, Lockmere, Highlands West, Crocked Creek and Waterford Green; plans are to continue to build good subdivisions. Their standard have always been to do the right thing and proposes the plan for the Seagroves Farm fully within the 2025 Land Use Plan and approved to define the use of this property and meets all the criteria of this plan and is the right thing to do. For parks and recreation requirement they offer two alternatives: adjacent piece of land better suited for parks in their opinion and offered to pay a fee in lieu both of which are allowed under the ordinance but at the option of the commission. Parks and Recreation Commission recommended dedication of land on site not adjacent piece or payment in lieu. They agree and offered not just 4.7 acres, but additional the pond and land around the pond to benefit apex citizens with a dedication of 10 acres; the right thing to do. Planning and Zoning Board wanted the Seagroves home place preserved for its historical significance and they agreed and have further agreed to restrict the corner and put it under historical encumbrance so it will always be historic use. They are presently working with Capital Area Preservation however have not reached a final agreement and not required at this point in the rezoning. Gary Roth was present and he fully expects to reach such an agreement in the short term as well; this was the right thing to do. 2025 Plan defines the type growth Apex wants and where they want to see it. UDO dictates how it's to be done; town has told them what they want, where they want it and how they want it done and they have agreed; it's the right thing to do. He noted the ball in their court asking them to look at what McGregor has done, look at the compromises and concessions and the changes and asked them to do the right thing.

Holt addressed public benefit and land uses he's involved in, calling it in-fill development of left over land area and property that has not developed concurrently with adjacent subdivisions, and often raises interest from neighbors and in many instances constructive criticism, hoping so in this case; many aspects of this constructive criticism has been taken to heart and incorporated into the plan. On behalf of all parties they would continue relationship with the neighbors and do the best they can so residents are amicable neighbors of theirs and so there's mutual respect and courtesy. He noted what was unusual about the case as far as in-fill is that seldom is the last subdivision to be developed and constructed a lower density then the surrounding subdivisions; normally a development pattern because the comprehensive plan recommends higher density or because the developer is attempting to let a profit motive be the primary interest is attempting to come in with a higher density then the surrounding subdivisions, and the residents that do not want to be connected is because there is a substantial higher density and is not the case here. This subdivision in comparison to the densities of the southeast and to the west is lower than existing and uncommon and needed to note this.

In summary of what he's heard: If there is a speaker that is totally unbiased and looks at the comprehensive plan from afar without self interest, and from existing neighbors that doesn't want new neighbors or neighbors driving what they consider to be their streets, or self interest of McGregor or self interest even of the trust or one of the charities that will benefit, its staff. Staff has reviewed this, the comprehensive plan and has noted point by point and determined this satisfies the conditions of the UDO and the comprehensive plan. Staff is urging you to adopt this because it is in keeping with many things they work for over the years that the board has adopted and been working for. He urged the board to listen to staff's recommendation concerning compliance with the objective standards and on the interpretation issues as it relates to the code itself.

Public benefit: He thinks Stam said it well, Craven addressed it – they have calculated as part of the development process, that there will be in excess of $1 million in development fees paid to the town as a result of this development, including more than $700,000 in capacity fees in upgrade of water/sewer facilities for a long range supply; includes $50,000 in transportation impact fees that Apex can use – perhaps with seed money from NCDOT to make some of these off-site improvements all has agreed is needed. If the property is allowed to be rezoned and developed in accordance with staff recommendations and the comprehensive plan, there will be more than $1 million to help pay for the roadway improvements.

Another issue: Traffic Impact Analysis - the charts are difficult to follow, the point needed to be understood what the ordinance requires. Staff had done an excellent job in reciting what the requirement is and listed on page 10 of their report. Ordinance requires they provide for infrastructure improvements that are made necessary by traffic generated by this particular development from causing any intersection or road segment to fall below the average level. Horne and the charts say the off-site improvements that have been of such concern either will suffer longer delays, or fall to an unacceptable level of service – failure is caused not by the additional trips created by this development – the failure is caused by background traffic – existing residents and existing citizens – people who don't even live in Apex that are just driving through – not caused by this development, therefore the code doesn't require or support this developer be responsible for paying for those improvements and frankly it's not equitable that one developer – the smaller number of homes of the surrounding developments, the lowest density of the surrounding developments - that this be the one signaled out to contribute and pay for these costs for which they are not the reason, and according to Horne there is an insignificant amount of additional traffic when you consider the level of the background traffic; its not legal to require them to do it and not equitable that they signal out one property owner or one developer to pay for it and suggested for this land to lay fallow, undeveloped because of a problem they didn't create; a problem that would exist regardless of whether their land develops or not. That's the bottom line of what the ordinance requires and what the traffic impact analysis requires.

Holt appreciated the time and attention and pledged continued co-operation with the town and continued dialogue with the neighbors; he was not involved in most of the conversations and noted rumors of what was said; he can say now that Whitehead is a quality developer and McGregor Developments reputation is unparallel in this particular area and on their behalf and his own behalf he pledges to all the people here if they are allowed to proceed, will reopen to the extent they feel dialogue has been closed concerning common problems, will work with them and the town so this development can be something all will be proud of.

Public wanted opportunity for rebuttal. Mayor Weatherly asked Cowles if there had been any changes in the proposal presented than the plan that went to the Planning Board. Cowles responded it was exactly the same plan.

Public wanted to know about the change in the order, with Mayor Weatherly responding it makes no difference; he made the decision to do opponents first because he wanted all of them to address every concern the spokesman made in the public hearing and the intention and felt it was well served.

Leilani Mendenhall stated the applicants plan was unchanged and their position is unchanged; reiterating the plan is unacceptable as it fails to comply with multiple provisions of the town's UDO, drawing attention to article 2 page 24: burden shall be on the applicant to demonstrate by competent testimony and or evidence the validity of the facts and opinions stated in the application, that the application complies with the relevant review standards and the proposed use is in the public interest. She didn't have the handouts, since they lost their program, however there's not evidence the site plan complies with the UDO, it's unsubstantiated. She continued it appears the applicant is attempting to rebut statements that were made by imaginary people – their entire contents of certain speakers were addressed to statements attributed to the opposition but in fact never made – it was never their position or stated in any way the applicant should be responsible for the road improvements that are dictated by the current present unacceptable conditions; that would be inequitable and agree 100% with the applicant. She stills questions how 1578 additional daily trips could be a drop in the bucket, with too many discrepancies in the facts, with Vintage Grove at 95 is much lower entity of neighboring subdivisions – 143 Surry Meadows – this last development is not the one that has the least amount of houses. The need was not seen for dedicated left turn signal lights – their power point presentation noted police directing traffic, and the clogged conditions; applicant is not responsible for background traffic – the board is responsible for holding the town's course in adherence with the UDO and the published comprehensive plan and the growth management plan enacted and published by a hired consultant and therefore to suggest that an additional entrance onto Center Street would be a solution to an already bad problem would be in the neighborhood of saying, "put a bandaide on an open sore would be an improvement." In her opinion she believes her sentiments are shared, the existing conditions if given the cure proposed by applicant would be equivalent of causing an already bad situation to become a raging infection; therefore any development – no one said the land must lay fallow; that was one of the petitioners objections – they didn't make that statement – no one had said the applicant must pay or construct any of the road improvements, but must be done, and no allocation in the near future for the funding of any of necessary capital improvements; regardless with what happens with this proposal the existing conditions must be addressed otherwise what is already bad will be exacerbated.

Holt understand the burden of proof of a conditional use case such as this; once the applicant through expert testimony establishes a prima-facie case that the conditions and the ordinances are satisfied, that the law holds that the burden shifts to those who would oppose the issuance of the permit to produce equally compelling and expert testimony why the permit or zoning should not occur.

Mayor Weatherly asked Assistant Town Attorney Laurie Hohe if she agreed with that assessment, to clarify for town counsel. Assistant Town Attorney Hohe advised her understanding is the applicant has the burden of proof that the rezoning would be in the public interest and a reasonable action for the board to take, not that the opponents would have any kind of burden to show that it wasn't.

Mayor Weatherly closed the public hearing at 9:55 p.m. and referred the matter to the board, asking if there were questions of staff.

Commissioner Meckes commented on the process and where we've ended up and come about through a great deal of citizen input and the way the system is supposed to work. On the board, they have had constant input about this development and thankful they are a part of it; however, he said for those who have been less than pleasant, those that have impugned the integrity of the members of the board, for those that have questioned the motives of the members of the board in any deliberations they take, he believes the terms have been showing a lack of concern, showing unwillingness to stand up against developers within this community. He would say and he speaks for all of them, he knows these men and have worked with them for a long time and none of the decisions they make are ever made lightly, there are lots of nights of lost sleep and hours of study and preparation for rezonings and applications such as this, but it's always done with what's in the best interest, given his experience on the board, for the community. Obviously not even the members of the board agree upon everything and from time to time there are descending votes, but overall he can say in his ten years of service on the board the ladies and gentlemen that served with him have been men and women of integrity and men and women who almost altruistic in their efforts to serve this community and with very few underlying agendas. He would say that before they bring their integrity into question that they please discuss the issues with them regarding that and thankful for the opportunities they have had to serve – whatever decision made he doesn't know what it will be, it will be made by the people on this board with what they believe to be the best interest of the community and what conforms with the guidelines that they have.

Commissioner Jones addressed stormwater retention ponds, asking at what point in the process during the pending process would there be more information about the technical aspects of storm water, with David Rowland Director of Planning stating it would come as a master subdivision plan and in TRC committee and then to the board, however, not a public hearing.

Commissioner Schulze addressed improvements, striping on Old Raleigh Road, and asking if Apex could take the lead and do this and the expense. Manager Radford responded this could be worked out with NCDOT and no cost had been established; we are talking road paint. Commissioner Schulze addressed the ramp at US1, knowing NCDOT would be involved in this, and considering there would be $50,000 for traffic impact fees, asked the feasibility of Apex pursuing initiative with NCDOT to get something like this accomplished, asking if we could use seed money to get it going. Manager Radford responded staff had talked with NCDOT about their requirements at this intersection; in past, the town has accepted fee-in-lieu cash for improvements to a particular intersection; he thinks it has been well shown that this proposed development in and of itself does not require that all this improvement be made at this time by any particular developer, with Commissioner Schulze agreeing. Manager Radford continued if there is some percentage of demand increase as a result of this particular development than this developer might have reason to participate in the increased expense at a future date; NCDOT would be willing for us to make contribution towards future improvements of the interchange at US 1 and Center Street, so his understanding is that there has been discussion about this being a $100,000 improvement the ramp at US1; though not had to flesh this out because this was not our project.

He asked Horne if he had estimates of the cost, with Horne responding they have not done an estimate, he did state at the Planning Board it wouldn't surprise him for this to be a six figure number. Manager Radford continued, if the cost is $100,000 and we see a 5% increase in the total volume of traffic through this intersection as a result of this development, logic would dictate a 5% contribution towards the project be made because NCDOT knows volume increases; the need to widen Center Street has and will increase over time and then could develop a capital improvements budget to participate with NCDOT just as at the intersection of the Peakway and SR1010 to put that in at some time in the future.

Commissioner Gossage wanted someone to help him understand with a park here and serving other communities, how kids will get to the park from Waterford Green, Surry Meadows. Craven showed internal streets of the Seagroves Farm with sidewalks along them; showing park frontage, RCA area, sidewalks on Center – landscape area and utility easements would keep the park from having direct from Center but if there were any access desired it could be accommodated; the historic site has access out to Center Street and sidewalk. They have left a 30 foot wide squat out from the park area and ties into the extension of Rainesview so there will be pedestrian access at this point, then noting all access points.

Commissioner Jones asked how this connects to Waterford Green. Craven stated through Waterland Drive with sidewalk; the area along the stream is being left as RCA but no request for a greenway through this area and to his knowledge no greenway system within Waterford Green to connect to.

Commissioner Jones questioned barricade of connections to adjacent development until certain time, asking what was proposed. Craven stated as each phase of Seagroves is constructed, the requirement to build those streets through to the full connection will go with each phase of the construction; they will construct those streets and connect to Rainesview and Waterland with each phase and when they get to that point; will build full construction of the street. They will temporary barricade them until the town designates them appropriate to be opened up and traffic to pass both ways through them; they will do their part and leave it to the town to decide when it's time to open them up.

Commissioner Jones asked relative to improvements required on SR1010, what does he propose as to the timing of the widening and turn lanes and sidewalks on the frontage along SR1010 relative to the phasing of the project. Craven responded they are all interval to the construction of the entry road and will be in the early phases of the development. Horne added they would have to seek NCDOT drive permit and suspects NCDOT will require all those improvements upfront before they will allow a driveway connection onto Center Street; it will happen the minute the connection is made onto Center Street.

Commissioner Gossage addressed the concern of the town houses being inconsistent with the surrounding properties, asking where the nearest town houses are located to this proposed development, with Cowles responding those under construction off Center Street Cherry Grove (three blocks up), and townhomes across from Vintage Grove (Heatherwoods).

Commissioner Gossage asked what was included in the RCA asking if the retention ponds were included in RCA, if the pond was included, with Cowles responding the pond and pond buffer is, the streams, stream buffers, Center Street buffer and the retention ponds and the areas around them. He used the numbers available and noted 4.7 acre park site, 15.08 acres of RCA of 19.78 acres of land that is not going to be developed, asking if that was the entire amount of the land that will not be developed, excluding public streets. Cowles responded this is correct and noted in section 5 there is some RCA and part of the RCA. There is no more RCA in the 15.08.

Commissioner Jensen asked how can we manage for sidewalks on Samara and Rainesview; we are getting $1 million in fees, but a child is more than that and critical before the street is opened. Commissioner Jones added we have to determine if we have the right-of-way and everyone is willing, asking if there were any preliminary work on either of these streets and if we could get it in the existing right-of-way. Manager Radford responded we don't know. Commissioner Jones agreed this was something to consider, with Commissioner Meckes adding and for speed calming devices, with Commissioner Jones agreeing.

Commissioner Jensen addressed the traffic flow from the town houses and the tendency to funnel toward Waterford Green, and considering the fact there is a traffic light at Waterford Green and SR1010 asked if there was another way to do this, so it doesn't occur; he can see the point asking if there are other traffic flow patterns that would funnel that traffic back out the entrance rather than towards Waterford Green. Rowland responded they should remember this street obviously goes two ways and there could be opportunity for folks coming out of Waterford Green onto SR1010 to take a right and come through this entrance to make a right hand turn; he was saying traffic can go both directions and take some burden off the light at Waterford Green. Commissioner Jensen responded Waterland will get the extra traffic both ways. Rowland responded there is opportunity for some relief at the light and not everyone will go out to the light there, there's opportunity to go down Waterland and turn out.

Commissioner Gossage addressed the point that traffic will head to Waterford Green and the light to make a left hand turn; he feels very strongly you should be able to make a left hand turn out of the development into a center turn lane where then you could merge over and into the traffic, you only have to cross one lane of traffic; example: Peakway with no light and see people head out, with Commissioner Jensen agreeing you need a left hand turn. Commissioner Gossage didn't understand why it was wider on one side of the driveway to have a left hand turn in and once you get to the other side then you are too narrow, and asking this to be explained to him. Commissioner Meckes didn't think it was necessarily too narrow, understanding, and if there were space, with Horne having commented it was more desirable to not do this. Commissioner Gossage had heard the opposite and experienced the opposite, with Horne responding and that's why with three lane roads NCDOT will no longer build three or five lane roads because they do not like the idea of someone coming out and turning into what he was calling the center lane, he called them suicide lanes, with someone turning into them and sitting there waiting, and meanwhile someone else would come in and if there were a drive on the opposite side, they think they could get into that lane and then there's head-on collisions; this was NCDOT's concern, he doesn't quite see this here but whenever you give someone the feeling they can go and sit in the middle of traffic, you are asking for trouble and while many do it, we see it on daily occasion, the person that gets out there and doesn't quite know what they are doing in the middle of traffic with cars on both sides and they have to decide to merge in and if they don't do it right, there's an accident; they need to be stopped at the intersection and wait for the proper gap and then move through the intersection properly get into the flow of traffic and move. He continued the only time its different is if there is an island there and there truly is a separation and someone could come out sit in a divided roadway and he sees this, that's allowed, but Center Street is not that width yet to do this, but could be. Commissioner Gossage respectfully disagrees and feels strongly there should be lane to turn out left onto to wait and to merge into traffic, with Horne responding depending on again what will happen with the full widening of Center Street you will have that or you will have an island; it will be there when the full widening is there.

Commissioner Jensen asked staff about the density, all agreeing it's down and due to the pond and parkland and RCA because of the streams, asking the average lot size vs. the other subdivisions, asked if they were talking density or lot size.

Cowles responded with lot size; Commissioner Meckes wanted to look at homes not townhomes; Commissioner Jensen noted that's what is built on and drives the price. Cowles reported the minimum square footage is 6,600 for single family lot; again this was not the master subdivision this is preliminary site layout. Commissioner Gossage asked the maximum density for medium density development, with Cowles responding 4 units per acre and this is 2.5, with Commissioner Meckes adding this falls into low density and under the UDO would be acceptable to have medium density development here, with Manager Radford adding less than 3 units and Cowles adding this is correct. Commissioner Jensen noted a subdivision approved on NC55 with low density because half of the property could not be used and talking density could be meaningless unless you look at the topography and realize the property is useless anyway and this isn't useless but he's trying to look at lot size to get the feel if this is really one to one on lot size, with Cowles adding you also want to cluster type development where open space is left and ponds and stream buffers and then the developable land be developed instead of evenly disbursing it without open space.

Commissioner Jensen addressed stormwater run-off and noted we control peak flow and not volume meaning 300% more could come off an impermeable surface area because we go to peak flow for a long time and concern no studies have been done to date on this concerning the 10% point downstream and personally can't see how this could meet and not sure any meet just doing flow control, asking if this had been looked at. Cowles responded a stormwater analysis was submitted and Dan LaMontagne then the Environmental Program Coordinator reviewed this and didn't have any critiques or comments about it and it's also fine tuned at master subdivision time; pre stormwater calculations have been reviewed by staff. Commissioner Jensen knows there are a couple of homes, thinking Rowland has visited them on Sterlington where they are almost flooding and off one of the main streams out of this and a big concern; if we don't have the study how do we know what is going on to look at.

Craven added the ordinance in this rezoning process requires a preliminary stormwater impact analysis be prepared with the rezoning and has been done and submitted with the rest of the documents and reviewed and approved; it demonstrates the schematic devices shown to date, that this site complies with the ordinance and continues to increase in detail and as it goes through the process and demonstrates the ordinance can be met on this site as the proposed development takes place. Commissioner Jensen asked if this includes the 10% down stream with Craven responding yes it does.

Commissioner Meckes stated as they had gone through this process this evening he wrote down his questions that troubled him and he wanted to come to grip with and come to terms with.

Townhomes: initially he had a bit of difficulty understanding but Craven addressed this and was a transition tool from Center Street, the Pharmacy and the commercial development across the street and they blend from intense activity on Center Street at the Pharmacy and gas station across the street through these townhomes and back to the what should be more of a calmer area and that's the residences.

Alleys: Exclusive of the idea of the alleys leading to Waterland Lane, these alleys in the townhomes make a wonderful amenity for the townhomes; he lives in a community with alleys and have residences and townhomes and apartments with alleys behind many of them and makes for a wonderful community with the alley taking on a life all it's own different than what happens on front porches and so he found it to be a delightful situation.

Light at SR1010: Horne addressed this and that there was not enough volume of traffic to warrant a light at Ten-Ten.

Density: Issue with density is not that there are fewer homes in this development than Vintage Grove, and Surry Meadows, however densities are low and point made that this falls into the realm of low density development; could have been medium density development and proposed that would have significantly increased the number of homes; in spite of where some or none of the land could be used, fortunately, he thinks a lot of the land can't be used and have ended up with a significantly more RCA than would have otherwise.

Objective Opinion: Holt addressed objective opinions and suggested staff holds an objective view of this and thinks rightly so, as they rely heavily upon staff to advise and direct them in development procedures and their input is valuable to them and have determined, not lightly, that this is in compliance with the UDO and certainly Rowland, Cowles and Khin are the most knowledgeable people of all about what the requirements are for the UDO; again looking for input from different folks also suggests to Holt that Mike Horne, Kimley Horne, is an unbiased opinion and here to present the facts as they are determined by specifically designed guidelines that give us information needed to make decisions and as many times the case, certainly none of them on the board have expertise in traffic and none of them have expertise in specific fields of engineering and always rely on expert outside opinions to give guidance and direction to make these decisions. Horne's information had led him to believe the situation will be somewhat improved with the improvements that will be made by this development and in the absence of the development the situation would be conceivably worse than would be with the development and the improvements that will be made, not to say the exit Ramp on US1 doesn't need to be done, he thinks there are several issues the town needs to actively pursue and try to come to some understanding with NCDOT and seek to have these improvements accomplished.

Connectivity: This concerns him the most and he and Horne have had lots of discussions about connectivity and cut through, asking if it's cut through for him to leave his home and drive through Cameron Park to go to the grocery store or is it connectivity? He believes in connectivity and thinks it has potential to diminish traffic on the major thoroughfares and is one of the primary ideas behind it. He is concerned about those who have voiced the potential problems with some of the increased traffic through the neighborhoods and thinks the town has record and history of seeking to address those problems; significant portion of our transportation bond issue is dedicated to sidewalks and certainly been in a number of neighborhoods throughout this community with traffic calming devices and pledges this will certainly be the case in this situation as well; we can look to building sidewalks in areas where we are able to do this and as Commissioner Jones stated it's not been looked at yet, but certainly can look to do this.

Finally, he feels as a board member they are directed to follow the rules of the law and if something comes to them, and has met its requirements and if it's going to fulfill all responsibility that development has to in our community, then they are bound by their position to support that development. He thinks this is where he's ended up; not without some concerns, but there would be concern with any development and believes McGregor Development has gone a long ways to minimize impact within all of the community and within surrounding communities significantly lower density than potentially could be placed there and a park facility that will be available to surrounding communities and thinks the town has plans to expand and continue to improve the park situation in this area and pledges they would do this also.

Mayor Weatherly stated it's been a long night at the end of a very long process, however thinks process was well served in examining critical issues to development in this area of Apex; believes the process allowed for some negotiations and review of those issues that made the plan better than it was when initially submitted and thinks the original plan had flaws, but thinks through process some very significant improvements were made in the plan through the advisory board, and staff and pleased to see most of those concerns have been addressed in the plan reviewed by the board. He believes this zoning and planned unit development deserves to be approved. Rezoning request and PUD plan are in compliance and has been stated; staff has recommended the plan as submitted is fully in compliance with our ordinances and other policies for development; the petitioner is gone beyond what those requirements are and have made a number of concessions that make the plan much better than it would have been otherwise.

He pointed out the issues addressed have been through the process since the initial plan was submitted:

1) The one thing that disappoints him the most is the way this issue had been discussed in public and in emails and other communications to him, was the property as a park. He has been involved in town government a long time and never had he been involved in any discussion that would indicate the town was willing party to purchase the entire acreage for a park – clearly they assumed it would be developed at some time and during the process in the park master plan was assumed town would receive a dedication which would be a neighborhood park for this area, maybe with additional acreage, but thinks it points out the fact, had laid out clearly and concisely their priorities for the park and open space, and education in the recent bond referendum that almost $10 million didn't include any acquisition in this area and includes acquisition in other areas and in fact the recent acquisition with the clean water management trust fund – sizeable acre in excess of 100 acres in another part of Apex for open space. He thinks that passes the need for passive recreation; the need is for multi-purpose recreation and the topography of this tract does not lend itself to that and doesn't believe this body every intended to purchase this for a current park need.

2) Pond issue: as the discussion of this issue came up, then the pond became a critical asset for the recreational value of the pond for the citizens at large and not just an amenity for the subdivision; the developer has dedicated the pond and the buffer around the pond which will be added to the recreational potential of the 4.7 acres.

3) Historic value of the house: there are many other properties including Shepherd's Vineyard and doesn't know any other historic property in Apex that had, when developed had historic potential like this, but the developer did go, and hopes for prudention, of the conversation and negotiations being currently held with the Capital Area Preservation for the continued preservation of the Seagroves Farm house.

4) Density: it's already been discussed, but the land use plan says medium density – the Developer has given a plan that provides for low density and is a considerable improvement than where it could be with any other plan doesn't think we will see low density with another plan that may come subsequent to this one if it fails.

5) Traffic: this had been discussed in length; thinks the interior traffic flow has been modified since the first plan that had the straight connectivity with the changes made the internal flow is better; the off-site had been discussed and everyone agrees the developer should not bear the entire cost of those two off-site improvements.

Mayor Weatherly continued traffic is not unique with this site, not with Apex, and not unique with Wake County – traffic is a concern if any development occurs in any corner of the Triangle, so if discussion had been that traffic is a problem, traffic flows on SR1010 from Cary, Holly Springs and all the rest and clearly need to do what they can in Apex. But to say a development can't be approved because of minimal, as they heard the expert say, minimal diminution of the traffic then they would not want to approve any more development on NC55, Ten-Ten or anywhere in Apex, or anywhere in the triangle, he should say.

It's their duty to exercise some legislative discretion, clearly in rezoning and he thinks the body will do that in consideration of this proposal but he thinks it deserves approval because it does respond favorably to every criteria provided in the town's ordinances and policies and has met reasonably with most of the concerns of the adjacent neighborhoods and is a quality project. McGregor Development has quality projects, not only here in Apex but all over the triangle and if they were to send the signal that this quality development having met all of our standards and they had admittedly the highest standards to development anywhere, at least the UDO, and they try to make it so; had met every requirement with the UDO development standards and if they say that and they say no to that type quality development, he's afraid other business will not invest in Apex because of the pre-development costs would be prohibited to do so and get to this place and turn them down after having met every reasonable requirement the town has. He recommended to the board approval tonight and could continue discussion, and the floor was open for a motion.

Commissioner Gossage wanted one point resolved for his satisfaction, asking whose responsibility it is to widen and stripe the road in front of the proposed subdivision on Ten-Ten. Horne responded the roadway improvements identified as required by this project traffic are the left and right turn lanes on Ten-Ten and they will be responsible to meet the state standards, the widening SR1010 – Center Street. Commissioner Gossage went back to an earlier statement that one car sitting making a left hand turn at an un-signalized intersection could be considered failing, with Horne interjecting on certain major thoroughfares and he would tell him Capital Boulevard, with Commissioner Gossage assuming he was speaking about this, with Horne stating no, we already see that we have some short or moderate delays if they are side streets on Ten-Ten, which does not carry the volume that Capital Boulevard or Six Forks or NC55 would carry or are carrying. There will be delays associated with them; again, they are acceptable delays for this type development on SR1010. Commissioner Gossage asked then if someone were sitting on the development trying to exit making a left hand turn during rush hour that would never be considered D or E or F, two or three cars back. Horne responded they would be delayed and would wait their turn when there is a gap in traffic to exit onto SR1010. Commissioner Gossage added that waiting for traffic is subjective asking to give him something objective that he could work with; he could go back to the UDO where it says road improvements will be required to prevent the traffic generated by the proposed development from causing any intersection or road segment to fall below average level of service D and if there are two/three cars backed up waiting to make a left hand turn onto SR1010 its rush hour, he would consider that we have, as he had stated, were probably at a D, E, or F. Horne responded acceptable or unacceptable, he would tell them it's acceptable. Commissioner Gossage respectfully disagreed with him; he requested the applicant widen and stripe the road to allow for the turn lane making a left hand turn out so a vehicle could make a left hand turn and sit out there and merge into the other lane. Horne heard him, but he had to understand we, applicant, this board, do not have the power to decide what goes on on SR1010, it is a state route and whatever improvements will be made there will be at NCDOT's final approval – they are the governing body of that road. Mayor Weatherly asked if this could be broached with NCDOT with Horne responding absolutely. Commissioner Gossage could understand if NCDOT said not.

Mayor Weatherly continued if NCDOT said it would improve the traffic flow, would it be part of the widening project. Horne responded they believe they will have asphalt poured if NCDOT will allow it, they will find a way to put it in, if NCDOT doesn't and what they typically do is make them stripe out that area then they will have to stripe it out. Commissioner Gossage felt this was good enough, with Mayor Weatherly continuing to advocate for that position and if NCDOT says yes, they will do it, and if they say no they want - it will be dangerous then you want do it. Horne was happy for them to come to the NCDOT meeting with him, with Commissioner Gossage responding this was fine.

Commissioner Meckes asked if there was a light at the Peakway and SR1010 and the light at Vintage Grove could those be coordinated so that a left hand turn out of the Seagroves Farm could be made easier. Horne responded light at the ramp, and Center Street and the Peakway; with Commissioner Meckes interjecting there will not be a light at Seagroves but asked if that is a traffic thing they could do to coordinate those lights to make a left turn, with Horne responding absolutely. Commissioner Jones asked if that would make a difference with Waterland, with Horne responding the signals would allow gaps in the flow of traffic to make that movement out. Commissioner Gossage asked he do his best; with Horne asking him to come to the meeting, and Commissioner Gossage responded he would come.

Mayor Weatherly stated the motion could be debated.

Assistant Town Attorney Laurie Hohe advised the board a valid protest petition had been filed and requires a three-fourths majority vote.

Action: Motion by Commissioner Meckes to approve rezoning case #04CU05 Seagroves Farm Planned Unit Development. Second by Commissioner Jones with an additional requested condition and a couple of requested commitments:

- condition relative to the connectivity – at the end of the presentation, question of delaying connectivity and he asked the question to both Surry Meadows and Waterford Green until we reach a certain point of construction, and for two reasons:
  1) construction traffic – do not want construction traffic through either of those areas while these houses are being built, so he suggests they delay this until the completion of what they describe as the end of Phase II – he calculated that as two-thirds through the number of units.
  2) the board commit to looking at the feasibility of sidewalks on Samara Street and Rainsview – the bond issue recently passed didn't include sidewalks on either of those streets, but as they always do and always happens are priorities shift based on circumstances and brings this issue more to the surface as a priority as it was a year ago when looking at transportation bond priorities.
  3) traffic calming devices: they also take a look at this and once they open the connectivity to Waterford Green and Surry Meadows that, as they have in other subdivisions look at the installation of some type traffic calming device and according to the criteria used in other situations.

The developer requirement would be delay the connectivity, the others a commitment from the board they look at this like they had done in other situations. Commissioner Gossage asked the time frame the delay would be through – the end of Phase II, with Commissioner Jones stating this was a suggestion, again looking at the calculations. Mayor Weatherly asked if the petitioner would accept this as a condition. Response by petitioner was yes.

Commissioner Schulze asked to add one more condition:

4) re-stripe on Old Raleigh Road in front of Surry Meadows, thinking this should be done, with all board members being in agreement.

Mayor Weatherly stated there was a motion and a second.

Commissioner Gossage stated his thinking is this development is very low density and could be up to four units per acre where this is 2.5 and pointed out this is low density; townhomes were brought up as a concern but as staff pointed out there are townhomes down the street closer to this than the entrance to Surry Meadows. Math shows him 30% of the site will not be developed and includes almost a five acre area for a park which is badly needed in this part of town. It's a good development.

Commissioner Jensen had concern that communication between the developer and community had been lost and still questions if this is in the best interest of the community; there's a lot of people sitting there saying no and they are right along the side. They have made commitments to sidewalks and stripping and still concerned about the number of townhomes and the flow into Waterford Green and he wanted to ask the question and not sure he's allowed to, of the community, do these commitments satisfy their needs or not, and wanted to ask this of the homeowners association president. Mayor Weatherly stated they were in debate and could not have dialogue with the board at this time. Commissioner Jensen wanted to get extra input after they have made adjustments; he would feel good if they said yes, and bad because there was communication lost and doesn't think because of community but because of developer and wanted to know if this satisfies their needs or doesn't satisfy their needs, asking if this were a bad thing to ask. Mayor Weatherly asked if they were going to do this every time; with Commissioner Jensen responding, bad precedent. Mayor Weatherly again noted they were in board discussion, with Commissioner Jensen noting this fine. Mayor Weatherly stated there was a motion on the floor pending, asking if there were further discussion.

Commissioner Meckes asked how he was adding those to the motion. Commissioner Jones responded if they were to vote for this, they make the commitment, the one for connectivity at the end of Phase II is a condition; he heard they were willing to do that at their discretion during the presentation; others fall upon the board, and have made a commitment that they will; due diligence to do the right thing.

Commissioner Schulze pointed out that all have spoken eloquently about their views and he shares most of them. His issues were traffic and traffic flow: frustrating to him was working with NCDOT; he had rather get all these things done right away, but facts of the matter is NCDOT doesn't operate that way and the best they could do is push them as much as the can and beat them when they have too. If they waited for NCDOT to do everything, they would never get anything done and progress would never be made not only in Apex, but anywhere. It's frustrating to deal with these traffic issues but feels they are dealing with them the best way they know how. He thinks overall its a quality development and from the internals he likes it and he personally commits to addressing the traffic issues from sidewalks, to traffic calming devices, to striping, pursuing improvements to the US1 ramp; he commits publicly he will try to get this done to the best he can in working with NCDOT. Overall he sees this as a good quality development and in favor of it.

Commissioner Jones appreciated Commissioner Meckes comments at the beginning of discussion relative to the input they had gotten and the method in which they had gotten it; however he needs to say the vast majority of the correspondence he had and discussions had been very positive and does appreciate the fact that the folks have put a lot of effort into researching this and to making their presentation to them, the planning board and their discussions and appreciates it and thanks them for it.

Commissioner Gossage added that in allowing other families the opportunity to live in Apex is a good thing.

Mayor Weatherly stated the pending motion was to approve with the one additional condition as accepted by the petitioner and calling for the vote on the motion.

Vote on the motion was four in favor and one opposed (Commissioner Jensen cast the opposing vote). The motion carried to approve the rezoning and the PUD plan.

End of public hearing # 1

June Cowles, Planner
Public Hearing # 2– Rezoning Case #O5CU05
(Planning Board recommended approval of this rezoning)
Public hearing and possible motion regarding Rezoning Case #05CU05 Old Mill Village, Apex 1st Development, LLC., petitioner, seeking to rezone from Planned Unit Development District to Planned Unit Development District the 32.12 acres located south of Old Raleigh Road, west of the Apex Peakway and north of Center Street.

Cowles gave sworn testimony regarding background information from the staff report which is attached and incorporated as a part of the minutes. Highlights; Old Mill Village PUD rezone amendment and located south of Old Raleigh and west of Apex Peakway and north of Center Street; current zone PUD; PUD was approved on September 7, 2004 with six lots, with lot six being the flea market site at the northwest corner of Apex Peakway and Center Street. Flea Market site on Lot 6 was zoned 2001 PUD district with all the uses permitted in the PUD district prior to the inclusion in the Old Mill Village PUD plan. When the flea market site was included in the PUD plan 2004 as lot six the number of uses were reduced to the list in the staff report page 2; applicant BBM and Associates requests a rezone amendment to the Old Mill Village PUD plan for lot six and the proposed amendment includes all uses permitted in the PUD unit development district accept for recycling collection station, water or wastewater plant, arena, auditorium or stadium, golf course, bar or nightclub. In addition and consistent with the UDO, the flea market requires a special use permit. Everything else in the PUD plan is the same and only requesting this change to lot six only except for the five noted issues. The April 11, 2005 Planning Board recommended to approve Old Mill Village PUD plan rezone amendment request. Commissioner Jensen confirmed they were just adding back uses that were mistakenly taken away, with Cowles responding this is correct for Lot 6.

Mayor Weatherly opened the public hearing at 11:15 p.m.

Alan Manase, BBM Associates, representing the owners gave sworn testimony this is bookkeeping, with two owners within this PUD with some uses limited on one lot and the other owner feels his property was devalued by reducing these uses and wants to get his uses back; we just want to get them back to what it was before.

No one else addressed this amendment and the hearing was closed. Mayor Weatherly referred the matter to the board.

Commissioner Gossage asked if restaurant drive through was not included in the original, with Cowles responding it was allowed on this lot and not on lot three and still remains the same.

Commissioner Jones asked if there were any other uses now allowed that she was concerned with. Cowles responded they had taken out the five they were concerned with.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the rezoning request #05CU05. Motion carried.

End of public hearing # 2

Public Hearing # 3– Annexation # 370
Public hearing and possible motion regarding Annexation # 370, Andy and Susan Mullins, owners/petitioners; petitioning to annex 2.927 acres into the town's corporate limits; property located at 1548 East Williams Street and known as Williams Street Station.

Commissioner Meckes asked the Attorney's advice; he stated this property was next to his and he owns 25% of the sewage pump station and if this site is annexed and seeks sewer will be coming to them for sewer and will be buying a part of his corporation that runs the sewer plant, asking if he should sustain from voting and participating. Attorney Fordham advised someone should make a motion to allow him to be excused from voting and participating.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to excuse Commissioner Meckes from voting and participating as requested. Motion carried.

David Rowland Director of Planning presented this petition for consideration, orienting the board to the location of the property near US1 and NC55; vacant property. There will be a site plan for consideration.

Mayor Weatherly opened the public hearing with no one addressing this petition, closed the public hearing.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the annexation petition by adopting of the ordinance to include this property in the town's corporate limits. Motion carried.

End of public hearing # 3

Public Hearing # 4– Annexation # 371
Public hearing and possible motion regarding Annexation # 371, Town of Apex, owners/petitioners, petitioning to annex 0.071 acres located on the north side of Green Level Church Road (SR1600) near the Kelly Road intersection.

David Rowland Director of Planning presented this petition for consideration, orienting the board to the location of the property noting the location of the property on Green Level Church Road and a town water vault. Manger Radford stated it deals with excess capacity in pumping capacity on the new line going up Kelly Road.

Mayor Weatherly opened the public hearing and with no one addressing the annexation petition, closed the public hearing.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve annexation petition by adopting an ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 4

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Tim Carley, 301 Satinwood Drive, requested as a resident the board begin a feasibility study for sidewalks and improvements on Rainsview and Samara Street at the expense of the Town of Apex. He asked this be part of the connectivity and barricade issue to keep this parallel. Mayor Weatherly responded as they proceed, they will look to the home owner's liaison to assure we don't have right-of-way, reasonably acquire rights-of-way. Carley stated he had petition from 143 members of their association that has agreed to sidewalks, with the Mayor saying in their yards. Manager Radford understood their willingness to make a blanket statement but there will come a time when you will have some number of hold outs, somebody or more, that will say I'm sorry but I like my yard the way it is and don't want to give you anything more and don't want anything less; Mayor Weatherly is saying that there will be somebody to hold out and they need 100% participation in a deal like this. If in the event there is not existing right-of-way.

Robin Oke, wanted to reiterate traffic calming; poster child for traffic calming – there's a 25% fee that has to be paid by the residents asking if this would be waived in this case for Rainsview. Mayor Weatherly didn't want to answer this now but would look at the whole issue and see what other things play into putting in traffic calming. She asked if they could expect a time frame since the first house is to be occupied by December. Commissioner Jones responded they had said connectivity with Phase II 2008. Commissioner Jones stated he's counting on sticking by their phasing plan which gives them some amount of time to deal with these issues. She wasn't as disappointed as they may think, they want be back in six months with the same argument.

No one else spoke during public forum. Mayor Weatherly closed this portion.

NEW BUSINESS

There were no New Business Items to be considered.

WORK SESSION AGENDA

There were No Work Session Items to be discussed.

CLOSED SESSION

There were no Closed Session Items to be discussed, however Mayor Weatherly recognized Attorney Fordham who asked the board to amend the agenda for a two minute closed session to receive legal advice from the Town Attorney. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session as requested. Motion carried. Minutes of closed session were recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to move out of closed session and back into regular session. Motion carried.

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Gossage and a second by Commissioner Schulze to adjourn at 11:32 p.m. Motion carried.

The above minutes were approved on the 17th day of May 2005.

Georgia A. Slaughter
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 17, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2 nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.
Invocation was given by Commissioner Meckes.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve the consent agenda. Motion carried.

1. Minutes of the May 3, 2005 Board of Commissioners meeting.
2. Minutes of the May 3, 2005 Board of Commissioners Closed Session (separate cover).
3. Annexation Petition # 374, Joseph & Ruth Lee, Jr.; Ervin Judd; Dan Heavner and Cecil Heavner (C.O. Heavner Heirs); Frank and Ella Holding; Walton & Lois Parker, owners/petitioners; petitioning to annex 54.684 acres into the town's corporate limits; property located on NCSR 1448 Bobbitt Road on the east side of NC55 south of Apex;
   1) Resolution directing Clerk to Investigate Annexation Petition;
   2) Certificate of Sufficiency of Petition by Clerk, and
   3) Resolution setting date of public hearing for June 7, 2005.
4. Resolution Declaring Result of Bond Referendum held in Town of Apex May 3, 2005, Upon Question of Approving $35,000,000 Wastewater System Bonds and Resolution Relating to the Canvass of the Returns of the Bond Referendum.
5. Site plan: Spiral Graphics, Aiken & Yelle Associates, petitioner, 12,000 square-foot building located at 1012 Investment Boulevard.
6. 2005-2006 Parks Grounds Maintenance Contract with Jones Landscaping and Maintenance at a price not to exceed $150,352.
7. 2005-2006 Non-parks Grounds Maintenance Contract with Jones Landscaping and Maintenance at a price not to exceed $178,236.
8. Wake County tax report.

End of Consent Agenda

PRESENTATION

Tim Carley, Apex Chamber of Commerce, presented the Chamber Economic Development Report of August 2004 – March 2005 and is attached to the minutes.

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set and with no amendments the agenda was set as presented.

PUBLIC HEARINGS

Dianne Khin, Senior Planner

Public Hearing # 1 – Apex Transportation Plan

Public hearing and possible motion regarding amendment to the Apex Transportation Plan.

Dianne Khin, Senior Planner presented three amendments to the Transportation Plan maps to correct mapping errors.

First Map: Amend Lake Pine Drive road section from two-lane to four-lane with landscaped median section in order to match Cary's section. Town of Apex's 2006-2012 Transportation Improvement Program request made in 2004 indicated this section would be four lanes, but the map was never amended accordingly.

Second Map: Per request of Jones, Cnossen & Dolle Engineering on behalf of Joseph Iannone (JVI Construction), remove collector-street from Apex Transportation Plan that connects Kelly Road with Apex Barbecue Road through the Beaver Trail cul-de-sac. This collector street connection was included in the original Transportation Plan in error, as we did not intent to connect through an existing subdivision in this particular instance (consultant assumed this was a stub street, not a cul-de-sac).

Second Map: Remove collector-street from Apex Transportation Plan that goes through Kelly West Subdivision and connects to Apex Barbecue Road. This collector street connection was included in the original Transportation Plan in error, as it was not intended to connect through an existing subdivision in this particular instance (consultant assumed this was a stub street, not a cul-de-sac).

Planning Board and staff recommends approval of the proposed amendments.

Mayor Weatherly opened the public hearing at 7:08 p.m. No one addressed this item; the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the amendments to the Apex Transportation Plan. Motion Carried.

End of Public hearing # 1

David Rowland, Director of Planning

Public Hearing # 2– Annexation Petition # 372

Public hearing and possible motion regarding Annexation #372, Town and Country Daycare, Inc. owner/petitioner; petitioning to annex 40.00 acres into the town's corporate limits; property is located on the north side of Holland Road (SR1187) Wake County.

Continuation of Public Hearing # 2
– Annexation Petition # 372

Director of Planning David Rowland presented the petition for consideration, orienting the board to the location of the property, and noting this was a voluntary annexation of 40 acres on Holland Road. The initial map of the property was in error and since has been corrected and filed with the Town Clerk. Advised: The proposed plan for this property is for a subdivision if the property is annexed into the town's corporate limits; property is currently zoned R40-W and will be rezoned at a later date. This property is a satellite annexation; total satellite area does not exceed 10% of the area of the town within its primary limits. Closest town limits is the Crocketts Ridge Subdivision. Sewer will tie into a gravity line and water will be extended. The Land Use Plan states this area is planned for medium density development.

Mayor Weatherly opened the public hearing at 7:10 p.m.

Jim and Karma Lee, 2700 Holland Road are the owners of the adjoining property to the north, and adjoining property owners to Crocketts Ridge Phase 4. Comstock Homes approached them for a sewer easement through their property, however, they have not responded to their request. Their property will lie between the two annexed areas and they are concerned, as to what this will mean for their farm operation; the land will become a part of the ETJ sooner than anticipated with Apex expecting this around 2025 and with this annexation will accelerate the ETJ expansion. Their 40 acre farmland lies in Wake County and their future. A creek runs through their property and assumes the sewer line would follow the creek, with the bulk of the farm lying in this area and mostly timberland. The initial map showed the sewer to be 60' from the back of their house and noted their home is in the dog-leg section of the map. If the annexation takes place now, it will impact their farm and their property would then lie in the Apex ETJ. Mayor Weatherly advised the extension of the town's ETJ would have to be a request to Wake County; the town's land use plan is more intense and the town further does not do involuntary annexations. Commissioner Meckes added there may be more threat from developers, and perhaps traffic and advised the sewer line would be underground. Ms. Lee noted the raised manholes were a concern to her and questioned further the emergency services for this area, noting Crockett's Ridge had been a straight line, however, with Phase 4 there was a loop.

Tom Carter, 7104 Campbranch Lane expressed concern with the utilities infrastructure, roads, and the traffic. He was searching for more information regarding the sewer to the area and concerned with the waterline as to where it would go, noting the resident across the street was closer to the road and would receive the most significant impact. He doesn't see the developed property of this density fitting into the area, as the current land is divided into large lots with septic tanks. He noted satellite annexation was "jumping around".

Mayor Weatherly closed the public hearing at 7:20 p.m. and referred the matter to the board.

Commissioner Jones noted the land use plan shows medium density for this area, with the density dropping as you move farther towards Jordan Lake; noted: proposed development of approximately 120 homes.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve Annexation Petition # 372 by adopting an ordinance to extend the corporate limits by the 40 acres. Motion carried.

End of Public hearing # 2

David Rowland, Director of Planning
Public Hearing # 3 – Annexation Petition # 373
Public hearing and possible motion regarding Annexation #373, Howard E. Macon, owner/petitioner, petitioning to annex 17.773 acres into the town's corporate limits; property is located at 7220 Apex Barbecue Road (NC1162).

Director of Planning David Rowland presented this petition for consideration, orienting the board to the location of the property, and noting this was a voluntary annexation of 17.773 acres located on 7220 Apex Barbecue Road. The proposed plan for this property is for a subdivision if the property is annexed into the town's corporate limits with water and sewer available nearby; this sewer line would be southwest of the town's proposed parkland and would be of benefit to the town. Land Use Plan shows the area for medium density development and would connect to Apex Barbecue Road.

Mayor Weatherly opened the public hearing at 7:24 p.m.

Sean Dolle, Jones, Cnossen, and Dolle, was present to represent the client and answer questions. There were no questions asked.

Mayor Weatherly closed the public hearing and referred the matter to the board.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve Annexation Petition # 373 by adopting an ordinance to extend the corporate limits of the town by the 17.773 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

Dianne Khin, Senior Planner
Old Business # 1 – Kohl's Beaver Creek Crossings
Note: *The public hearing was held on April 19, 2005; the hearing was closed. Board deferred decision to allow Kohl's and staff to reach a compromise regarding building elevation.)*
Possible motion regarding amendment of a major site plan to allow changes to the Kohl's elevation in the Beaver Creek Crossings and located on Green Level Church Road.

Dianne Khin Senior Planner stated the public hearing for site plan for Kohl's at Beaver Creek Crossings was held on April 19, 2005, with Board of Commissioners having asked the developer, Kohl's representative and staff to work on a mutually acceptable elevation for the Kohl's building and bring it back to their May 17, 2005 meeting. The three parties have come up with an acceptable elevation; staff recommends approval.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve the site plan elevation for Kohl's at Beaver Creek Crossings. Motion carried.

End of Old Business # 1

Kent Jackson, Director of Construction Management
Old Business # 2 – Laura Duncan Road Sidewalk Project
Discussion and possible motion regarding the design options for the Laura Duncan Road Sidewalk Project.

Kent Jackson, Director of Construction Management, and Adam Stephenson Engineer presented design options for the Laura Duncan Road sidewalk project, asking the board for a preferred option.

The proposed sidewalk footprint starts on the east side at the end of the existing sidewalk at Vineyard Station, heads north to connect to the existing sidewalk fronting Oakgate Court, heads north to Pinewood Drive and crosses to the west side and heads north to connect to the existing sidewalk at Apex High School. Advantages of this path includes utilizing all existing sidewalk on Laura Duncan Road, provides contiguous sidewalk from Hunter Street/Old Raleigh Road to US64, minimizes impact to properties as far as proximity to the homes, minimizes impact to surface and subsurface utilities. Ditch to ditch section cost estimate: $82,000; curb section cost estimate $255,000. Engineering staff recommends the ditch to ditch section for the proposed sidewalk, as the curb section cost is approximately three times more expensive and only provides an additional foot of distance between houses and sidewalk.

Commissioner Schulze addressed the pedestrian crossing proposed at the southern end or Pinewood Drive and the safety options being considered: police involvement, speed bumps, blinking light, with engineer Stephenson proposing an illuminated device. Chief Lewis noted signage as the only option with there being various degrees of impact. Mayor Weatherly noted the pedestrian traffic paths created in the direction towards town. Commissioner Jones agrees people have to cross somewhere, with staff engineer agreeing this is the less impact at this location. It was noted the section at Oakgate has small frontage; houses are further back than on Pinewood.

Commissioner Jones addressed the ditch to ditch section, which pulls the sidewalk closer to the road gaining one foot; sidewalks would be five feet wide with staff having measured the west side and noting less impact to the homes than on the east side; drive pipes will be replaced.

Commissioner Jones noted he knew of one tree that would be in the path for the sidewalk, asking about others, with the staff engineer responding he had not addressed the number of trees or the visual affect should trees be removed. Commissioner Meckes felt a layout should be seen prior to the decision, with Commissioner Jensen thinking the sidewalk could move out around the tree, and town could work with the folks giving them an option, of the sidewalk either being closer to the house or loosing a tree. Commissioner Jones reminded the board he had brought up the curb/gutter since the sidewalks would be there for awhile, however, ditch to ditch will gain one foot closer to Laura Duncan Road, and offers a better alternative as far as costs and impact.

Commissioner Meckes questioned the proximity of the sidewalks to the houses with staff engineer noting the west side ditch average was 78 feet to the front of the house and the east side was 48 feet; construction of the sidewalks on the west side would impact 15 parcels and 12 drives and on the east side 39 parcels. Commissioner Jones advised the residents are aware of the sidewalk project, but felt they should be notified the board is in favor of proceeding with the project; he had looked at dog paths around mail boxes and it often puts them in the street.

Jackson asked the board to choose an option so staff could begin request for proposals; staff engineers will do the design work and noted the passage of the bond referendum for sidewalk improvements. Commissioner Jones thinks it's appropriate for the residents to see the design, and look at the tree option and consider save of 6" caliper size trees.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the ditch section design for the Laura Duncan Road sidewalk project. Motion carried.

End of Old Business # 2

John Brown, Director of Parks and Recreation

Old Business # 3- Funding Apex Community Center and Beaver Creek Greenway

Discussion and possible reaffirmation regarding bond fund allocation for the expansion of the Apex Community Center and construction of the Beaver Creek Greenway.

John Brown, Director of Parks and Recreation, wanted to reaffirm the bond fund allocation was to be used for the Apex Community Center and the construction of the Beaver Creek Greenway.

Contract No 1: Board approved $3,976,204 with Centurion Construction for the Community Center expansion project and $40,973 for furnishings. And additional $517,177 will be taken from the town's un-appropriated fund balance to cover the $4,017,177 expansion cost which is over the $3,500,000 bond referendum amount and due primarily because of the triangle construction inflation costs.

Contract No 2: Board approved a contract with Raleigh Paving $355,376 to complete Phase 1A of the Beaver Creek Greenway, connecting the western property line of the Whitehall PUD through Pearson Farms subdivision.

Contract No 3: Board awarded contract with Haden Stanziale $10,300; bond referendum designated $600,000 for Phase I Beaver Creek Greenway which was suppose to connect to downtown Apex to the existing Kelly Road Park; $600,000 was one-half of the estimated $1.2 million cost. Town anticipated receipt of the other one-half million from NCDOT T-21 funds, however, request was denied due to lack of NCDOT funds. NCDOT suggested fund grant requests be broken down into smaller projects; staff broke Phase I down into smaller projects with 1A being noted, Phase IB – Pearson Farms to Olive Chapel Road / Jaycee Park to eastern property line of Whitehall PUD, Phase IC – Downtown to Jaycee Park with intent of continuing to seek matching funds to help complete future phases.

Due to cost of Community Center project being over budget, staff asks Board to reaffirm the intent to spend the entire $600,000 as designated for the Beaver Creek Greenway rather than applying the balance of $234,324 towards the Community Center deficit.

Items to consider:

- Whether funds should be used to complete portions of Phases 1B, 1C, and 1D while we have good pricing from a contractor on site, and

- Whether or not there will be need for all or a portion of the $234,324 balance for future grant requests since the grants being applied for typically require at least a 50% match.

Power point presentation submitted by staff and Sarah Burroughs, Haden-Stanziale illustrated some additional information and potential options regarding Phases I, IA, 1B, and 1C.

Notes:

- Bids were open for Phase IA with prices less than anticipated
- $235,000 left could take this for additional greenway projects
- Small segment of Pearson Farms north and south to Olive Chapel, and connects to Becketts Crossing; staff met with home owners association and recommends replacing the bridge with a larger bridge due to the current bridge being a safety issue as it had been washed out from past storms.
- Good prices for Phase IA - contractor will honor these prices.

Staff recommends the following:

1) Phases be completed as noted
2) Bridge at Becketts Crossing be replaced with larger bridge due to it being a safety hazard
3) Completion of Pearson Farms extension of greenway to Olive Chapel Road, and it be tied into Beckett Crossing greenway, and continuing to the shopping center
4) Remainder of funds being placed towards matching grant funding

Commissioner Jones asked if the $234,000 was needed to reimburse general fund for the Community Center expansion, with Manager Radford responding there's opportunity to save $234,000, however he saw the greenway as an important connection for the town's future with Commissioner Meckes adding the general fund is designed for overages. Commissioner Gossage noted the decision to spend this money was made without this knowledge. Commissioner Jensen addressed the contractor's bids: Brown noted there were three bids; McQueen with greenway and park experience; next bid was close and had experience with greenway work in the past, with award recommended to Eastern Services dba. Raleigh Paving Inc. ($296,958); it was noted the bidder is a Scotts Mill resident, and feels he will have a vested interest in doing this project; noted: most of the topography was flat, and would be mostly board walks, concrete, and asphalt with relatively no clearing necessary as its located mostly within the utility easements; contractor is willing to hold the units prices (award May 3, 2005).

Action: Motion by Commissioner Jones and second by Commissioner Jensen to reaffirm the board's position that the $234,000 be used for the greenway construction projects as recommended by staff and noted, and that the additional balance needed to complete the community center expansion be expensed from general fund. Motion carried.

End of Old Business # 3

Bruce Radford, Town Manager

Old Business # 4- Resolution Sale of Property

Possible motion to adopt Resolution Authorizing Completion of Sale of Hwy 64 Property.

Manager Radford advised the town had received an offer of $85,000 from Steve Sebastian, Sebastian Holdings, LLC. for purchase of the .46 acres located at the northeast quadrant of the intersection of Lake Pine Drive and Hwy64. Board recommended sale price be comparable to the $135,000 appraisal of two years ago, with signage having been placed on the property noting it for sale. Staff proceeded with the upset bid process, and while having received many calls, no upset bids were received, thus the $135,000 bid stands as the highest bid. Staff recommends adoption of a Resolution authorizing completion of the sale of the Hwy 64/Lake Pine property and declaring Sebastian Holdings, LLC the highest bidder with award of bid for $135,000.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the resolution finalizing the sale and declaring Sebastian Holdings, LLC. the highest bidder for sale of the property.

Commissioner Schulze reiterated his preference to hold on to the property until there was a need or reason to sell. It was noted the property had been advertised for two months, with Commissioner Jones adding he respects Commissioner Schulze's opinion, however, the $135,000 could be used for possible downtown or parks, etc. Commissioner Meckes would like to see this money used for the community arts center, as there was need for an additional $800,000 and felt this was a good gesture towards the fund raising event.

Mayor Weatherly could agree with Commissioner Schulze if the money were in the bank and there was a willing buyer; "beauty being in the eye of the beholder", and this being a unique site and having been looked at long and hard and sees this as an appropriate value and could put the money to good use now. Commissioner Schulze still felt if there was a hold, the price could go up but understands the money could be used. Commissioner Jensen shared some concern with the appraisal being two years old, asking if we are getting the full value for the property. Manager Radford responded twelve calls were made regarding the sale, affording opportunity for upset, and no one did. Commissioner Jensen gave an example of his neighbor's home being sold because he held out. Commissioner Meckes agreed with Mayor Weatherly this was a unique piece of property, but called it "the armpit" with its easements and waterlines, etc. and in Cary's limits; it was noted Cary would work with the builder at this site. Commissioner Gossage called for the question.

Vote on the motion was four voting yes and one voting no with Commissioner Schulze voting no. Motion carried.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

There were No New Business Items to be considered.

WORK SESSION AGENDA

Work Session:
*Bruce Radford, Town Manager gave a re*view of the proposed Annual Budget for Fiscal Year 2005-06 following the budget message dated May 6, 2005. Tax rate will remain at $0.40 per $100 valuation. New estimated tax base $2,592,305,322 with a one year growth rate of 3.7% or an approximate $93,000,000 increase from current fiscal year. Public safety is the highest priority (police and fire) and most important. The meter replacement program was discussed. Police: additional staff is requested and due to the Beaver Commons area and traffic; special units will provide additional police protection and additional officers available during a.m. and p.m. peak hours. Fire: growth and community services require more personnel, still utilizing volunteers, however it was noted the turn out is not as many and with the 2-in and 2-out rule (new regulatory requirements) there have been close calls and could not let this happen. Additional staffing will add up to $417,924 and sees this as a realistic request.

Manager Radford's approach was for focus on the General Fund portion of the budget rather than the revenue/expenditures of water, sewer and electric since that is a more fixed area. Director of Finance Lee Smiley covered the General Fund Revenues; a fund balance is appropriated for $750,000 which is earmarked for the Fire Department's requested 95FT Aerial Ladder Truck. Manger Radford covered the Governing Body's budgeted items that covers the legal attorney's salary; travel and training (noting not an abundance of travel and training); due (NCLM, Metropolitan Coalition, School of Government, National League of Cities, Wake County Mayors, and TJCOG); frequent professional services.

Manger Radford noted the salary line item (salary line items include a 3% COLA for all departments). Commissioner Schulze addressed the advertising budget, with Assistant Manager Wilson noting each department having their own budget. Commissioner Schulze addressed the vehicle purchases and the replacement program with the Fleet Services Director explaining the phasing process with Police, Public Works and Construction getting the better vehicles.

Manager Radford noted in HR there is an increase for one fulltime 30 hour employee; HR Director noted the 4.9% insurance increased and dental changes with trend being over 15%. Assistant Manger Wilson reviewed the positions for Information Systems and the purchases for this upcoming year with Director LaPiana explaining the need for the $15,000 server.

Assistant Manager Wilson reviewed the Finance budget noting positions, the meter tech had moved to Purchase and Warehouse, contracted services covers the expense of billing and utilities. He continued with the Planning budget noting 11 positions, with funding for a full time transportation planner, and noting dues include CAMPO Work program. He continued with Facility Services housing three positions, and noted equipment needs with half of their request being specified for expansion projects, one replacement vehicle, and noted the list of contracted services which are all building related needs. Manager Radford pointed out the ice/snow guard for public works building for $10,000, noting the accident at town hall requiring the structure of the ice/snow guard, however could not do these for all walkways.

Manager Radford noted the increase in salary of the Police budget with a proposed captain's position already approved six police officers, a communications supervisor, and part-time staff person. Chief Lewis had based his budget from the management study conducted by former Chief Boone and concurred by former acting Chief Fortson. Manager Radford understood the needs, and were addressed with the Personnel Committee, noting shift changes which does not overtax the officers with long shifts, creates an overlap for additional officers during peak hours, will develop special interest units that will be assist in serving the community needs; noted the uniform budget, the capital expense for vehicles $307,000, and $270,600 for capital outlay equipment. Chief Lewis reported on the restructure of the department to shifts, vs. squads, overlaps to assist during high volume call hours, better quality of life for officers while providing services to the community, special officer training and the proactive approach to prevent crime. Capital outlay equipment includes the 800 MHz Digital system.

Manager Radford presented the fire budget noting an increase in salary, with 9 new personnel position reducing the six part-time positions; capital outlay equipment Aerial Ladder Truck – 95 foot $750,000. Manager Radford updated the board on the south section of town fire needs, noting lots of land for sale, and with sewer issues being unclear and with the Jessie Road Drive Extension in the works thinks it best to wait and watch looking at the opportunity for property when sewer opens up. Renovations to the Station I will total approximately $125,000, with town having received county funding for this project. Manager Radford commented on the replacement schedule for fire apparatus with each location having different needs and assured the board the 95FT Ladder truck was needed allowing additional 20 feet to get closer to structures and allowing water to be pumped further, and giving note of the larger commercial properties: Target, Lowes, proposed movie theater, Barnes and Noble – and two story structures and an example of a fire in town that needed this additional footage and didn't have it.

Manager Radford presented the Public Works budget noting the debt service transportation bond $310,000; and noted the debt service of public works had been paid off. He noted the Powell Bill position of Street Supervisor, and street resurfacing budgeted at $650,000 and $97,000 for capital outlay equipment. Director of Public Works Donnelly explained the equipment used for spreading sand and the equipment for snow plowing.

Manager Radford continued with Environmental Services budget including $1,780,000 for Sanitation Services, which includes education and the federal obligations that must be met, noting professional services, and capital outlay equipment budgeting $105,000.

Assistant Manger Mike Wilson gave a review of the Fleet Services budget with three mechanics positions; capital outlay improvements are for shop improvements totaling $23,578 and capital outlay equipment totaling $39,527.

Manager Radford presented the budget for Construction Management noting road construction projects, planning and inspections with emphasis on keeping up with demands and having no dramatic increases, and replacing two vehicles.

Assistant Manager Wilson presented the Recreation budget showing an increase by $485,000; new debt service – recreation bonds total $1,035,500 which is 34% of the budget; personnel costs include 14 positions. Director of Finance Lee Smiley noted the interest rate when bonds are sold to be approximately 5% or 5 l/2% with Commissioner Jensen questioning bonds sold after 2008 which according to the finance director would use 5 l/2%, with the town being in good shape with this now. Part-time salaries are reflected as well as contracted services which includes the new Level 4 Use Agreement with the schools. Director of Parks and Recreation Brown explained the breakdown of the services. Anticipated revenues - $422,000 in Recreation Fees or a 21% off set by these uses.

Manager Radford noted the cemetery fund is ground maintenance; Special Appropriations are down and no contribution to reserves with pay off of debt services and remaining contributions to the Apex Chamber of Commerce, Special Education "Kids Voting" and TRACS Program with some money to downtown development.

Manager Radford noted a number of expansion items that could not be recommended due to the budget overage of $1.7 million; staff found money and cuts to present a realistic budget, with concerns over next years budget, however during tighter times he still continues to "pull rabbits out of the hat", without an increase in taxes, and it being a joint effort to continue the level of services and second to none anywhere, with the town having the lowest positions to population ratio per 1,000 residents and employees giving more than their fair share every day to assure these services and presenting a chart of area towns with Garner being the exception with no utilities, fire, or electric services. Apex remains at 7.1 and anticipate with 238 employees 8.0 per 1,000 residents in 2005. Mayor Weatherly commented on surrounding towns having lots of user fees increases and some tax increases with Cary having 9.4 ratio. Current authorized positions are listed in the proposed budget as well as new personnel requested.

Commissioner Schulze asked to explain the vehicle sale and where the money went. Director of Fleet Services Mitchell explained the sale of town vehicles are included in the state surplus sale with the money going to general fund, and noting NADA online comparison price and below retail. Commissioner Schulze also asked he explain the purchasing process for vehicles, with Mitchell explaining they look at the standards and questions and purchase vehicles as needed in groups, looking at bid prices and state contract prices which is like a "moving target".

Commissioner Jensen noted the transportation engineer's position which helps in costs for outside services. It was noted legal services increased budget from $80,000 to $130,000 which includes a range of services including outside service for attorneys, appraisals, and surveys. It was noted the town has a fulltime attorney and an assistant attorney.

Mayor Weatherly stated the public hearing for the proposed budget would be held on June 7, 2005, with the budget being adopted prior to June 30, 2005.

Manager Radford stated the other funds could be reviewed at a second workshop if the board so chose, and could be prior to the public hearing of June 7, 2005 if they so choose.

End of Work Session.

CLOSED SESSION

There were no Closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Gossage and a second by Commissioner Jones to adjourn at 9:30 p.m. Motion carried.

The above minutes were approved on the 7th day of June 2005.

Georgia A. Evangelista
Town Clerk

Kevin R. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, June 7, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room (2 nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order on June 7, 2005 with Commissioners Jensen, Gossage, Jones, and Schulze present. Commissioner Meckes was absent.
Rev. Bob Bergland, Apex United Methodist Church, gave the invocation.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those attending the meeting.

RECOGNITIONS

Mayor Weatherly recognized the Apex High School Lacrosse Teams N.C. 4-A Champions with a plaque, with Coach John Hayden accepting it on behalf of the team.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve all items in the consent agenda. Motion carried.

1. Minutes of the May 17, 2005 Board of Commissioners meeting.
2. Minutes of the April 28, 2005 Personnel Committee meeting.
3. Findings of Fact and Conclusions of Law and Ordinance for Rezoning #04CU05, MacGregor Development Company, petitioner, property located at 1617 Center Street (Seagroves Farm).
4. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU05, Apex First Development, petitioner, property located south of Old Raleigh Road west of Apex Peakway and north of Center Street (Old Mill Village).
5. Annexation Petition #375, Joann Wardensky, owners/petitioners, petitioning to annex 0.829 acres into the town's corporate limits; property location is 6516 Roosendall Court Apex, off Twin Creeks Road and north of Old Jenks Road;
   1) Resolution directing Clerk to Investigate Annexation Petition;
   2) Certificate of Sufficiency of Petition by Clerk, and
   3) Resolution setting date of public hearing for July 19, 2005.

6. Resolution of Intent to annex 62.273 acres including public rights-of-way and owned by the Town of Apex, and located on both sides of Apex Barbecue Road (SR1162) between Kelly Road and Olive Chapel Road, and setting date of public hearing for July 19, 2005 (Annexation # 376).
7. Budget Ordinance Amendment #16 and Capital Project Ordinance Amendments (Recreation Project Fund and Street Improvements Project Fund).
8. Guidelines and fee schedule governing use of Salem Middle School and Elementary School Park under Town's Level 4 Use Agreement with Wake County Public School System.
9. Amendment to the NC Statewide Emergency Management Mutual Aid and Assistance Agreement to reflect the name change from former Chief of Police to current Chief of Police Jack Lewis.
10. Salem Street Sidewalk Project: Proposed Resolution accepting and/or authorizing purchase and acceptance of easements for sidewalk project.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set, and with no amendments the agenda was set as printed.

PUBLIC HEARINGS

June Cowles, Planner

Public Hearing # 1– Rezoning Case #05CU04

Public hearing and possible motion regarding Rezoning Case #05CU04, Crawford Planning and Design, petitioner, regarding a Land Use Amendment and rezoning for Williams Street Station; seeking to include Commercial classification to the Office and Institutional and High Density Mixed Use classification and to rezone from Planned Unit Development and Residential Agricultural to Planned Unit Development Conditional Use district classification, containing 6.1 acres and located at 1548 E. Williams Street.

Town Clerk administered an oath to those addressing this rezoning case.

June Cowles, Planner, giving sworn testimony, oriented the board regarding the conditional use hearing for Williams Street Station rezone – 6.1 acres located at 1548 East Williams Street, from the current zoning of Residential Agricultural and Planned Unit Development to Planned Unit Development District, and 2025 Land Use Plan amendment from High density Residential and Office Institutional Mixed Use to include commercial in the existing mixed use (may include office, residential, and commercial uses). Staff report is attached and incorporated as a part of the minutes.

Planned Unit Development Plan includes 3 buildings that are two-story and three-story adjacent to diagonally parked street (seen in many historic downtown areas); off-street parking is located behind and under the buildings.

PUD Plan proposes the following limitations:

- Property may not be used exclusively for commercial purposes
- Property may not be used exclusively for residential purposes
- No single-story buildings shall be allowed
- Upper floors of the buildings shall be usable space (not fake facades)
- Drive-through facilities and/or canopies shall be designed so as to be appropriate to the "historic downtown" design concept in terms of scale and aesthetics.

Uses listed in the PUD plan may be allowed as a mixed use. Uses omitted from the PUD Plan are listed on page 3 of the staff report.

Resource Conservation Area is 25.4% of the site which is consistent with the UDO (page 3).

Traffic Impact Analysis was completed by Wilbur Smith Associates; proposed development is projected to generate approximately 1,777 trips per day and approximately 165 trips will enter/exit the site during AM peak hours and approximately174 trips will enter/exit the site during PM peak hours.

Improvements are recommended:

- construction a southbound exclusive right turn lane with a minimum of 75 feet of full storage and a minimum of 150 feet deceleration length; a 300 foot deceleration length is desired.
- Provide separate northbound left and right turn lanes exiting the site.
- Construct all driveways to meet or exceed current NCDOT standards.

Project Analysis concludes applicant has reduced uses as permitted in the PUD and the buildings are set up as perpendicular to Hwy 55 and restrictions to be two and three story buildings to ensure it is not a strip commercial development.

Staff does not support the convenience store with gas sales use and fast food restaurants with a drive-through. Drive-through uses such as restaurants (similar to the Rain Cafe on Ten-Ten Road) and dry cleaners can be incorporated on the end of the buildings.

Staff supports the inclusion of commercial into the High Density Residential and Office Mixed Use Land Use without fast-food drive-through restaurants and convenience store with gas sales.

Staff recommends approval of the proposed Land Use Amendment to add commercial into the Mixed Use and the rezone of Williams Street Station PUD with conditions:

- Convenience store with gas sales shall be omitted form the PUD Plan
- Fast food restaurants with drive-through shall not be permitted in the PUD Plan,

Planning Board at the May 9, 2005 meeting recommended for approval the Land Use Amendment and Planned Unit Development Conditional Use rezone request with the following conditions:

- Convenience store with gas sales shall be omitted from the PUD Plan
- Fast food restaurants with drive-through shall not be permitted in the PUD Plan.

Mayor Weatherly opened the public hearing at 7:15 p.m.

Carter Crawford, giving sworn testimony, and speaking in favor, submitted the proposed Williams Street Station rezoning, and Land Use Plan Amendment (attached), and stating the proposed uses including the ones in contention discourages NC55 corridor as a commercial strip, and addressed the aesthetics and traffic movement. Photos depicted two story commercial buildings with diagonal parking and a gas station with pumps in the rear.

He submitted the PD Plan prohibits such building types with inclusion of:

- No single-story buildings shall be allowed
- Upper floors of buildings shall be usable space (not fake facades)
- Drive-through facilities and/or canopies shall be designed so as to be appropriate to the "historic downtown" design concept in terms of scale and aesthetics.

He submitted staff does not support the disputed uses, however feels restaurants such as Blue Rain Cafe and dry cleaners could be incorporated into the end of the buildings – to him – this statement makes clear staff is not opposed to the land use restaurant, drive-through, as long as it looks a certain way, noting this a design issue and not a land use issue.

He submits the Restaurant, Drive-through uses should be allowed with the aesthetics being handled at site plan review; same logic applying to Convenience Store with Gas sales. Photo illustrates convenience store on street front with gasoline sales at rear, and would fit into the Williams Street Station concept; would fit into the Apex Town Square property entrance to the west; establishes a streetscape pattern of human scale and important given proximity to NC55 traffic.

He submitted an overview of the PD Plan for Apex Town Square with Williams Street Station outlined in red; noted current NC 55 traffic problems and concerns with future development for this corridor. He noted the planning goal was to allow these uses at or near the US 1 interchange so to avoid a commercial strip, however disagrees with this strategy for achieving the goal, as commercial strips generate traffic congestion, and unattractive. By placing convenience uses at major intersections or interchanges, people are forced to access major thoroughfares to get to these uses. He provided a drawing of a collector street through a traditional neighborhood for the purpose of discussion analogous to NC 55 (each trip involved driving on the collector street and adds to cross-town traffic and the major reason collector streets are so congested). In traditional neighborhood development all land uses are included within the developed area and connected with small-scale streets and do not require the use of collector streets. He contends planning policy allows convenience uses only at US1/NC55 interchange and will not achieve the goal and if NC55 does not look like a commercial strip, would feel like one and to allow convenience uses at Williams Street Station will lead to a better outcome and would ensure Hwy 55 does not become a commercial strip due to the aesthetics and traffic congestion. He believes the design strategy of the PUD Plan and to allow these uses, has addressed both issues associated with these uses, are compatible with the downtown, and would provide for a better and more pleasant experience for people who live and work near there and for those driving through.

Discussion followed regarding with Crawford responding:

- Commissioner Jensen addressed incorporation of residential development (hopes, so; allowed and hopeful condos, apartments on second story above office/retail; market/developer decision whether people buy or not). Commissioner Jensen felt it was open-ended (noted this a rezoning of the property; will not build if thought no one would buy them; some photos so mixed use and wants it to work)

- Commissioner Schulze addressed Traffic Impact Analysis Improvements to NC55 (PD Plan addresses this and part of the site plan; actual trip generations can be derived from this and improvements to NC55 are part of that site plan approval; mixed uses are not known at this point and can't predict traffic generation.
- Commissioner Jones addressed the limitation of property use not exclusive for commercial purposes or residential purposes, could be someone living above the stores, asking how he perceives them (commercial is obvious, and no one wants a regular shopping center; it can't be an apartment complex; it could be mixed use); Commissioner Jones felt it was open-ended, with Commissioner Jensen asking if there was an option to dump residential, with Crawford responding, yes.
- Commissioner Schulze asked if the Photos show commercial uses; (photos showed drug store with street front being commercial with some office;
- Commissioner Gossage asked if photos show the two excluded uses (he showed the convenience store with gas in the back).
- Commissioner Jensen felt if it faces NC55, would look like a strip mall (responded it's not true and doesn't have to face NC55 and photo doesn't look like a gas station; if it did face NC55, there would be no parking out front and would look like a commercial building).
- Commissioner Jensen addressed the 50' wide thoroughfare buffer adjacent to Hwy 55; visualized NC55 and wants streetscape buffer to vary and not have a tunnel look - "B" Type Buffer (submitted it would be similar with slightly different parking to downtown Apex – you could say it's a tunnel too, and everyone loves that look).
- Commissioner Schulze addressed the permitted recycle/collection station use and appropriate way to have dumpsters (left in for dumpster); Rowland noted if it's part of a site plan, it would be fully screened.

Rowland having been sworn expressed concerned with the photo's being shown, and not having made this a part of the record; is this the way the development would be built or look like, wanting it said it would be this way for the record. Crawford responded this was a rezone and land use and not the site plan; language of the zoning conditions says "drive through facilities and/or canopies shall be designed so as to be appropriate to the historic downtown design concept in terms of scale and esthetics", and if the language should be stronger, so be it; he couldn't submit photos as illustrations and say it would look like the photos. He said it's not reasonable at a rezoning.

With no one else addressing this request, Mayor Weatherly closed the hearing at 7:40 p.m.

Mayor Weatherly asked Attorney Fordham to address the legal position regarding rezoning and conditions, and if uses are not conditioned out, then site plan is subjective to those uses, example gas stations. Any uses permitted under the rezoning; if a site plan came in that met all the criteria of the UDO, then it couldn't be rejected because it was a use that didn't seem to fit. At site plan stage you could enforce any requirements of the UDO or any restrictions that are placed on the PD Plan or rezoning directly on the plan or as conditional use conditions, but if its not one of those conditions or part of the UDO then you couldn't reject it based on esthetics unless there was some specific criteria that could be pointed too either in the UDO or rezoning condition.

Commissioner Jones clarified they could not reject a site plan because of the location of the gas pumps relative to NC55 and the building. Attorney Fordham responded this was true unless the condition is here in effect, specific on that point and he's not seen the language in this particular application, but if it said it has to be consistent with architectural standards of downtown Apex, then it would be a judgment call whether or not it met that, and would have some grounds to say it, but not as clear as if it said, gas pumps will not be facing NC55. Mayor Weatherly felt this was a site plan issue, asking for an example when the rezoning process was used to specify the location of a particular facility on site. He was not taking issue against what the Attorney's legal opinion, but he couldn't remember using that mechanism.

Attorney Fordham advised there probably had been a site plan attached as a condition on a rezoning before, where the whole site plan was part of the condition; at that point, it's not an approved site plan, but a planned development that is a condition on the rezone, so they would have to develop consistent with the plan submitted. Mayor Weatherly commented they had always felt a rezoning was permanent until changed and the development may change or flipped after its rezoned and while they would accept Carter's assertation or integrity involving his insertions he's making as far as what the property would be, if it comes into other hands, the rezoning remains with someone who might be less constrained to do what clearly the sentiment may be expressed; they haven't expressed any position on any issue yet, he's saying the rezoning carries forward beyond what assertions the individual owner today may be saying. Attorney Fordham advised the rezoning applies to land and not to the owner.

Commissioner Jones asked staff's perspective on the Planning Board's decision not to allow convenient stores with gas or fast foot drive-throughs. David Rowland responded they were asking for change in the land use plan, and currently specifies Office and High Density Residential, so they are requesting a change; they wouldn't necessarily have to recommend a change, but were trying to work with petitioner and recommend change that was somewhat and didn't go to a full strip commercial type use. Planning Board agreed with staff to compromise so there would be no drive-through or fast food type facilities, recognizing the request was for change in the land use and felt this was a good compromise and Planning Board did too. Rowland was familiar with the photos and visited both facilities and neither has drive-through or fast – food restaurants. His concern photos shown here, and Mayor Weatherly pointed out this could be sold to another person, if rezoned and they are not aware of these photo's they are not part of record, and felt it misleading to show photo's that are not part of the record – this is what it would look like, to guarantee and guard against what the Mayor is saying in terms of it being sold, and doesn't have to abide by the photos. It makes him uncomfortable to see the nice photos and hopes they do not base decision unless applicant makes it part of record.

Mayor Weatherly recalled being cautioned about material that's not part of the record. Attorney Fordham advised the legal principal is you can't rely on, and not saying anyone has represented that it will be done this way, but can't rely on representation that it will be done this way, unless its made a specific condition of the conditional use permit. You have to make decision based on all the possibilities that could occur under the rezoning and what's in the public interest in light of those things which are agreed to by the applicant as actual conditions; things that are actual conditions are no longer subject to someone avoiding them, they are part of rezoning or permit. Mayor Weatherly added if this were a part of the record, the text goes with photos illustrates the pattern of building that they proposed and not sure what that means. Rowland stated it shows scale and setback.

Commissioner Jensen noted a drive through is used by people who come off NC55 and opposite of the proposed concept is to keep people off the main artery; no one in this group will get their car to go through a drive through within the development, and doesn't make sense. If there's a drive through or gas station on NC55, it's the strip mall look. He's not against a drive-through or gas station, as long as they are not up front. Mayor Weatherly asked how they impose this condition, with Rowland responding the petitioner would have to volunteer it as a condition.

Mayor Weatherly asked if you would divide the site like a non-fast food and non-gas station tier. Rowland responded they could bring language back to the board; they were not recommending they do this, but if they think its necessary, he would offer they table or postpone decision and come up with language if they want to do this. Mayor Weatherly didn't know if it was consensus to do anything with the conditions the Planning Board felt was important, asking if they wanted to defer action for more work.

Commissioner Schulze agreed with staff that the area was important from an office stand point/residential and thinks to introduce things staff doesn't want – convenient store/gas station, is the wrong path to go and open to table it for the consideration, but not inclined to approve a convenient store/gas station.

Commissioner Gossage noted other uses permitted restaurant in general, convenient store, grocery general, grocery specialty – they were talking about removing elements that are traffic related which are vehicles going from where to where; get in their car and drive to the gas station or drive to the restaurant – he's having trouble understanding why they would need those specific uses as restaurants with drive throughs with a gas station here; he mentioned running to the store, there could still be a store here can be store here and they were not removing that use or not proposing to remove that use.

Mayor Weatherly didn't have any advice to preclude those as he eats fast food and uses gas, with Commissioner Gossage being specific regarding drive throughs; Mayor Weatherly was saying they might be able to mitigate the bad affects if they were restricted from being in site from – he thinks Commissioner Gossage was talking about prohibiting them all together. Commissioner Gossage responded this was the proposal.

Commissioner Jones noted certain elements he likes – building is perpendicular to NC55, there was one entrance off NC55; he doesn't like the idea of not having some sort of traffic generating – it will look like a stripe mall whether it is or not – with the Mayor interjecting the other part of NC55, with Commissioner Jones adding the things they are trying to change.

Mayor Weatherly asked if they want this to go back for more work or come to a decision. He asked petitioner Crawford what he desired, with Crawford responding he thinks if they should make the language stronger they could work with staff. Mayor Weatherly noted Commissioner Meckes out of town on business and conflicted which direction to take – out right prohibition and not wanting to spend a lot of time working around location if this is where they are coming from and similarly if the issue isn't out-right prohibition, then give them some direction on the other, but he's not sure where they are at this point.

Commissioner Schulze stating his feeling is prohibition, but would leave the door open for possibility but now it's slim. Commissioner Jones was willing to consider allowing those uses if there was language that made him comfortable they weren't going to be along NC55, but in the inner part of the development.

Commissioner Jensen could see maybe inner, but on the other hand if a person is going to get gas, he could guarantee they are in the car and on NC55 or US 1, and would agree with Planning Department, you would want that type commercial at some node, you don't need something like this, but another upscale restaurant if anything, but not a drive through with Commissioner Schulze agreeing.

Crawford asked they have another chance at the language, with Mayor Weatherly assuring him he could, or they could give their answer but thinks the board would accommodate his request. Crawford was willing to try and return in two weeks.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to defer decision on this request until June 21, 2005. Motion carried unanimously.

End of Public hearing # 1with decision to be (deferred to the June 21, 2005 meeting).

Rosetta Radtke, Design Planner

Public Hearing # 2 – Rezoning Case #05CU08

Public hearing and possible motion regarding Rezoning Case #05CU08, Town of Apex, petitioner, seeking to amend the 2025 Land Use Plan and rezone from Medium Density Residential to Conservation Buffer Conditional Use District classification to existing park acreage and creating an educational nature park and greenway connection to the property located on Apex Barbecue Road, southeast of Holland's Crossing subdivision containing 50.398 acres.

Town Clerk administered oath to those addressing this rezoning case.

Radtke stated the Planning Board unanimously recommends approval for this project, having met May 9, 2005. The purpose of the request is to add to the existing park acreage and create an education nature park and greenway connection with the 50.398 acres obtained by a grant. Map was shown to orient the board to the location of the property. Current Land Use Classification is Medium Density, and proposed Conservation Buffer Conditional Use.

Director of Parks and Recreation John Brown stated this was the Seymour Tract

Mayor Weatherly opened the public hearing at 7:55 p.m. and with no one addressing this request, closed the public hearing.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the request for rezoning and amending the Land Use Plan for Rezoning Case # 05CU08. Motion carried unanimously.

End of Public Hearing # 2

Bruce Radford, Town Manager

Public Hearing # 3 – FY 2005-05 Annual Budget

Mayor Weatherly opened the public hearing regarding proposed FY2005-06 Annual Budget at 8:00 p.m. and with no one addressing the proposed budget, closed the public hearing. An ordinance to adopt the budget will be presented at the June 21st. meeting.

End of Public Hearing # 3

David Rowland, Director of Planning

Public Hearing # 4- Annexation Petition # 374

Public hearing regarding Annexation Petition #374, Joseph & Ruth Lee, Jr.; Ervin Judd; Dan Heavner and Cecil Heavner (C.O. Heavner Heirs); Frank and Ella Holding; Walton & Lois Parker, owners/petitioners; petitioning to annex 54.684 acres into the town's corporate limits; property located on NCSR 1448 Bobbitt Road on the east side of NC55 south of Apex; possible motion to adopt an ordinance to extend the corporate limits.

David Rowland, Director of Planning oriented to the property location next to the Miramonte Subdivision, a planned unit development with single-family homes and townhomes, anticipating this to be same, and noting this was a voluntary annexation, with the land use classification of high density, with property lying outside the ETJ.

Mayor Weatherly opened the public hearing at 8:05 p.m.

Jason Bertoncino, PE, Withers & Ravenel, Inc. Cary, NC spoke in support of the annexation on behalf of the petitioners.

With no one else addressing this annexation request, the hearing was closed.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to adopt an ordinance to extend the corporate limits by the 54.684 acres for annexation # 374. 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 Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Nancy Hall and, David Bristol, New Hill residents, an unincorporated area south of Apex, spoke against the proposed site for the Regional Wastewater Facility, stating they have no voice in the process for selection, disappointed and outraged they had no notice the 200 acres of land in New Hill community was to be condemned for the facility and called it a secretive site selection process; further Apex was not representing them, and to select New Hill for the site was undemocratic. Site will be located near churches and historic properties and would put the future of the community center in jeopardy. Cary is the lead agency in this project with Apex, Morrisville, and Holly Springs. Asked why Progress Energy had not been approached for a land purchase further away from the core of the community; requested Board ask Cary to consider other sites and protect the citizens, tax base and character.

End of public forum

NEW BUSINESS

Lee Smiley, Director of Finance
New Business Item # 1 – Resolution Authorizing Issuance of General Obligations Bonds
Possible motion to adopt a resolution providing for the Issuance of $7,500,000 General Obligation Public Improvement Bonds, Series 2005 and dated July 1, 2005.

Lee Smiley, Director of Finance stated the town is two weeks away from the bond sale and all is on tract. He asked the board to adopt a Resolution providing for the issuance of the bonds.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to adopt the resolution providing for the issuance of $7,500,000 General Obligation Public Improvement Bonds, Series 2005 and dated July 1, 2005. Motion carried unanimously.

End of New Business Item # 1

Mayor Weatherly
New Business Item # 2 - Appointment to Planning Board
Mayor Weatherly recommended the appointment of Graham Wilson to the Apex Planning Board for the unexpired term of Louis Iannone, with term expiring December 31, 2006.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the appointment as recommended. Motion carried.

End of New Business Item # 2

APEX BOARD OF COMMISSIONERS

Closed Session of June 7, 2005

MINUTES AND GENERAL ACCOUNT

Mayor Keith Weatherly called to order a Closed Session of the Board of Commissioners at 8:22 P.M. on Tuesday, June 7, 2005, in the Executive Conference Room of the Apex Town Hall. The Closed Session had been called for the purpose of receiving legal advice from the Town Attorney concerning a unilateral offer received from Community Properties, LLC, regarding the condemnation of land for an easement related to the extension of Chanticlair Drive. Along with the Mayor, Commissioners Jones, Jenson, Schulze, and Gossage were present. Commissioner Meckes was not present. Town Manager Bruce Radford, Town Attorney Henry C. Fordham, Jr., and Assistant Town Manager Mike Wilson were invited by the Board to attend the Closed Session.

The Mayor began the session by calling on the Town Attorney who explained that Community Properties, LLC, had made an offer to pay to the Town the legal fees and other expenses associated with the condemnation of the land required for the extension of Chanticlair Drive, provided there could be some cap or limit on these fees and expenses charged to Community Properties, LLC, with the Town absorbing any fees and expenses above the cap. Discussion by the Board followed concerning what an acceptable cap might be. Ultimately, the Board members agreed that a cap was not appropriate and that Community Properties, LLC, should bear all expenses as the easement acquisition was entirely for the purpose of facilitating their development plans. More discussion followed. In an effort to treat Community Properties, LLC, as fairly as possible, it was agreed by consensus that the Town Attorney would inform Community Properties, LLC, that they could choose the attorney (including the Town Attorney) that would provide to the Town the legal services regarding the condemnation but that Community Properties, LLC would be responsible for all legal fees and expenses.

With all business complete, the Mayor and Commissioners ended the Closed Session at 8:41 P.M. and returned to the Town Hall Boardroom to resume their regular meeting in Open Session.

J. Michael Wilson
Assistant Town Manager

The above minutes were approved on the 21st day of June, 2005.

Georgia A. Evangelist
Town Clerk

Keith H. Weatherly
Mayor

JMW/Execsess.151.

* **PUBLIC INSPECTION STATUS:** **Release authorized by:** _____
Town Attorney

Date: _____

* approved for release by Town Council at their meeting of February 21, 2006.

Georgia A. Evangelist
MMC

Bruce Radford, Town Manager
New Business Item # 3 – July 5, 2005 Board of Commissioner's Meeting
Possible motion to cancel the Board of Commissioner's July 5, 2005 meeting.

Mayor Weatherly offered it was traditional the first meeting in July of the Board of Commissioners be cancelled to allow staff to close out the current government fiscal year end and prepare for a new one, vacations, relaxation, etc. and recommended the same to the board.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to cancel the July 5, 2005 Board of Commissioner's meeting. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Attorney Hank Fordham:
Possible motion to move into Closed Session at 8:42 p.m. to receive legal advice about a unilateral offer received form Community Properties, LLC regarding condemnation of land for easement and temporary construction easement related to the Chanticlair Drive Extension.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session at 8:15 p.m. as stated by the Mayor. Motion carried. Closed session minutes are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jensen to move out of closed session and back into regular session. Motion carried.

With the board having moved back into regular session there was a motion by Commissioner Jones and a second by Commissioner Gossage to allow Tommy Esqueda, Engineer for Camp, Dresser, McKee and consultant for the regional partnership to discuss the process for choosing the recommended site for the regional Wastewater Treatment Facility. Motion carried.

Mayor Weatherly recognized Tommy Esqueda, who reviewed the site selection criteria which focused on the discharge potential of a site, the available pumping corridors from the various towns to the site, and the favorable conditions that should be found on a potential site. Board discussion followed regarding the suitability of the recommended site. Discussion ended with a request that Esqueda provide the Mayor and Board with copies of the site selection report. The copies would be sent to Town Hall the same week for distribution to the board.

ADJOURNMENT

With no further business to come before the Board, there was a motion made by Commissioner Gossage and second by Commissioner Schulze to adjourn at 9:21 p.m. Motion carried.

The above minutes were approved on the 21st day of June, 2005.

Georgia A Evangelisti
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, June 21, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2 nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Ground Breaking Ceremony for Community Center Expansion

was held at 6:30 p.m. Community Center, Apex Town Campus

Mayor Weatherly called the meeting to order with Commissioners Jensen, Gossage, Jones, Meckes and Schulze present. Invocation was given by Commissioner Jones.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those attending the meeting.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set; consent agenda was modified as follows:

Manager Radford asked Old Business Item #1 Rezone Case #05CU04 be continued to July 19, 2005 as requested by the petitioner. Manager Radford advised Public Hearing # 3 Rezone Case #05CU07 should be readvertised for July 19, 2005 meeting and asked this item be removed from the agenda. Commissioner Jensen asked to add an item to discuss the wastewater facility site selection with possible decision to request further delay and evaluate additional sites, as did Board of County Commissioners, and to discuss Apex Board of Commissioners authority in assisting in the site selection (New Business # 4). Mayor Weatherly asked to include for consideration a Resolution Opposing Mandatory Year Round Schools (New Business # 5).

Mayor Weatherly asked for a motion to approve the consent agenda and the regular agenda as modified.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to adopt the consent agenda and further the modifications to the regular agenda as requested.
The meeting agenda was set as modified. Motion carried.

1. Minutes of June 7, 2005 Board of Commissioners Meeting.
2. Minutes of June 7, 2005 Board of Commissioners Closed Session (separate cover).
3. Budget Ordinance Amendment # 17 to transfer funds from Town's Land Acquisition Capital Reserve Fund to General Fund to complete purchase of property near downtown for future parking.
4. Resolution authorizing Wake County Revenue Director to collect taxes on behalf of Town of Apex.
5. Site Plan – Quarles Petroleum, located between Schieffelin Road and Center Street.
6. Site Plan – Salem Street Arboretum, Commerce Office Park, LLC., 1930 N. Salem Street.
7. Contract – Waste Industries for curbside solid waste collection.
8. Contract – Waste Industries for curbside recycling.
9. Contract – Waste Industries for commercial dumpster service.
10. Contract – Centurion Construction Co., $639,000, and authorize additional components of the upfit of the 3rd. floor of Town Hall.
11. Personnel Committee recommendation: Adopt Position Classification Plan FY05-06.
12. Amendment to Town of Apex Medical Reimbursement Plan, Pre-tax Premium Plan and Dependent Care Reimbursement Plan to amend definition of "dependent" to comply with IRS's new regulations.
13. Wake County Tax Report approved by Wake County Board of Commissioners in regular session June 6, 2005.
14. Consent Judgment in the Andrew J. Gregory & Hennie A. Gregory condemnation case.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda that was set as modified.

PUBLIC HEARINGS

Rosetta Radtke, Design Planner

Public Hearing # 1– Rezoning Case #05CU03

Public hearing and possible motion regarding Rezoning Case #05CU03, Jones, Cnossen & Dolle Engineering, petitioner, seeking to rezone from Planned Unit Development and Residential Agricultural to Traditional Neighborhood District Conditional Use District classification, 41.70 acres located on US 64 West between NC55 and N. Salem Street.

The Clerk administered an oath to those speaking during this hearing.

Rosetta Radtke presented the staff report orienting to the property location for requested "Peachtree Landing" PD Plan for TND Case # 05CU03 on the south side of US64 West, and north of Haddon Hall Subdivision and Haddon Hall Place. Staff report is attached an incorporated as a part of the minutes.

Radtke advised a valid protest petition had been filed and triggers the three-fourths super-majority requirement for approving this rezoning.

Project has thoroughfare buffer with utility easement, bounded by buffers, green space, pond and park to backside; centered by extension of Blackburn Road to function as a right-in and right-out onto US64; roundabout centers road circulation to the east as required with second round-a-bout; residential area and commercial area borders both sides of Blackburn Road; not determined by NCDOT the potential median restriction aligning with Fern Valley and Castlewood Subdivision. Plan hopes for left-in and left-out instead of total median closure which is possible for NCDOT to decide.

Impact on neighboring properties was noted Blackburn Road, with some folks wanting this for access and safety, while some folks do not, even though it has been a requirement of the Apex Transportation plan for some time; access and safety of median restriction from Fern Valley will be discussed by the residents. A neighborhood meeting was held in March.

Staff reports the proposed project meets requirements of the UDO, 2025 Land Use Plan, and Transportation Plan. All TIA recommendations are proposed to be met by the project and would convert the full movement median at present across US64 to left-over such as there is on Kelly Road and right-in and right-out Blackburn Road.

RCA satisfies 27%; buffers largely border Haddon Hall residents, with parking and green space against existing residents; fee-in-lieu for recreation is proposed and further will provide a .7 acre open playing field.

Landscape master plan will be submitted with the initial site or subdivision plan basically providing for street trees and master plant type spacing, etc. for thoroughfare and residential buffers.

Architecture and Design will be a mixture of shapes and sizes and what would be wanted in a Traditional Neighborhood District ranging from one story to three story buildings; non-residential structures will have exterior materials of brick, stone, precast concrete, and/or wood – no vinyl.

Property owners association will take care of the common areas and basically would delegate an architectural review committee which will then preside over architectural plans both non-residential and residential as long as approving the master sign plan. This project has put in a special allowance if you put a master sign plan in with PD Plan which increases the size slightly, provides a few additional options. Sign plan is a part of the packet and the review committee will have the first cut in approving this before those permits come to town for approval.

All utilities will be provided by Town; developer will work to provide an over-sized gravity sewer main which runs basically down the primary road with electric utilities out front and water from the Blackburn Road area.

Planning Board decision was split in their recommendation voting 3-3 with 1 recuse.
Staff would recommend approval as it meets the UDO, Land Use and Transportation Plan.

Radtke clarified the following:

- Transportation plan intent was to connect Blackburn to US64; required sidewalks and pedestrian linkage will be up and down the main road; there will be some traffic calming measures proposed – round-a-bout, angled parking on a portion of Blackburn to the round-a-bout that would slow traffic). Sidewalks will provide a greenway linkage in connection with the parks and recreation master plan and has been on the transportation plan for quiet a while, and a requirement of the project.

- Buffer on US64 will not be the normal thoroughfare buffer but a Type A Buffer
- Parcels abutting to Haddon Hall were noted for size and uses –
  Parcel I – no square footage; retail and mixed use and residential, RCA and Buffer park - 3.39 Acres all RCA
  Parcel B – 12 residential lots; .34 Acres in buffer, with 15′ public utility Easement running north of the public road
  Parcel H - .75 acre park and over 1 acre of RCA
  Parcel G – 3 acres of RCA with pond
  Parcel F – residential with 3 l/2 acres just over 25 lots
  Parcel E & B – 12 lots - 25 lots respectively – only non-park green space buffer
- Parcel H and Parcel G and Parcel I will have nothing built on them.
- .75 acre park has a public component satisfying recreation requirement with some credit for RCA
- Commercial area on US64 matches with 2025 Land Use Plan for mixed use – commercial, office and institutional and residential (there has been some discussion about Parcel C and the alignment of Blackburn Road - staff thinks this is in agreement with the 2025 Land Use Plan); uses do not include big box stores
- Residential units are planned over retail providing for a Meadowmonte feel with diagonal parking, round-a-bouts, retail with residential
- Recreation requirement proposes and with Recreation Commission approving the fee-in-lieu based on the number of units it will have when it's finished; RCA is not being used to satisfy the parks requirement (stated by Commissioner Jones); there was nothing on the parks master plan for this particular spot; open space is provided.
- Parcels A & C are noted in darker shades on the map:
  Parcel C has maximum 29,400 square feet of retail
  48,000 mixed use up to 15 units residential and buffer along Blackburn Road;
  Parcel A has maximum 68,000 for retail – 85,500 for mixed use - 14 units possible; same buffer
- Restrictions to A & C are listed in Section 5 of the Peachtree Landing report, permitted uses, with maximum height for non-residential would be 45 feet (With ground floor retail office and commercial there could be two levels of residential units above them and in Parcel D with maximum height would equate to three story non-residential - Commissioner Meckes)
- .75 acre Park has a public component (Commissioner Jensen added opening Blackburn takes quietness away and from the kids; this would give component to play there in a safe zone and thinks it important to be public for Haddon Hall)
- Parcel D has 30 lots and l.33 acre buffer
- Parcel E has 30 lots and 4 acres (residential uses listed on page 4 of the PD Plan – duplex, tri-plex, quad, single-family detached or any townhouse type products) and stubs out to the east
- East of this parcel is mixed use of commercial and medium density residential and office and institution and required for a mix (Director of Planning David Rowland stated there's an intervening parcel of medium density residential and further up to Salem Street it becomes a mixture of office, residential and retail)

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

Those having been sworn and speaking in favor:

Stewart Jones, Jones, Cnossen, and Dolle Engineering, 106 West Chatham Street, Apex, introduced Mike Horne, with Kimley Horne and Associates there to answer questions and presented the following.

- Staff has worked on the project from the beginning regarding planning issues, utility easements along US64, sewer issues, alignments and dedicated areas.
- Blackburn Road extension has been on the Transportation Plan for Apex for nearly 20 years and no surprise, and part of the project from the beginning, with deed restrictions recorded showing this access in this location for a long time.
- Traffic study improvements: working with NCDOT on access issues on US64 – NCDOT has said they want to close the US64 median – are petitioning NCDOT for a left-over like at Kelly Road with a left into Peachtree Landing and left turn into Fern Valley and no left turns out of each side street – they need approval of the plan before moving forward with NCDOT before approving the drive permit for Blackburn Road.
- Project meets intent of Land Use Plan calling for mixed use, higher density of commercial uses on the west side of Blackburn Road
- TND – has neighboring commercial use on the east side of Blackburn Road for a village feel; requiring two story buildings on Blackburn Road; diagonal parking all for a desirable feel with diagonal parking to calm traffic similar to the round-a-bouts, and working with the police to have stop signs at Blackburn Road and Abbey Knoll Drive the street to the south into Haddon Hall as a traffic calming device
- Transition provided from medium density single family residential Haddon Hall out to a limited access major thoroughfare (either residential or a park, or a buffer, or RCA adjacent to Haddon Hall)
- All commercial uses are pushed out to US64 being sensitive to existing uses noting there are no buffers from Haddon Hall as they came before the UDO and no buffers were applied (project provides that buffer and more than the minimum amount of RCA and buffer; initially project proposed one-half acre park in the PD Plan clear, graded with sidewalks, picnic area, gazebo, statutes, that will make a public feel to the park – want folks to shop and use the park)
- Project is a small village fee – hoping it has a downtown Apex feel to it
- US64 is steep; noted the second round-a-bout behind Parcel C is for landscape and separate it from the residential areas; restrictions on mixed use buildings on Parcel A & C will be double fronted and esthetically pleasing on both front and back as they will be seen on US64
- There are site distance issues coming from US64 (Parcel A buildings may be two stories above Blackburn or one below due to the grades)
- Limited retail uses to first floor, with office or residential on second floor or a mix
- Have capped residential quantities and retail uses and office uses and mixed use to maximums allowed on the parcels, having cut back the amount of non-residential or residential uses on Parcels A and C, working with a traffic impact study to define how they get out onto US64, allowing them to push NCDOT for a left-over onto US64.
- Noted five years ago, a plan could have called for more commercial uses on this property; they have 100,000 square foot of retail and not much on 40 acres of land

Summary: He heard for a long time – land use plan with Apex wanting TND and feels this is a tremendous opportunity to set a standard and show developers what Apex wants.

Mike Horne, Kimley Horne, 3001 Weston Parkway, Cary 27513, addressed questions regarding the drive access onto US64 and understanding US64 is a limited access highway, and the previous established drive. The deed has an old right-in and right-out drive onto US64 which is further up on US64 that served the old peach packing plant; these are two separate parcels; owner wanted the factory and drive there with NCDOT wanting the drive moved across from the median open across from Fern Valley and appeared he didn't want to. It was clear in the deed they would allow one break in control located at this spot and at such time he did away with the peach facility it would revert back to this opening and the intent of NCDOT. He asked NCDOT about other access and they said no and surprised to see the deed when brought forward.

Rowland stated a correction – the property on the land use plan shows in addition to medium density residential, office and institutional and transitions to office, residential and commercial toward Salem Street and showed it on the map. Rowland noted Copeland Road access that serves three to four homes farther up on US64.

Jim Weaver, 106 Dundee Court, Cary spoke in favor of the plan and noting this a good start and overdue and this being the highest and best use of land on US64; he's a landowner across the street and the road into Fern Valley has been there a long time and the basic road to the plant is still in use and used by go-carts, four-wheel drives, but no deer anymore. Urge the plan to go forward and getting sewer and highway entrance and outlet network in the plan to favor all.

Sue Sennert, 1101 Brittley Way, Apex supports the opening of Blackburn Road with comments presented to the Town Clerk, noting increased traffic on Brittley Way, limited entrances into Haddon Hall, safety issues, and the road having been on the transportation plan, believing the designers of Apex Transportation Plan considered all factors to open Blackburn Road to Hwy 64 as necessary and urged board to support the project and uphold the transportation plan to open Blackburn Road to Hwy 64 East.

Those having been sworn and speaking in opposition:

Daniel Martin, 204 Persimmon Place, Castlewood, spoke for other residents and urged the board to reject the proposed plan that would force Castlewood residents to turn right onto US64 with a left-over and hamper response of emergency vehicles and could have serious consequences; the location to Shearon Harris Plant and the emergency evacuation route east, and with the left-over would cause residents to travel west on US64; Haddon Hall has two access points and may not need an additional one; Castlewood has one access and urged not to facilitate Peachtree Landing at expense of crippling the sole access of Castlewood residents; if Blackburn Road is rerouted to intersect US64 some distance away from Fern Valley Lane, NCDOT might leave it alone showing two examples of possible realignment – if in this case, outcome may be Apex making the decision instead of NCDOT; urged board reject the rezone as it now stands.

David Cole, 206 Persimmon Place, Castlewood, shares the same concerns, and noted he bikes to RTP and noted US64 traffic control situation for motorized traffic; look to calm traffic and make it more accessible to foot or non-motorized traffic and bikes – there are others who cycle in Castlewood.

Serapon, 104 Beechtree Court, Knollwood, lives here 20 years and proud to call Apex home; 20 years ago some said do the smart, slow growth, not like Cary – was part of the Appearance Commission for two terms and noted the great job by the board, until now, and not sure yet asking to keep neighbors and not high rise buildings and opposes the rezoning due to public safety, quality of life – wants to stay here, not move to Chatham County, and urge board to reject this project.

Ottway Hill, 1117 Blackburn Road, spoke in opposition to open Blackburn Road to US64 for Peachtree Development, being concerned with the impact to the community and their quality of life; Blackburn, a residential street to serve their community, will become a by-pass and an access road to the shopping and short-cut through Haddon Hall to access shopping at Peakway Center from NC55 and US64. Original developer of Haddon Hall wanted the end of Blackburn to be a cul-de-sac and the Planner for Peachtree Landing did not require it be opened as a part of the project and offered a pedestrian walk way for residents of Haddon hall to access Peachtree Landing – Town's intent to open the road was to give access to Haddon Hall, with original plan drafted over ten years ago and there have been lots of changes and opening it now with current development would dis-service the residents it was meant to serve. He noted vehicular traffic on Blackburn Road, walkers, bikers, and baby strollers, and an increase in traffic with the opening of this road and less usable to the residents. Supports efforts to control speed and traffic on Brittley Way and not a solution to the traffic problems on Brittley Way; speed bumps are not an option for Blackburn due to the steep grade in the road and little that can be done to control traffic. Peachtree Landing will increase traffic on those streets. Understands the balance of uses by the town, but can meet those needs without opening Blackburn to US64. Urge board to protect the community and deny the development.

Ray Anoldi-Debona, 1112 Blackburn Road, lives at the bottom of the hill adjacent to the Greenway and noted the traffic problem there – speeding, bike safety, and to open Blackburn would make the problem worse; he doesn't want to wait for an accident to happen and sees this unacceptable.

Susan O'Brien, 1902 Abbey Knoll Drive, lives five houses from Blackburn Road and addressed walkers, strollers, kids, and with the 25 mph, due to the grade, they move faster; asked before opening road, see the number of children and residents walk, ride bikes, bus stops at Blackburn and Abbey Knoll, noting cut through traffic to get to US64 morning and evening. Noted past residence with speed bumps, stop signs, no right hand turns and no left hand turns during cut-though hours and posted an officer to enforce it – there were accidents and kids hit on their bikes; doesn't think we could budget an officer there – doesn't want the road open and asked for options – walkway or not open it to others ; she thinks it's fine for Peachtree residents to access US64, but with limited access you can only m ake a right-hand turn how do they leave – go through Haddon Hall. Brittley Way is a problem and don't an additional problem. She has questions regarding the impact, number of people and population and how they leave their neighborhood. Urged board to visit their neighborhood – Apex will not be good living if kids can't be out on the road.

Barbara Gardside, 1115 Blackburn Road, addressed the planning board meeting and plans for Blackburn to open to US64 and looked at other roads opening onto US64 and noted them big wide roads and no turn offs into neighborhoods but are main access roads; Blackburn and Fern Valley are not wide but neighborhood streets; parties with additional cars and traffic does not have room for neighborhood cars to park and traffic back and forth – a neighborhood street; to open to US64 should have been built wider and an access road – hind-site look at the impact on neighbors and afraid for Haddon Hall, specifically Blackburn Road. Growth is nice in Apex, but when this opens there will be traffic not planned on when the road was made.

Windy Hill, 1117 Blackburn Road, opposes the opening of Blackburn Road to US64; noted two dips towards Abbey Knoll and one in another direction and would pick up speed; developer offers stop signs and do need it however, it's at the top of the hill and drivers will stop and pick up speed down the road. She's concern with the impact of the development on Haddon Hall.

Hillary Erb, corner of Haddon Hall Drive and Blackburn Road, is not opposed to the development but the opening of Blackburn; Haddon Hall drive is super busy and Blackburn as well with folks running the four way stop – speeders on Blackburn and most of those are Haddon Hall Residents; doesn't see it that far for folks to go around NC55/64 to get to the shopping center. It's already a busy intersection and sees cut throughs from NC55 of folks not living in Haddon Hall to get to Salem, via Brittley Way which is already a problem.

Ed Jasper, 1208 Blackburn Road, lives at the top of the hill, addressing speed calming and traffic calming testing his truck and car and having to rid brakes to stay under the speed limit; doesn't oppose the development and needed for the community, but opposes opening of Blackburn Road, noting the steep hill, and concerned for the neighbors, and the street is not as wide as Haddon Hall Drive.

Leone Hicks, 2007 Abbey Knoll Drive, noted the bus stop at Blackburn Road and Abbey Knoll, year round schools, increased traffic, and opposed to opening Blackburn Road, noting the 20 year plan for Blackburn to open now needs to look at new information and not that of 20 years ago to re-assess where we are today; she lives along the green belt and has no fenced yard and exposed to everything off NC55 and can have a fence there.

Julia Mallet, 2121 Abbey Knoll Drive, addressed child safety, bus safety, and to open Blackburn there would be more traffic; kids ride bikes, people walk dogs, and come from the pool – asked there be protection for the safety of the kids.

Misty Lane, 1815 Abbey Knoll, noted the good points made, and not against the project as it adds to Apex, and concerned the access of Blackburn to US64 – it's not wide, has to swerve around cars and increased traffic, once done, it's done, look at alternatives, make it safer – development will add to Apex but the folks across the road have offered two options for access – get together and look at alternatives to access Peachtree.

Mayor Weatherly closed the hearing at 8:15 p.m.

Clarification was made:

Rowland advised Blackburn Road has a 60 foot right-of-way and 32 foot back to back; Haddon Hall is the same with sidewalks on one side. Staff noted it stubbed for years and designed to intersect with Fern Valley with their position being the more connections to major thoroughfares, the better, as it helps disburse traffic, provides alternate ways in and out and supports the opening in accordance with the plan and feels it needs to be made given the growth of Haddon Hall and the more access points the better. Commissioner Schulze agreed.

Rowland was not sure why speed humps could not be placed there; there's a process to follow that warrants speed humps and not sure that process would not bear out. Mike Horne would be concerned with grade, and noted the proposed parking for Peachtree, two round-a-bouts and petition Police Department for a four-way stop that would slow traffic.

Commissioner Gossage addressed the median with full movement in front of Castlewood, noting there would be left outs from Fern Valley or Blackburn if this opening occurs, asking if it could be right-in and right-out, with Horne stating no, left-overs, and giving the process with NCDOT to extend Blackburn, with no development plan; property owner wanted to promote land for sale and recognized Blackburn was needed for marketing. They went to NCDOT with a driveway permit, and asked NCDOT if they could extend Blackburn Road as part of the transportation plan for the town, and make this connection and NCDOT said no, they would not allow it, and took their permit off the table; they wanted to close the median opening regardless. He stated Mr. Martin wanted them to believe it was their fault, and they may be the person coming forward with this, but not their fault NCDOT wants to close this median opening even if they go away. NCDOT wanted to see a plan to show how much traffic would be generated, and based on the study would let him know if there could be more than right-in and right-out; he's asking NCDOT if he can have a left-over, and not sure he has a left-over; he's waiting for a response of the traffic study from NCDOT for a concurrence to put his drive permit back – they have told him the most they will consider is a left-over, and not ask for a full movement – it wouldn't be reviewed but would look at a left-over for this location. He stated if he did nothing, NCDOT was looking to close this median, and he's trying to keep it open in a fashionable level, and is a left-over in both directions; NCDOT is looking at this corridor very heavily.

Commissioner Jensen asked if there was no left-over into Blackburn Road, would they allow Fern Valley to remain full access; seems to him a trade off – getting left-over into Blackburn and Fern Valley looses their left onto US64. He would be in favor to leave Fern Valley alone and not try for the left-over because it jeopardizes them. Commissioner Meckes felt to get the trade, you had to be in a position to negotiate and we have never been in a position to negotiate with NCDOT. Commissioner Jensen would rather give up the left-over than negotiate with someone else's access; looks like we are trading one groups access for another; logically he could see a right-in and right-out and full access for Fern Valley. Commissioner Gossage noted anything here would be more than NCDOT's plan. Horne noted the question as being could they have some type limited access on this development side and still keep full movement on Fern Valley – he doesn't see this as an NCDOT option giving an example of a left into this location and not left out however across the street they would have a left back out. Commissioner Jensen would have the median sign saying they way to go – Horne didn't know of any such design that would allow one side with a movement being discussed and the opposite side to allow full movement. Horne asked if he was wanting to keep right-in and right-out at Blackburn and keep full access at Fern Valley; there's a possibility of a design that could work but afraid of what NCDOT has told him with their desire to close this median opening and would suggest that the two alternates offered – Alternate B on the down hill side with crest and closer to NC55 ramp and not feasible, and Alternate A the grade and site distance is fine for right-in and right-out, but not where the control of access break is and the deed restriction allowed by NCDOT. Commissioner Jensen was only asking a right-in and right- out of Blackburn and to allow Fern Valley full access; Horne thinks if they ask, he's afraid NCDOT will still close the median, and even if he restricts his request for right-in and right-out feels they will close the median.

Commissioner Jones stated no matter what, feels Mr. Martin made good arguments to health and safety as to why this shouldn't be the case and being able to turn east on US64 is important to the Castlewood residents and should move on this regardless of the action taken. Commissioner Gossage added this may not be up to us.

Commissioner Meckes asked the likely hood of a left-over opposed to right-in and right-out for NCDOT to close the median vs. right-in and right-out for everybody. Horne's prediction was NCDOT would allow the left-over to occur in both directions. Commissioner Meckes asked if emergency vehicles would go across – with Horne noting Castlewood with one point of access and all been with developments with one point of access.

Commissioner Gossage asked if there is a right-in at the point of the deed restriction and right-out further east – breaking them up and less of a point across from Fern Valley and also putting the right-out further and helping Haddon Hall where its' not as attractive as a cut-through. Horne stated it was clear in the deed where the break of controlled access and no more than 60' wide; and to get a right-out would have to shift it outside the break and to change the control of assess is difficult; not impossible however in 25 years he's been able to modify or break control of assess less than five times.

Commissioner Jones clarified without the deed, when he went to NCDOT he was saying there would have been no access to this property on US64; what flexibility do we have. Horne responded they were going to use the original driveway to the Peach packing plant and not align with Fern Valley, and told they couldn't use it.

Commissioner Meckes questioned making this a cut-through and that only those having access to Blackburn's connection on US64 are those coming from the west headed east and would have to drive by the NC55 exit and then if a cut-through would purposely drive by NC55 and up to Haddon Hall Blackburn and US64 and turn and go back into Haddon Hall to get back to where they are going and since there's no left turn headed west – left over. Horne doesn't see it becoming a cut through however does see Haddon Hall residents using it and will with this connection. Commissioner Meckes came back to connectivity and cut-through. Commissioner Jensen noted connectivity as a way in and out of a specific subdivision but cut-through is when someone goes through, asking if they could designate Blackburn to Haddon Hall Drive to be by ordinance, not a cut-through road, noting the sign at Vintage Grove that says no through traffic, but there's no ordinance behind it, but could pass an ordinance and could be ticketed.

Commissioner Schulze asked about increased traffic on Blackburn, with Horne responding 300 to 400 vehicles per day; he doesn't see it being cut through but people destined within Haddon Hall who will use that, yes he sees this as the increase from those Haddon Hall residences, and you can start at zero and would increase to Haddon Hall Drive and would hope a decrease on the other streets, with Commissioner Schulze adding accomplishing the goal to disperse traffic.

Commissioner Jensen again stated an ordinance for no cut through doesn't hurt anyone with Commissioner Meckes stated an ordinance would require enforcement and would have o stop folks asking where they are going.

Horne responded this development "Peachtree" doesn't need the connection and could operate with access to US64 and no connection to Blackburn Road; the whole picture is does Haddon Hall really need these multiple points of access. He's stated many times interconnectivity is the way to go.

Commissioner Meckes noted this connection planned many years ago, things have changed, and make plans recognizing things will change and asked how he would address the plan then and what's happened since then. Horne responded he knows a lot about traffic in this area, and working with Beaver Creek. He believed he was asking his opinion on this connection and stated his professional opinion is that Haddon Hall has quite a number of ways in and out;

Peakway in its entirety will play more and Haddon Hall could operate without the Blackburn Road connection. His advice as the paid professional is that he would tell them not to make the connection, it can work without it.

Commissioner Gossage addressed the medium density and O&I the east, and if it would have a US64 connection, with Rowland explaining it's designed for connection to Copeland Road and out, with Commissioner Gossage noting this would give the development a second way out, with Rowland reminding the board the Planning Board does support the connection for dispersing and sharing traffic load within the subdivision.

Commissioner Jones stated if Horne's advice was not to do this, asked in light of Brittley Way and additional 300/400 trips on Blackburn Road, with Horne reminding them they would expect these trips from Haddon Hall residents would shop here and all goes out to US64 and not that we are moving from one area to another, he again stated Haddon Hall would operate as it is now, and would not get any worse and could get better with the Peakway access.

Commissioner Jensen asked if the petitioner was requesting this be shut off, with Horne responding they understood this connection was not needed for their development, and if the board were considering this, give them a moment to discuss this.

Manager Radford added if the board chose not to make the connection, then they would have to revisit the thoroughfare plan because it clearly calls for Blackburn Road and reason to cause pause for tonight if they choose that direction.

Horne advised the petitioner does want to have the connection. Commissioner Schulze asked his opinion if the additional trips could Blackburn handle the traffic, with Horne responding it could. Commissioner Schulze asked the total trips and how it compares to other neighborhood streets, with Horne responding zero trips and around 1000 trips and well within the caring capacity of the roadway and compares with other neighborhoods, with other roads carrying more traffic.

Mayor Weatherly called for the motion reminding the board with the protest petition would require four affirmative votes to adopt the rezoning.

Action: Motion by Commissioner Jones and second by Commissioner Meckes for approval of the rezoning case as presented.

Commissioner Jones explained the connectivity was the major point rather than cut-through and was an issue that the connection was planned from Haddon Hall to US64 since built and otherwise would not be stubbed to the north as is and other stub streets where decisions would be made later as development occurs to the east. If done appropriately and assuming it will, they would see a site plan and would assure it is. As far as the traffic circle and parking and trying to dissuade people from using this for unnecessary connectivity, or people who do not live in Haddon Hall from using it, they have to assure they do the best they "the board" can to not encourage that kind of traffic. It's a good development and appears from a zoning perspective and has to see the site plan, but the RCA, parkland, the buffering along residential uses on the south, thinks it's appropriate to protect the Haddon Hall residents and up to them to enforce it and what has been planned on the Transportation Plan and Thoroughfare Plan for as long as he can remember. Aspects of the connectivity to Castlewood, the median, he thinks they need to do their due diligence and how they can influence NCDOT to keep this open; there needs to be left turn access onto US64 out of Castlewood and not sure how to do this, but as they get this through site plan, they need to do due diligence to make that happen.

Commissioner Jensen spoke to the Castlewood Fern Valley access, asking if there's a trade between the left turn into this development from US64 east vs. keeping Fern Valley open, he would say stay with what's there for full access, with Commissioner Jones agreeing if there is negotiation we can make, he agrees the access from Castlewood needs to take precedence, with Commissioner Jensen noting this development would be right-in and right-out in that case, and Commissioner Jones adding if it's agreeable with NCDOT.

Commissioner Schulze noted two issues, connection to Blackburn for the development and access from Castlewood. He noted the connection has been planned and on the books and what was decided 20 years or so still holds true for Blackburn Road connection, and that it can handle the traffic that would be generated, that's not additional traffic, but spreading the traffic out from one part of the neighborhood to the other and always been a goal of the boards present and past to make interconnectivity around Apex a bit more spread out so they don't have focal points where there is traffic – more of a grid system, like a city system where traffic is spread across the entire area, and thinks this accomplishes this as designed, and making this connection is necessary. He appreciates the Castlewood concerns as far as limited access, but sounds like what the board does has nothing to do with what NCDOT is going to do and unfortunate, NCDOT has always been hard to work with and thinks they will do what they want to do, and as said we are not in an negotiating position with them. He thinks they are trying to do their best to maintain full access for Castlewood and if it doesn't work then left-overs and keep as much access as can for these folks. He thinks the development is good and the issues have come down to access and thinks from planning standpoint are following the plan and the correct thing to do to approve the project.

Commissioner Meckes appreciates how hard it was for him to say and his contention is and always has been that connectivity is the right thing to do, with Horne agreeing. Commissioner Meckes continued this has been hammered into the board for years and feels it's the right thing to do; there are always issues about connectivity and cut through, but to allow another means of egress from this development he believes is the right thing to do. It distresses him that the people in this subdivision " Haddon Hall " are the primary culprits at this time and run stop signs, speed through the streets and believes in his community, the homeowners association continues to address those issues and is not anything they have control over if folks within it's own development doesn't have appreciation for the children in the streets playing and people walking the streets, shame on them and needs to be continually addressed through the homeowners association. He noted little mention about what a wonderful plan this is and an asset and addition to our community with the concept of neo-traditional neighborhoods intergraded into this entire development with residential above commercial and retail, thinks a feather in our cap and again similar to Meadow Monte with diagonal parking, round-a-bouts and supports the efforts made to bring this to the community and stands in support of this proposal as well.

Commissioner Gossage feels this is a good use of land along US64 and does concern him Castlewood might loose their left or east bound turn and thinks they should do everything they can to preserve that, but on the other hand, if its NCDOT's desire to close the median and as a result of this work and working with them, end up with a right-in and right-out and a left-over, that's more than you would have if NCDOT does close the median, and NCDOT is on the war-path on US64 and have their sites right on it and are putting their will on top of us and have had limited success working with them. As far as the connection with Blackburn Road, he thinks we should keep our eye on this and when this connects over to the east and we have another entrance and exit for this particular development, it might be appropriate to see how the connection with Blackburn is going and see what the traffic volume is like and always come back later and cut it off.

Commissioner Jensen agreed it's a good use of land, and not one in favor of a lot of these, but does desire time limits on the commercial, and if there's potential for folks to drive out of the commercial through this subdivision, thinks there should be some consideration for limiting the time the commercial is open; not something that will be open all night or drive throughs, and didn't see it addressed, thinking this is critical and should be considered. Commissioner Jones thinks this is a part of site plan but not sure, with Stewart Jones advising drive-throughs are not allowed and have not limited time but when site plan comes through could be considered.

Commissioner Jones noted when there's connectivity they talk about conditions on making the connection after a certain amount of construction is complete in the new parcel, and not sure how to accomplish this, with Stewart Jones noting it's at the end of Phase 1. Commissioner Jones was concerned with construction traffic in Haddon Hall while this is being constructed, and would like to limit it entering and exiting on US64 – trucks in and out at 5:30 and 6:00 a.m. Stewart Jones stated this could be a site plan issue and has to do something on Blackburn first or would not have access and could address it at that time.

Mayor Weatherly restated the motion to approve the rezoning, calling for the vote on the motion. Motion carried unanimously.

End of Public hearing # 1

June Cowles, Planner

Public Hearing # 2 – Rezoning Case #05CU06

Public hearing and possible motion regarding Rezoning Case #05CU06, Cummings Property and Dominion Properties, Inc., petitioners, seeking to rezone from Wake County R-30 Designation to High Density Multi-Family Conditional Use District classification, 68 acres located East of NC55 Bypass, south of Bobbitt Road.

All those speaking during this hearing were administered an oath by the Town Clerk.

June Cowles, Planner oriented the board to the location of the 54.68 acres for the requested rezone from Wake County R30 to High Density Multi-Family Conditional Use noting restrictions and conditions proposed by the applicant noted on Attachment 4 of the staff report and all uses allowed under HDMF except: Apartments, Communication Tower, and School (public or private). Staff report is attached and incorporated as a part of the minutes.

Conditions include a 20 foot buffer adjacent to Marimonte Subdivision and 20 foot landscape buffer along the northern property line and 50 foot wide greenway easement along Middle Creek through this property. Public street stub shall be provided to the northern and western boundaries. Marimonte Subdivision has a stub street to the north that would connect with this project. Applying to the development: Architectural standards, trash collection, roll out carts, 10,000 square foot active recreation area and a minimum of 20% developable portion of the site shall be developed as high density and a minimum of 20% developable portion shall be developed as medium density.

Portion of one parcel is requested to be rezoned and the other portion has not been annexed into the Town of Apex and therefore is not being requested to be rezoned.

2025 Land Use Plan identifies the site as medium density residential and high density residential mixed use classification and where the 20% minimums come into play. Apex Transportation Plan shows the collector street with a 60 foot right of way and 32 foot back to back in connection with the adjacent property and the Wake County R30 classification. There is a subdivision that is within Wake County and known as Marian Subdivision. This portion is not included and if the collector street is built it would meet this rezone line.

Mayor Weatherly opened the public hearing at 9:10 p.m.

David Brown, Raleigh was present on behalf of the applicant and property owners, speaking in favor of the rezoning. Staff encouraged inclusion of both high and medium density residential designations in conformance with the 2025 Land Use Plan and future development would have diverse housing types. Jason Bertoncino, Project Engineer was also present.

David Gurley, is a resident of Marian Subdivision in Wake County, adjacent to the non annexed land adjacent to the annex land of the subject parcel, and is conditional opposed to the rezoning of the subject property and speaks for the residents there as well. They do not have an official homeowners association, but is being put together and have met and he was appointed to speak. The Apex Transportation Plan proposes that the street within the development be connected to the street within their neighborhood which splits the neighborhood with a collector street within the development extending to Smith Road and pointed to the map showing the location. Planning Board met and Amy Flannery Smith stated she didn't buy in this neighborhood even though she looked at it because of this proposed collector street. Transportation Plan was prepared by Kimley Horne and adopted November 2002. Phase I was well under construction at that time and he didn't have the luxury to check to see if there was a collector street, because there was no adopted plan for the area. 20 children live on Colby Chase, which is the collector street and 8 more older children and not designed nor developed for a collector street. To develop financially, the town or developer would need to build a bridge over Middle Creek, 500 or 600 feet over wetlands as well as flood plains.

Based on Cary's bridge costs the bridge would be in excess of $1 million; upgrade of Colby Chase adds to the cost, with house price $450,000, traditional right of way is needed to required, and damage to the remainder – the cost for the collector street would face additional costs or approximately $2.2 million dollars and hard to justify this costs. Marian Subdivision supports the rezone if counsel directs staff to amend the transportation plan to eliminate the Colby Chase collector street connection. Connectivity for this development is available on the front from E. Williams Street and shown as well as adjacent subdivision to the south as well as proposed collector street to the north that connects to Jessie Road thoroughfare shown that connects to Smith Road. The need for this section of the collector street is not there; it comes through the middle of the subdivision and would have to be relocated and plan amended due to those lots alone. They provide conditional support for the rezone that the transportation plan be amended to stop the collector street from crossing Marian Subdivision in Wake County; not in Apex ETJ or the portion of the subject tract that was not annexed. Subdivision community water system by Heater Utilities and private septic on one-half acre minimum lots. He's a right-of-way agent and worked for various agencies and understands it.

Commissioner Jensen asked the building heights etc, noting the type buffers and assuming townhomes back to residential to the south and is correct and includes other housing types such as duplex, but would be residential to residential back to back. Commissioner Jensen asked the height of the townhomes noting the Type B buffer and not an A asking he upgrade so there's no conflict of uses. Applicant noted in discussion with planning staff, Marimonte is a small single-family lots and townhome community and proposes similar development and encouraged on the 2025 Land Use Plan to provide density in this part of town.

Commissioner Jensen noted the part that abuts the houses is the Type B buffer to upgrade would be a few more trees asking if this is adequate or should be Type A buffer to ensure someone doesn't look down into someone's home next door. Applicant stated this could be a site plan issue and not sure of the type housing and gives a minimum. Commissioner Jones noted it is a part of the conditions. Cowles responded the requirement is a ten foot buffer and applicant added another ten to twenty foot, however Commissioner Jensen desired a Type A buffer because Type B is see through type buffer, with Cowles reading Type A is opaque to height of six feet and read the materials and height with no obstructed openings; Type B is semi opaque and read the same information for B.

Commissioner Meckes noted Type A was basically a fence and he wasn't ready to say this between the two, but doesn't want them to have to put up a fence until they know what's there, with Commissioner Jensen not saying fence, with Commissioner Meckes noting Type A up to six feet is an opaque fence. Commissioner Jensen was looking for plantings of this density – a green buffer. Brown pointed out Marimonte also has a buffer and its not 20 feet from their homes and would bring this back and has worked with staff and had doubled the size of their buffer to allow breathing room and it is residential to residential.
Commissioner Jensen was satisfied two B buffers make the A buffer and with 20 feet better.

Mayor Weatherly closed the public hearing at 9:15 p.m.

Commissioner Meckes noted the bridge was not likely to happen, with Rowland adding looking up/down NC55, SR1010 and Smith Road was trying to make some major east/west connections, noting Jessie Drive Extension and Sunset Lake Road and midway a street stub in this subdivision and logical place to look at this however, didn't do an estimate on costs to do the crossing and potential for growth gave a mid point of east/west connection between two fairly major roads.

Commissioner Schulze addressed the wetlands area, and Rowland added it's on the plan and if there is some desire, they would have to amend the thoroughfare plan to delete this. This was the rational for east/west connection as this area develops and will develop more intensely than has already.
Commissioner Schulze assumed Colby Chase is built so it acts as a collector street, with Rowland responding there will be more need or desire to go towards NC55 with the folks living here going in that direction, and go NC55 and thinks more need to go east to west.
Commissioner Jensen didn't see the bridge happening at this cost, with Rowland responding to construction, with Commissioner Gossage adding that maybe we should reflect reality in our transportation plan.

Mayor Weatherly called for a motion.
Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the rezone as requested. Motion carried.

End of public hearing # 2

Rosetta Radtke, Design Planner
Public Hearing # 3– Rezoning Case #05CU07
Public hearing and possible motion regarding Rezoning Case #05CU07, Comstock Holland, LLC, petitioners, seeking to rezone from Wake County R-40W Designation to Medium Density Residential Conditional Use district classification, 40 acres located on Holland Road, south of Camp Branch Road.

Mayor Weatherly advised this should be continued, with Attorney Fordham advising the issue was to re-advertise and will be legally advertised, and no motion needed.

This hearing was not held and will be readvertised for July 19, 2005.

June Cowles, Planner
Public Hearing # 4 – Rezoning Case #05CU09
Public hearing and possible motion regarding Rezoning Case #05CU09, Jones, Cnossen & Dolle Engineering, PLLC, petitioners, seeking to amend the 2025 Land Use Plan from Medium Density Residential to Low Density Residential and rezone from Wake County R-40W Designation to Low Density Residential Conditional Use district classification, 17.7 acres located at 7220 Apex Barbecue Road.

Those speaking in this hearing was administered an oath by the Town Clerk.
Cowles oriented the Board to the proposed rezoning on Apex Barbecue Road for a proposed land use amendment from medium density to low density residential and rezone from WCR40 (minimum is 40,000 square feet – less than one acre) to low density conditional use (three units per acre) and include all uses allowed under low density residential except modular homes, churches, schools, and water/waste water plants. 2025 Land Use Plan identifies the site as medium density and in the vicinity of the Crocketts Ridge Subdivision and the new park. Three units require more land for septic tanks.

Sean Dolle, Jones, Cnossen & Dolle spoke in support of the rezone and development that would extend water/sewer and benefit the future 160 acre park on both sides of Apex Barbecue Road.

No one spoke in opposition, the hearing was closed. Mayor Weatherly called for a motion.
Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the request as requested. Commissioner Jones noted the request was less density than on the land use plan and recognition of what's next door and is low density and applauds the petitioner. Motion carried unanimously.
End of public hearing # 4

David Rowland, Director of Planning
Public Hearing # 5 – Rezoning Case #05CU11
Public hearing and possible motion regarding Rezoning Case #05CU11, Ann M. Richard, ET. al., petitioners, seeking to rezone from Office & Institutional District to Mixed Office Retail Residential Conditional Use District classification, 4.63 acres located at 200, 202, 206, 207, 209, 210, 211, 215, 219 W. Chatham Street and 111 Jones Street.

All those speaking to this hearing were administered an oath by the Town Clerk.

Director of Planning Rowland stated the residents are petitioning to rezone because they are not able to get financing for their homes because they were non-conforming use. The UDO was adopted in 2000 and these properties were zoned Office and Institutional and in existence 30 or more years, and at that time permitted residential, however the UDO ridded the pyramid zoning and this became an O&I area. When the folks went for refinancing, the new Fed requirement is they will not refinance non-conforming uses and triggered these folks to look at this and have worked with Ann Richard. She gathered these folks to petition to rezone from O&UI to Mixed Office Retail Residential Conditional Use and patterned similar to those on South Salem Street with provisions if there's a site plan they follow Secretary of Interior Standards for rehab to keep the character of this area, and standards about parking and not paving the front of the yard for parking, also signage would be limited – bracket type signs –

and prohibition of storage of heavy equipment; this tries to bring these properties into conformity and make the zoning reflect what's there and most of these homes are residential but there are some offices that are in the area as well. There is no retail component even though it's said in the zone classification.

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

Ann Richard spoke, 219 W. Chatham, in support and exclusively residential older homes and within the historic district and in line with small town preservation planning; this is non-conformity issue and can't refinance, have insurance, if burned, could not be rebuilt under the current zone. Almost unanimous, only one person could not be contacted, with the rest signing the petition.

Ben Rackendorph, 205 W. Chatham Street, lived here since 1991 and urged board to pass this.

Mary Trotter, 215 W. Chatham Street, lived here 21 years and lifetime Apex resident in favor of the rezone.

Penny McGuire, 210 W. Chatham Street, lived there 30 years, and oldest resident there and can tell how lived there over the years in the older residential homes and need to be able to renovate and improve them and later another family could moved there.

No one spoke in opposition. The hearing was closed at 9:40 p.m.

Commissioner Jensen asked about the one petition that didn't sign, with Rowland responding they could contact planning and use the same process.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the rezone as requested. Motion carried unanimously.

End of Public hearing # 5

Dianne Khin, Senior Planner

Public Hearing # 6 - Apex Transportation Map & Parks, Recreation, Greenways & Open Space Plan

Public hearing and possible motion regarding possible amendments to the Apex Transportation Plan and Parks, Recreation, Greenways, and Open Space Plan.

Khin noted this was an amendment to the maps: Apex Transportation Plan and Parks, Recreation, Greenways, and Open Space Plan, for a greenway connection from the municipal agreement line to the American Tobacco Trail as well as to the north towards Cary jurisdiction. Cary's parks and recreation approached Apex about a partner with them on the White Oak Greenway and providing access to the American Tobacco Trail to further the goal for regional connectivity for bikes and pedestrians in Apex and Cary. Cary has approximately $240,000 grant from USDA with plans having been finalized and offered to partner for Apex to take advantage of this grant and have our portion of White Oak Creek studied.

To move forward the greenway needs to be included on the town's open space plan, bike and pedestrian plan. Parks Recreation and Cultural Resources Advisory Commission meeting of May 25, 2005 they unanimously recommended approval to amend the plan to show the greenway and June 13, 2005 Planning Board unanimously recommended approval for the amendment to the bike and pedestrian and equestrian plan. Staff recommends approval.

Mayor Weatherly opened the public hearing at 9:44 p.m. and closed the public hearing with no one speaking to the amendment.

Commissioner Jensen asked if we could do an inner town request for grant with Cary for carrying on with this item, and suggested we do this, as it doesn't count against the grant request if we do this with the next door town. Mayor Weatherly asked if this were a conservation type grant or rural development with Khin thinking conservation. Rowland stated you can't use it to construct but could use it to study. Mayor noted it some conservation benefit, wetlands, etc and noted it must be RCS. Commissioner Schulze asked if this would be a Cary greenway, with Khin stating it would be Apex in Apex jurisdiction and would provide interconnectivity between the two towns and the American Tobacco Trail. Commissioner Jensen stated NCDOT will give grants if we work with Cary and not count against any grant numbers we get, with Rowland stating it is to our advantage to be jointed with Commissioner Jensen agreeing that they look kindly on these.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve. Motion carried unanimously.

End of Public hearing # 6

June Cowles, Planner

Public Hearing # 7 - Major Site Plan – Old Mill Village

Public hearing and possible motion regarding Major Site Plan – Old Mill Village, Apex 1st Development, LLC, petitioner, seeking major site plan approval for 89 townhomes on lots 4 and 5 Old Mill Village, and located south of Old Raleigh Road west of the Apex Peakway and north of Center Street.

Cowles oriented to the site plan for Old Mill Village PUD unit development noting current land use classification is mixed use and high density residential commercial office and institutional. Current zone is PUD and on September 7, 2004 Old Mill Village PUD was approved and with residential density of 8 to 12 units per acre. Development, Architectural and RCA – applicant requests a major site plan for 89 townhomes or 6.85 units per acre on lots 4 and 5 shown on the PUD plan.

Includes main Public Street with entrance off Mason Street and Apex Peakway and traffic circle highlights the connection between Lot 2 and Lot 4 and 5. Townhomes are 3 story with brick veneer on front and sides and rear elevations include hardy plank siding and brick accents; each townhouse includes deck and two car garage with rear entry off an alley way. Elevations have a two story appearance at front due to existing grade conditions and on the side elevation where the third story would house the garage would be dropped to the back. As a condition of the PUD Plan, the townhomes have a porch and four steps to the front door as stated; design promotes interconnectivity with tracking of land use patters and roadways consistent with town transportation plan. Design concept includes round-a-bouts at the central intersection as well as adjacent Apex Flee Market and Apex Town Hall Campus; sidewalks are on both sides of the streets.

Townhomes include two car garage with access off alley way to allow for additional parking on the public streets and approximately 356 parking spaces or 4 spaces per unit with 178 spaces provided by the garage of the 356 (former issue and site plan was in the process, so applicant made revisions and staff conveyed same). Plan is consistent with the 2025 Land Use Plan and the transportation plan with staff recommending approval of Old Mill Village, Lots 4 and 5 Major Site Plan. Garbage pick up will be from the rear; and noted a traffic study done at PUD Plan stage. Round-a-bout would extend on east/west direction to Mason Street across from entrance of Town Campus and will be constructed in conjunction with the townhomes. Drives are not in the front with porches with parallel parking. Townhomes are 1200 to 1400 square feet and 24 feet wide; people can parallel park in front and no mail boxes or garbage cans with a mail depot.

Mayor Weatherly opened the public hearing at 9:55 p.m.

Alan Manase, BBM, 407 Gorman Street, Raleigh spoke in support of the site plan and representing the petitioner, Apex 1st Development. Site plan is subsequent to last years rezoning and first stage of Old Mill Village one of the infill pieces in town and staff has worked to revise the plan per the comments received months ago and in many ways enhanced the plan. Commercial development will be market driven when user identifies himself and will return with site plan. There is no dedicated parkland but paying fee in lieu as recommended by parks and recreation commission, however, there is RCA along the stream buffer and the detention pond to the north with some fairly large green space between the townhomes and the flee market on the property as well. RCA is 32% of the area, with stream buffers and a triangular piece the Peakway bisected that is dedicated RCA.

No one spoke in opposition. The hearing was closed at 9:55 p.m. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve the site plan.
Motion carried

End of Public Hearings

OLD BUSINESS

June Cowles, Planner
Old Business Item # 1 – Land Use Amendment and Rezoning Case #05CU04
The public hearing was held on June 7, 2005 and closed; board deferred action to this rezoning request to June 21, 2005
Possible motion regarding Rezoning Case #05CU04, Andy & Susan Mullins, petitioners, seeking to amend the 2025 Land Use Plan to add commercial and to rezone from Planned Unit Development and Residential Agricultural to Planned Unit Development Conditional Use District classification 6.1 acres located at 1548 E. Williams Street.

Mayor Weatherly noted this item was to be continued to July 19, 2005 meeting requested by the petitioner, and called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner to continue this item to July 19, 2005. Motion carried unanimously.

Public hearing continued to July 19, 2005

Kent Jackson, Director of Construction Management
Old Business Item # 2 – CSX Transportation, Inc/Trackside

Kent Jackson led discussion and regarding adoption of a resolution declaring intent to close a portion of East Moore and East Chatham Streets to vehicular traffic in conjunction of getting the Peakway through Trackside. Kimley Horne reported their findings of the traffic patterns in the central business district, the Trackside north plan and recommended closings of crossings and redistribution of traffic and impacts of closing crossings in the downtown area. Town is closer with NC Rail and CSX for a written agreement to carry out the plans for the Peakway and enable the Trackside development plans for the north to move forward and noted some activity on the south side. Does not want the town to be the week link when the time comes for developers to deliver their plans and trying to make arrangements for this. NC Rail asked for a resolution of intent, and does not start the process for closing the streets but states intent if we get consent from CSX as to how the Peakway will look and then would close streets in the downtown. Town would advertise four weeks in advance for a public hearing and notification for closing streets.

Mayor Weatherly had talked about leverage with the railroad to proceed with the plans for crossings, and didn't think the board expressed preference for E. Chatham Street, thought it was the opposite and one of the streets expressed preference not to close and asked what brought him to this conclusion; agreeing for E. Moore and other than Hunter though Chatham should not and Center Street being one if memory was correct. Jackson responded that was correct and was the Kimley Horne recommendation. Commissioner Jones recalled if we had to close, Moore Street and Center Street rather than Chatham. Jackson had included E. Chatham Street after having conversations with downtown merchants and primarily with the Manager of the impacts to the downtown merchants if close Center Street; other information was from the survey Planning conducted as part of the Small Town Character Plan, with question of preference to close Center or Chatham with majority saying Chatham Street.

Manager Radford added that listing potential intent to close the three and/or would give opportunity to get through public hearing process with opinions then being stronger in whatever direction. Mayor Weatherly responded as long as it's open/ended and intent to meet CSX requirements for the additional crossing and leaving options open; that would be a good option at this point.

Jackson suggested rewording resolution stating 2 of the 3 for potential for closing. Commissioner Jones noted this would give more time to look at information and make a decision on which ones to close and not resolving to close them. Commissioner Gossage thinks it's important to have all the information in front of us. Jackson noted there were some private crossings that would be impacted as well. Commissioner Jensen noted this assumes we get two at level crossings for the Peakway and talked about a fly over of one of those. Jackson stated we were required to show how it would be constructed, and the right-of-way dedication required to do that. Commissioner Jensen stated if we did the fly over, wouldn't have to close Chatham Street, or Center – East Moore he has no problems with, but a problem with closing Center Street as it's a main artery SR1010 into Town and Chatham crosses town. He hopes to find the money to do the fly-over and not do ground and save the town, with Mayor Weatherly noting CSX wasn't entertaining a one for one with Manager Radford adding we follow the three to one formula with Mayor Weatherly adding we are not going to meet that.

Manager Radford noted the idea of the fly-over may be if we could find a way to afford it; at the same time we don't have a deal on 3 for 1 yet. Commissioner Meckes stated they can't come in and close Center, Moore and SR1010; he noted a stand still during a downtown incident where tracks were blocked and it was scary to him to see the downtown crossings closed off; Downtown merchants wants Center Street to remain open as it's a significant access to the downtown rather than the others. Commissioner Jensen commented on closing the two would be a detriment to the town, and not a trade and hopes to find money to do a fly-over instead of at grade.

Mayor Weatherly noted this is the first step and would be thoroughly discussed and called for a motion to proceed with an amended resolution to include the three street potential and make it clear two of the three that our intent is to consider closing two of the three public streets; doesn't preclude looking at something else later on.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to proceed with an amended resolution. Vote on the motion was 4 to 1 with Commissioner Jensen voting no. Motion carried.

End of Old Business # 2

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

New Hill residents Paul Barth, David Bristol, John Moore, Wallace Womble, John Brubauer, Bob Kelly, and Barry Cradle addressed the board opposing the site location for the regional waste water treatment facility in the New Hill community. A New Hill Community Association has been organized, and requests the Board speak with Cary voicing their opposition to the site location of the facility or postpone decision for 30 days to afford an opportunity to examine reports/impacts, and noting various documents. They would like to protect Historic New Hill while preserving the quality of life and addressing many issues that would impact the neighborhood. They recommended other sites that would be more appropriate for the facility, noting the more favorable site being the Progress Energy property.

End of Public Forum

NEW BUSINESS

Town Manager, Bruce Radford
New Business # 1– 2005-06 Annual Budget
Manager Radford presented the FY2005-06 Annual Budget Ordinance.
Action: Motion by Commissioner Meckes and second by Commissioner Schulze to adopt the budget ordinance for FY2005-06. Mayor Weatherly noted no tax increase maintaining $0.40 second lowest in Wake County, 24 new positions primary police and fire, new indebtedness; he commended staff for the budget preparation noting this budget good for the citizens and tax payers and increase in services; no increases in electric, water, or sewer rates. No one addressed the budget at the public hearing. Motion carried.

Town Manager, Bruce Radford
New Business # 2 – November Election
Manager Radford presented a request from Wake County Board of Elections asking if Apex would like to have an Additional One-stop Voting site for the November 8, 2005 Election. Town would be responsible for all costs of the operation; ballots for all elections held on November 8, 2005 would be available at the site, and voters from any municipality may vote at the site(s). Voting would begin at 8:30 a.m. on October 20, 2005 and end at 1:00 p.m. on November 5, 2005. Discussion followed regarding the location of the site, costs involved and numbers of voters, and absentee ballots. No decision was made at the meeting, however, the board was poled later during the week because the Board of Elections needed a response by June 30, 2005; the one stop voting site will be located at the Eva Perry Regional Library with dates and time noted on the attached acceptance form, and having notified the Wake County Board of Elections of the approval for the site, and dated June 27, 2005, with estimated costs to the Town noted on the attached form.

End of New Business # 2

Mayor Weatherly
New Business # 3 – Planning Board Appointment
Mayor Weatherly recommended Tom Colhoun be appointed to the Apex Planning Board as the ETJ member, and with approval by the Wake County Board of Commissioners. Mr. Colhoun would serve the unexpired term of Ms. Ada Farrar as she has relocated into the town and no longer eligible to serve as a county representative to the board. Clerk will advise the County Board of the recommended appointment for their approval.
Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the recommendation to appoint Mr. Colhoun. Vote on the motion was 4 in favor and 1 opposed with Commissioner Jensen casting the opposing vote. Motion carried.
End of New Business # 3

Add-on requested by Commissioner Jensen
New Business # 4 – Wastewater Facility Site Selection
Commissioner Jensen requested an opportunity to look into the site selection for the Regional Wastewater Facility, noting other viable sites that may not impact New Hill in such a bad manner, and asking the board follow through as Wake County had done supporting a 30 day delay for review by staff and consultants.

Mayor Weatherly felt the board may need a legal opinion on this matter and asked for a motion to move into closed session for the purpose of receiving legal advice from the Town Attorney. The Mayor asked if Tommy Esqueda, Consultant, Kemp, Dresser and McKee, should be invited in. Town Attorney Fordham did not choose to invite him in due to Attorney/Client privileges.
Action: Motion by Commissioner Meckes and second by Commissioner Gossage to move into closed session at 11:00 p.m. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move back into open session at 11:25 p.m. Motion carried.
Action: Motion by Commissioner Jensen and second by Commissioner Jones that Mayor Weatherly speak with Cary requesting Town of Cary consider the advisability of a 30 day delay regarding the acquisition of the proposed regional wastewater treatment facility. Commissioner Jensen saw a need for answers before action was taken and felt a delay was in order. Commissioner Gossage felt there was opportunity to understand the town's role as partner. Mayor Weatherly added nothing implies Cary did anything improper or negatively, being a good partner and having conservation interests in proceeding; and having been a good water partner. Motion carried.

End of New Business # 4

Add-on requested by Mayor Weatherly
New Business # 5 – Year-Round Schools
Mayor Weatherly presented a Resolution Opposing Mandatory Year-Round Schools, noting it arbitrary, with the school taking choice away, and disruption to the family with a different school calendar and outrageous; effective 2006.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to adopt the Resolution.
Commissioner Jensen was opposed as well, noting disruption in the calendar. Motion carried.

End of New Business

WORK SESSION AGENDA

There were no Work Session Items to be discussed.

CLOSED SESSION

Bruce Radford, Town Manager
Possible motion to move into Closed Session to discuss Town owned property located at 904 N. Sharpe Street, Selma, North Carolina.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to move into closed session at 11:35 p.m. Motion carried. Minutes of closed session are recorded separately.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to move back into regular session at 11:41 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and second by Commissioner Jones to adjourn at 11:41 p.m. Motion carried.

The above minutes were approved on the 19th day of July, 2005.

Georgia A. Evangelist
Town Clerk

Kirby W. Weatherly
Mayor

Minutes of the Town of Apex
Board of Commissioner's
Special Meeting of Tuesday, July 5, 2005

Meeting was held at 6:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room (2 nd. Floor)

A special meeting of the Board was called to order by Mayor Weatherly. Commissioners Jensen, Gossage, Jones, Meckes, and Schulze were present. Others present: Manager Radford, Assistant Manager Wilson, Attorney Fordham, Director of Public Works Donnelly, and Environmental Programs Manager Deaton. Others present were Wastewater Project Consultants Tommy Esqueda and Ruth Swanek.

The purpose of the meeting was to review the proposed Agreement for the Design, Construction, Ownership, Management and Operation of the Western Wake Regional Wastewater Management Facility, proposed Service Agreement between the Partners, and proposed Memorandum of Agreement with NC Department of Environment and Natural Resources (DENR) regarding Secondary and Cumulative Impacts related to the facility prior to the Operations Committee of the Town of Cary meeting who would make a recommendation to the full board. Apex would get an opportunity to identify issues the board would like to address at a later date. Mayor Weatherly advised the board they could act on these items if they chose however there was a timing issue that might make it imperative to do so to meet deadlines established by NC DENR. Mayor Weatherly offered the consultants would review the documents, and would then suggest moving into closed session for the purpose of taking legal advice from the town attorney for legal clarification and obligations under the partnership.

Tommy Esqueda focused on the proposed Memorandum of Agreement (MOA) with NC DENR regarding Secondary and Cumulative Impacts related to the facility, with a July 15 deadline. Attorney Fordham advised the deadline was only applicable to the MOA and not the other agreements. Mayor Weatherly advised the board should act on the MOA and anticipated lots of information on the other agreements and the board did not have to act on these tonight.

Esqueda noted the MOA related to the EIS Process for the project, specifically to Secondary and Cumulative Impacts of the project. The federal and state environmental policy requires a SCI Master Mitigation Plan and then reviewed the measures, schedule, and activities to date. Grant money will be received for the project and provided by the Federal Government and calls for an alternative analysis and to address the impacts. SEPA requires documents to predict the environmental affects of the project, direct impacts to structures on the ground at the site (EIS). Secondary and cumulative impacts require a Master Mitigation Plan – measures are in place to protect environmental resources and look at infrastructure projects; plan deals with growth and development in the area. State proposes this plan to improve their efficiency in review of these documents with the intent of this document to cover all future projects. All MOA's are different for each town; on a bi annual basis the town would submit a report to the state indicating the measures that are put into place every two years; there's potential to update the Mitigation Plan; identifies geographic extent of the proposed service area, current and proposed land uses, infrastructure plans, environmentally sensitive areas; mitigation measures documented for the state are the towns UDO, open space parks and greenway plans, stormwater programs, design guidelines, buffers, etc. or anything town uses for developers to demonstrate the protection of the environmental resources.

MOA has a fifty year life and must be updated every 10 years; conditions allow the state to call for updates; will be submitted with the master mitigation plan to the state for review and public comment. It's up to the town regarding who signs for the Town of Apex.

Esqueda reviewed the time schedule up to date, with final plans for mitigation plan review in September with public comment, and then a record of decision on the MOA. State will not accept EIS for direct impacts until this has been submitted on July 15 and published in the environmental bulletin as a draft on July 22 and then will submit the EIS for the direct impacts. This document is independent of where the station or lines go. Holly Springs Board is considering this as well today and Cary tomorrow evening.

Mayor Weatherly noted the draft is the way we are currently doing things, policies and ordinances that speak to these issues, with Esqueda responding this was correct, but will report every two years. This is characterized as the long term affect of the sewer capacity for this community and how we deal with development as it comes into the system.

Mayor Weatherly asked if this binds future boards, with Esqueda responding there would be the option to make adjustments to plan reviews, land use plans, or the UDO and will be reported to the state in the biannual report; the State then makes the call if they want changes, and binds the board in no way.

Commissioner Meckes asked Esqueda to review how the EIS format worked (noted an outline with review agency's being named -19 agencies); public input will be allowed mid September after the final document is prepared; hearing officer would have discretion about additional comments; mid June response would be made to the document for final and submitted to the state and subject to review with no public hearing; final approval and decision from the state January 31, 2006. Town's documents are different: buffers, stormwater, floodplains, Resource Conservation Areas. Negotiations are possible should a town need additional time to negotiate bigger buffers, stormwater, etc. Each community has certain minimums to adhere to and nothing less than minimally required by NCDENR as far a stream buffers and stormwater control, with Apex going beyond those in many areas ex. RCA. Note: Holly Springs exceeds NCDENR requirements.

Donnelly expressed he felt the board seemed comfortable with the document and if so, asked they authorize the manager to continue the process, review and execute it if there are no substantial changes.

Attorney Fordham had no comments to add to this portion of the presentation, however, asked for clarification as to how this plays into ultimate approval of the Environmental Impact Statement. Esqueda explained to get a permit for the wastewater plant regards the direct impact analysis in September. Attorney Fordham saw nothing to obligate the town to maintain the plan, but authorizes the state to use the plan as part of its measure for further submittals, with Esqueda responding this is correct, and Attorney Fordham continued if not following the plan, they may take this into account measuring whether they approve the further submittals, but not actually obligated to go by the plan, with Esqueda responding this was correct.

Mayor Weatherly asked if the Attorney was comfortable with the answer, that adoption of this document doesn't bind future boards to obligate any current policies, statutory decision making authority, with Attorney Fordham responding he is comfortable it does not directly do this, but thinks the State process to some extent binds them not in the sense it limits ordinance making authority but fits into the overall process of seeking environmental impact statement so that if they didn't go by their plan, they might reject the permit applied for; but they can't avoid going through this process to get a permit. Mayor Weatherly asked if every municipal government that goes through the submission process follows the same initial format.

Esqueda advised every public works project, water and sewer infrastructure goes though an EIS process direct, secondary, cumulative – they way Apex is doing this is the first time it's been used in the State of North Carolina – let's unbundle them and do direct second. This is one project however Donnelly would have to get the pump station connected, requiring an environmental assessment and would reference this document. Attorney Fordham asked if it remained bundled would there be an MOA, with Esqueda stating it would not have an MOA.

Donnelly explained Cary being larger of the partners, and notice for a big project where having to do a cumulative impact section over and over, costing lots of money, and using the same document; state agencies review these same document and required; to get a buy in for secondary, cumulative for big projects – do it once and let it stay and focus on each project's direct impacts; this the first huge project, this document could remain for next projects, instead of recreating it over and over, and buys into the secondary, cumulative; would be a 30 year Agreement with a 10 year review; saves time and effort for the partners. The worst thing is if you change it enough they could say revert back to the way it the old way, but could agree with the change. Attorney Fordham asked the old way meaning you would do the secondary and cumulative as part of the project, with Donnelly agreeing part of the EIS or EIA. Asking if we are binding ourselves to something that may not work, Attorney's point is correct, it's our intent, you are not buying but subject to the old way. Commissioner Jensen noted this defines a base line and if doing something better we are ok, could fall back say if we required a ten year storm, and decided a five year storm, we've fallen back and to him it's almost a contract with the state to get this approval and only changes is to improve the item. Donnelly responded their is some accuracy to the statement that state agencies do not like to see what they view as "back sliding" and doesn't mean it could not be tweaked because you found some unintended requirement of the UDO that is not working – one reason we have a good buffer program; if you said we are only doing the absolute minimum – that would the type back sliding – MOA is off and would do project by project – it could happen. Ruth confirmed they want to evaluate the changes; that's the risk; you want know until you get to that point and now the intent is not to tie them totally but they don't like back sliding; this project the State would like to see this work because of it's unique effort to save time are trying to help us and he sees this a win-win situation. Commissioner Jensen asked if within the document it says where the facility will be, with Ruth responding Agreement names a general location, but does not pen-point the location, with the important point being where is the service area; that's where the growth will occur.

Commissioner Meckes felt the environmental impact statement would be more sympathetic to the New Hill residents and their concerns than thus far and would be heard and duly noted, with Esqueda agreeing. Esqueda finalized there have been American Tobacco Trail factored into this; a pipe in the Cape Fear – it all has to be addressed and to move there will be form. Commissioner Meckes added and in order for the sympathetic process to have been initiated condemnation had to have taken place, with Esqueda responding yes. Commissioner Jensen asked clarification regarding the piping with Esqueda responding the outfall point in the river.

Attorney Fordham asked the Mayor to inquire whether the other communities had approved the MOA, with Esqueda responding the MOA final meeting with the state was last Wednesday, and Holly Springs is being presented with it tonight and Cary tomorrow night; Morrisville gave their Manager authority to sign to keep the project moving forward.

Attorney Fordham advised the board as they consider adopting, put a proviso, it's subject to being submitted to the state as long as Cary and the other parties submit theirs, and there was no reason to think they would not adopt it and not suggesting it. Esqueda was in agreement, and offered there was nothing to preclude Cary from adopting it with changes to the MOA, and may want to look at any changes and may want the same change.

Mayor Weatherly asked an example, with Esqueda noting 30 years back to 50 years.

Mayor Weatherly asked if the board wanted to talk with the Attorney before making the motion.

Commissioner Schulze wanted to assure this had nothing to do with the operations agreement with the Mayor responding this was right, and with Commissioner Schulze continuing nothing to do with Cary's Operations Meeting. All responding they would being doing the same. Mayor Weatherly stated they would be discussing three things, this was one of them, and specified in the notice.

Commissioner Meckes stated secondary and cumulative impacts can go on and nothing more than has been done and decide who should sign – Mayor or Manager. He had no problem with the secondary and cumulative impact statement. Commissioner Schulze wanted opportunity to make changes if others do. Mayor added we could hold another meeting if need be. Cary's process could be different.

Action: Motion by Commissioner Meckes to approve the Memorandum of Agreement subsequent to changes made by other partners to be considered before July 15, 2005 submission. Commissioner Jones added subsequent to changes to their version of the Memorandum of Agreement. Commissioner Schulze wanted to know about any changes.

Attorney Fordham suggested the motion be withdrawn and restated with more detail, and think about the point if they wanted it submitted if others do not submit theirs; any changes and who would sign.

Action: Commissioner Meckes withdrew his motion and restated the motion: Motion to approve the Memorandum of Agreement based upon like approval of our partners, based on no changes of the partners, and authorize Mayor Weatherly to be the signing officer for the document, and it come back to the board if there were any changes; second by Commissioner Schulze. Commissioner Jones noted if there were changes it could be reviewed at the next regular meeting on the 19th. Motion carried unanimously.

Mayor Weatherly stated they would discuss the other two agreements, Design and Construction Ownership, Management and Operation of the proposed facility and the proposed Service Agreements between the town's of Cary and other partners.

Mayor Weatherly asked for a motion to move into closed session to discuss these two other documents and to receive legal advice from the Town Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to move into closed session at 6:57 p.m. Motion carried. Closed session minutes are recorded separately.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to move back into regular session at 8:40 p.m. Motion carried.

With the Board having returned to regular session the Mayor Weatherly informed that the Board had reviewed the Agreement for Design, Construction Ownership, Management and Operation of the Wastewater Facilities and the Service Agreements as explained by the Attorney and the Public Works Director with the Attorney having drafted proposed changes. Mayor Weatherly asked for a motion on those items.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to support the changes as indicated by the Town Attorney in the documents reviewed in closed session and direct staff to pursue them.

Commissioner Jones suggested under Advisory Committee, an amendment to the motion be made regarding the language for similar provisions as in the Water Plant Agreement that works for Apex, with a second by Commissioner Gossage. The motion carried on the amended motion.

Commissioner Jensen proposed Article I page 5 suggested a change in the site "preliminary" site description and shown in Exhibit A or some substitution. Esqueda responded Exhibit A can change if environmental impacts do not come to pass. Mayor Weatherly and Commissioner Jones were both unsure "preliminary" was the word. After a brief discussion, the motion was made:

Action: Commissioner Jensen stated in a form of a motion the proposed wording: The final site approved by the state shown in Exhibit A; Commissioner Jones made the second. After a brief discussion Commissioner Jensen restated the motion: The site approved by the State of North Carolina and described and shown in the final version of Exhibit A; Second by Commissioner Jones. Motion carried.

Tim Donnelly explained in the water plant model, the language was strengthened on the permit process and Apex was given a stronger position. After a brief discussion a motion was made:

Action: Commissioner Gossage made a motion with a second by Commissioner Jones to follow the water plant as a model to strengthen the language on the permit process so Apex is named and given as strong a position as possible. Motion carried.

Tim Donnelly added a final version of Table A5 with modifications will return to the board for review. Mayor Weatherly wanted it stated for the record and in the minutes that with all the actions having been taken, this reserves the right for them "the board" to make any further modifications they so choose based on any subsequent changes or modifications. Attorney Fordham advised the Public Works staff and engineers would handle the process as it progressed.

Mayor Weatherly called for a vote on the underlying motion. The motion carried unanimously.

End of special meeting

With no further business to come before the Board, there was a motion by Commissioner Gossage and a second by Commissioner Schulze to adjourn at 8:55 p.m. Motion carried.

The above minutes were approved on the 19th day of July, 2005.

Georgia A Evangelista
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, July 19, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2 nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order with all Commissioners present.
Invocation was given by Commissioner Schulze.
Pledge of Allegiance was led by Scout TJ Richardson, Troop 222.
Welcome by Mayor Weatherly.

AWARD FOR DEDICATED SERVICE

Mayor Weatherly recognized Mrs. Ada Farrar with a plaque for her dedicated service to the Apex Planning Board December 1995 - June 2005.

Town of Apex Appearance Award Winners

Mayor Weatherly recognized the Appearance Award winners:

Residential Award

Clarice Atwater 314 Lynch Street, for her beautifully landscaped front yard following road work. Mrs. Atwater also served as Town Commissioner from March 1981 – 1993.

Commercial Award

Town and County Veterinary Hospital, 2010 N. Salem Street, for all around attractive landscape of property. Gail Boyd received the award.

Capital Trees Program Biannual Awards

Louis Nixon, Wake County presented a power point presentation of the nominated trees throughout the County and presented Awards to Mayor Keith Weatherly for his Cornelian Cherry Dogwood, Wellstone Circle planted spring of 1987 and 1st Bank for the Linden Tree, West Williams Street (former Holt property, tree was left on the home site as part of the bank development).

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve the consent agenda. Motion carried.

1. Minutes of June 21, 2005 Board of Commissioners Meeting.
2. Minutes of June 21, 2005 Board of Commissioners Closed Session Meeting (recorded separately).
3. Minutes of July 5, 2005 Board of Commissioners Special Meeting.
4. Minutes of July 5, 2005 Board of Commissioners Special Meeting Closed Session (recorded separately).
5. Annexation Petition #377 Seagroves Farm, LLC, owners/petitioners; petitioning to annex 66.10 acres into the town's corporate limits; property location is 1617 Ten-Ten Road, Proposed Seagroves Farm Subdivision; 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for August 16, 2005.
6. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU03, Jones, Cnossen and Dolle Engineering, PLLC, petitioner, located on US 64 between NC55 and North Salem Street.
7. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU06, Kent Cummings, DBA Cummings Property and Dominion Properties, petitioner, located on NC55 between Bobbitt Road and Straywhite Avenue
8. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU08, Town of Apex, property located on Apex Barbecue Road
9. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU09 Jones, Cnossen & Dolle Engineer, PLLC, petitioner, located at 7220 Apex Barbecue Road.
10. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU11, Ann Richards, et.al., petitioners, located at 200, 202, 206, 207, 209, 210, 211, 215, 219 W. Chatham Street and 111 Jones Street.
11. Budget Ordinance Amendment and Capital Projects Ordinance (third floor upfit)
12. Site plan for Haddon Hall Restaurant, Phase 13 of the Haddon Hall Master Plan.
13. Subdivision Plan for Macon Property, Jones, Cnossen and Dolle Engineering, PLLC, petitioner, 17.7 acres, with 28 single family lots, located at 7220 Apex Barbecue.
14. Transfer Cemetery Lot in Apex Cemetery.
15. Ordinance to amend Section 20-150 Relating to Prohibiting Parking on the North Side of Investment Boulevard.
16. Ordinance to amend Section 20-100 Relating to Speed Limits.
17. Membership Agreement and Resolution with N.C. Interlocal Risk Financing Fund of North Carolina, Property and Liability Insurance Program administered by the NC League of Municipalities.
18. Membership Agreement and Resolution with N.C. Interlocal Risk Management Agency, Group Self-Insurance Pool for Workers' Compensation Risk Sharing administered by the NC League of Municipalities.
19. Resolution regarding NC Highway Safety Program, Governor's Highway Safety Program, Grant Form GHSP-02-A.
20. Resolution regarding NC Highway Safety Program, Governor's Highway Safety Program, Grant Form GHSP-06-A.
21. Possible motion to grant the Director of Facility and Fleet Services, Marty Mitchell, authority to grant the contract three 30 day extension on the substantial completion date with respect to the contract for the third floor upfit of Town Hall.
22. Resolution to authorize bank account in the name of Diversified Energy Services, Inc. (DESI) to facilitate right-of-way acquisitions for distribution lines connection to the new Laura Duncan Road Substation.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly will present the regular meeting agenda to be set.

PUBLIC HEARINGS

Rosetta Radtke, Design Planner

Public Hearing # 1 – Rezoning Case #05CU07

(A protest petition filed with the Town Clerk was determined invalid by the Town Attorney)

Public hearing regarding Rezoning Case #05CU07, Comstock Holland Road, LLC, to rezone from R-40W (Wake County) to Medium Density – Conditional Use, 40 acres on Holland Road.

Rosetta Radtke, Design Planner, and others speaking during this hearing were administered an oath by the Town Clerk.

Radtke oriented the Board to the request to rezone 40 acres from R-40W Wake County to Medium Density Conditional Use. Current Land Use classification is Wake County Residential and proposed Medium Density Residential and consistent with 2025 Land Use Plan. A protest petition was filed with the Town Clerk and determined invalid by the Town Attorney as this was an initial zoning of the property. Radtke reviewed the staff report which is attached and incorporated as a part of the minutes, noting restrictions/conditions proposed by the applicant on page 2 of the report. Applicant's intent is to create a maximum of 100 single-family residential lots with a maximum density of 2.5 units per acre and a minimum lot size of 7500 square feet with a minimum of 25% of the site preserved for RCA. No TIP was required. Planning Board unanimously recommended approval at their June 13, 2005.

Mayor Weatherly opened the public hearing:

Speaking in favor of the rezoning:
Brad Hart of Withers and Ravenel, project engineer for Comstock Homes spoke in support of the request and was there to answer questions.

Speaking in opposition to the rezoning:
Jim and Karma Lee, 2700 Holland Road, live north of property and were not opposed to rezone or development however had concerns:

- Increased traffic, on a country road, that had no posted speed limits and often drivers ran off the road at the curve
- Utility easements and the impact to their farm
- They operate a working farm and hear complaints from the newcomers about the farm noises of the animals, dust from drive, plowing of the fields and the tractors running when frost protecting in March
- Safety of the children in the new neighborhood and potential for accidents; even though the farm is child friendly – a strawberry farm, there's danger to un-chaperoned children and cause for potential accidents.

Asked if the rezone was approved that the rezoning include - the developer be required to leave an acceptable amount of undisturbed natural buffer area between the two properties and developer also be required to build an eight foot privacy fence between the two properties.

Commissioner Jensen addressed the 25% RCA asking if wetlands were in this area. Radtke responded this has not come to subdivision plan; has seen maps that includes a water area and assumed it would be part of the RCA; 25% RCA does not include the buffers and there would be additional buffers. Hart stated he did not have a wetlands analysis; Comstock Homes had a preliminary evaluation completed and along the western property line north and south follows a stream and a wide flat area they feel will have some wetlands and would be included within RCA, however, would extend upward beyond that and wouldn't be all wetlands and streams.

Mayor Weatherly asked what type buffer there would be between the two properties, with Radtke responding there is no requirement for it; site plan issue would address buffers and fence. Mayor Weatherly asked Attorney Fordham if buffers and fence were site plan issues or could be a condition placed on the zoning. Attorney Fordham advised if it is not one of the conditions then it should not be considered; if proposed to be a condition and added they could consider it; if a specific part of a plan then it would be mandatory; petitioner would have to consent to additional conditions to the rezoning and wouldn't add it to the site plan.

Commissioner Meckes was reticent to be specific about what needs to be done tonight, than to say some consideration must be given to some means of buffers and/or fencing and/or separation of the residential areas. Mayor Weatherly asked what consideration was given to buffering the property, as it would be a substantial impact on the property the Lee's described.

Commissioner Jones added without a specific site plan, he wouldn't want to consider specific conditions - fencing or buffering until he sees how it would lay out and thinks it would be appropriate for site plan review. Attorney Fordham advised they may want to find out whether they could require a fence at site plan to decide whether or not it's important to consider it now. If not required by the UDO, they may not have an opportunity at site plan. Mayor Weatherly asked should they do it now or do they have to wait. Attorney Fordham felt they should find out. Mayor Weatherly asked Hart if they had thought out these issues and what he's prepared to do.

Hart stated the Lees had conversations with Comstock Homes and their concerns were expressed during Planning Board meeting with the applicant being receptive to those and not opposed to the idea of buffer and/or fence; if that were a condition the board felt appropriate, and reasonable, would not be opposed to them. Mayor Weatherly asked if he would make it a condition on the rezoning and encumber himself, with Hart responding yes, if a privacy fence were a condition of the rezone it would not be a problem.

Commissioner Jones asked if there was an appropriate way for him to word this. Commissioner Meckes wasn't saying a fence now, something else may be more appropriate when the site plan comes to creation. Attorney Fordham advised they should find out what latitude they would have at site plan stage to require a fence, or that type of thing and once determined if there is a particular performance standard they would want to be met for buffer or fence; if it's already in the UDO and can be required at site plan, they wouldn't have to require it now and if not in the UDO this would be the only chance to require it.

Commissioner Jensen wanted to say, an acceptable fence or buffer to the board. Attorney Fordham advised it should be specific enough to where there would be a common understanding as to what it meant to be enforceable.

Mayor Weatherly asked the Attorney what they could say that would put a condition that may include an 8' privacy fence at the discretion of the board. Commissioner Jensen felt 8' was tall maybe say up to... Attorney Fordham advised they could state the purpose they are trying to accomplish – separation of visual or other type separation and might be the way to say it.

Mayor Weatherly added it would basically keep traffic from crossing the property, with Attorney Fordham adding it's not so much visual, with the Mayor continuing that's what he was saying; Ms. Lee had mentioned non-disturbed vegetative buffer, but he thinks the privacy fence when she talked about the safety of children that may wonder onto the property; there was an agricultural operation going on there and concern and also some wild life.

Commissioner Meckes asked the character of the land being rezoned, with Hart responding currently woods, some barns on site. Mayor Weatherly would like to see that they could reserve some flexibility and depends on how the thing lays out and the adjoining property owners the Lee's would see the wisdom of something different than a fence, but he would at least like to give them the legal leverage to be able to require that at the time if the board deems it appropriate, however they could accomplish that is what he's getting at.

Commissioner Jones was in agreement and felt it was a legitimate concern asking if they were talking about the Lee's adjoining property or the entire perimeter of this tract. Hart noted all the adjoining properties are heavily wooded and no other housing close. Karma Lee noted the southern lot is all wooded and the back is all wooded. Hart noted on the map the open field with the rest being heavily wooded.

Mayor Weatherly stated the board had tried when there's someone, and in this case a commercial-agricultural operation, they try to protect them from the intrusion of those that come later and in some cases tried to anticipate, and recently did this with heights of buildings; this is agricultural operation where there is, as the Lee's talked about danger and potential of the kids wondering as they will – left unimpeded would be on their property, there is no question about it.

Karma Lee noted where the drive was with Commissioner Meckes adding people would be driving down in there to come to the strawberry fields and on a regular basis during season, and people with their back yards abutting the eastern side would have an issue as well.

Karma Lee stated on their property on the eastern side now, there are nice older trees that would help preserve air quality, and concern if they are allowed to clear cut up to the property line, would loose a lot of nice large trees and then it would then be within three feet from the gravel drive with the dust; if that whole natural buffer is obliterated along the length of the driveway and pretty much where it's long and narrow and turns and the house is to the back and the strawberry field in front of it - then the last row of strawberry plants would be within five feet of that property line. Commissioner Jensen noted it very attractive to a child - giving his childhood as an example. Karma Lee would like to see natural areas left in tact in conjunction with the privacy fence just to help cut down on dust from the farm and then fence to help with the safety issues of having children come over through the open areas.

Commissioner Meckes asked about a 10 foot undisturbed buffer along the eastern side and the northern side; he knows it's not a requirement of the UDO. Radtke felt it would be better than nothing but to keep kids off the property she would vote for the fence. Commissioner Meckes responded he meant in addition to the fence; Radtke didn't think you could keep kids out of there with a 10' buffer, and depending on where the big trees are would be 10 or 15 feet she's not sure, but better than no buffer. Karma Lee added if no specifics have to be determined tonight, that's fine she would like to see 30 or 40 foot natural buffer but cuts down on the houses they can build, but just as soon it stay the way it is because it's a beautiful piece of ground, but that's not going to happen either. She just wanted something there for safety sake if nothing else and when she asked Radtke, she stated currently there are no requirements for any fences and no requirements for any buffers, so this was their opportunity to request those be a part of this rezoning.

Mayor Weatherly asked the board what they were comfortable with, since the developer has assured he would do anything reasonable to protect the intrusion on the neighbor's property, and if he's offering, that the board wouldn't have any objection in taking him up on this.

Commissioner Gossage responded for some combination of fencing and buffering included as a condition. Commissioner Jensen added they need to define it enough and then they can make it at the discretion of the board and can have some wiggle room.

Commissioner Meckes added no less than 10 feet and no more than 15 feet depending upon specimen trees of undisturbed buffer on the eastern and northern side. Mayor Weatherly added and a fence not to exceed up to 8 feet at the discretion of the board of commissioners and to be determined at site plan, with Attorney Fordham advising site plan or subdivision plan, depending on the way it comes. Mayor Weatherly asked Hart if he would be comfortable with this and knowing that he would have to offer it as a condition. Hart responded yes, absolutely they would be willing to condition of that nature.

Mayor Weatherly closed the public hearing at 7:46 p.m.

Mayor Weatherly called for a motion. Attorney Fordham advised when the motion was made the condition should be added and person making the motion should recite that it was consented to by the petitioner.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze for approval of rezoning case #05CU07 with the additional conditions which has been accepted by the petitioner to maintain a 10 to 15 foot buffer along the eastern and northern side of the property with the potential for the construction of no greater than an 8 foot fence along the same border in addition to, with the potential for that construction, and at the discretion of the board.

Attorney Fordham asked if they want to require the fence they might say ... with Commissioner Meckes interjecting he said potential for the necessity of construction, with Attorney Fordham advising he would say also for a fence not to exceed 8 feet. Commissioner Meckes stated it would be left to the discretion of the board.

Mayor Weatherly stated they may not ultimately require that, but leaves them flex. Commissioner Meckes added we don't necessarily know that there will be an 8' fence there, with Attorney Fordham asking if he knew there would be a fence, some type of fence. He didn't think they should leave it totally discretionary if they want a fence, they should go ahead and make it part of the condition then the height should be discretionary. Commissioner Schulze asked if they could require the fence and then decide not to require it later on. Attorney Fordham advised they could amend the approval.

Commissioner Meckes added until they see some kind of layout, they don't know; conceivably there could be some wetlands there. Commissioner Jones concern was not that there is a fence but what length of the property they are requiring, they were not specifying – east and northern side, but may not need it along the entire east and northern sides, and will need some discretion there.

Commissioner Meckes stated he had said potentially the requirement for construction of the fence, but not necessarily; if he says a fence they could amend it later on, with Attorney Fordham advising, yes.

Commissioner Meckes restated his motion to include the condition of a 10 to 15 foot buffer along the northern and eastern boarders and a fence not to exceed 8 feet in height. Commissioner Jensen clarified the eastern boarder that includes the line along Holland Road and guesses it could be amended later, but that's extending the fence all the way down the eastern boarder, with Commissioner Meckes adding just opposed to the driveway. Mayor Weatherly noted this amendment would signify this clarification.

Mayor Weatherly restated the motion to approve the rezoning with the additional conditions as so stated. Vote on the motion was 5 in favor and 0 opposed. Motion carried unanimously.

End of public hearing # 1

June Cowles, Planner
Public Hearing # 2 - Site Plan Garland Norris Expansion
Public hearing and possible motion regarding Major Site Plan for Garland Norris Expansion, Chas Sells, Inc. petitioner, for warehouse use, located on 1101 Perry Road.

June Cowles, Planner oriented the board to the site and reviewed the staff report which is attached and incorporated as a part of the minutes for a proposed warehouse expansion 48,800 square foot building; a 20% RCA which includes existing buffers and stream buffers; street access will be off Perry Road at the existing drive with an access agreement with adjacent Norris Office Park to utilize one of the drives; no traffic impact report was required as the proposed project does not create 1,000 vehicle trips a day. Staff recommends approval and Planning Board unanimously recommends approval.

Mayor Weatherly opened the public hearing at 7:52 p.m.

Jim King, Garland C. Norris, spoke in favor of the expansion.

With no one else addressing this site plan, the hearing was closed.

Mayor Weatherly called for a motion.
Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the major site plan for Garland Norris Expansion. Motion carried unanimously.

End of Public Hearing # 2

David Rowland, Director of Planning
Public Hearing # 3 – 2025 Land Use Plan
Public hearing regarding and possible motion regarding amendment to the 2025 Land Use Plan for the area along the south side of Jessie Drive Extension from Medium Density Residential to Industrial and Office and Institutional.

Director of Planning Rowland noted development inquiries for the Jessie Drive area, and felt it was a good time to look at this area and make adjustments to the 2025 Land Use Plan, which presently shows industrial on the north side and medium density residential on the south side - along the central portion of Jessie Drive. He continued good planning suggests you don't put residential across the street from industrial. Staff recommends amending the 2025 Land Use Plan for the area along the south side of Jessie Drive from Medium Density Residential to Industrial and Office and Institutional and Industrial.

He noted existing homes along SR1010 were left alone not to excite those folks as they may think this is a rezone, it's not and reason it stopped; if Jessie Drive is extended this has potential for redevelopment. He visions Jessie Drive similar to Weston Parkway, a 4 lane divided median and showing slides, with higher density residential being appropriate, with some commercial planned. His point was that like uses would be across the street from each other with transition in the rear of the properties.

Planning Board unanimously recommended approval (wanted Tech/Flex to be included here and this zoning is allowed under the land use class Office and Institutional).

Commissioner Schulze wanted to encourage the same type development for Apex as the shown in the pictures. Commissioner Meckes assumed development would build out Jessie Drive, with access from the other end not being desirable, with Rowland agreeing. He thinks they would see the northern end built for commercial soon and triggers building a portion of Jessie Drive. Rowland responded to Commissioner Jones comments that Weston Parkway was more office and institutional with a cookie plant there; and noting some offices at Pinnacle Park.

Mayor Weatherly opened the public hearing.

Grant Livengood, McKim & Creed, spoke in opposition to the proposed amendment. He has petitioned for rezoning of three properties to medium density which meets the current 2025 Plan south of Jessie Drive, and pointing to the property on the map. He had spoken with staff and an argument for their zoning petition is that good planning is that you don't make the transition across the street and argues against this, a flip of what is proposed having medium density to the south of Jessie Drive transition into medium density on the north side and using the transition buffer in back yards. He noted Weston Parkway a valid point for light industrial and noted on Weston Parkway behind the arboretum is Weston Development a high end residential housing, and along the Cary Parkway corridor is obvious high end residential is conducive to these types thoroughfares as well; because you are building a thoroughfare plan the Jessie Drive and anticipate it to be a beautiful corridor doesn't necessarily warrant just light industrial, office space – his client is looking to do a high end residential development and feels is need in the Apex area. He agrees through this area, its highly voluble and people are looking at it to develop and his client is questioning that having knowing his client was involved in getting this petition through, it's almost after the meeting they had from that point on it brought attention to the town to say we need to look at this area and need additional space or area in the town for light industrial; he thinks the conversation come up from staff that maybe there's another pocket in the town they would like to promote for light industrial. He noted it unfortunate when the wheels started to turn, the wheels were already turning for his client in getting land under contract and hiring sub consultants to do traffic impact analysis at the intersection of Jessie Drive and SR1010 and hiring him to do additional analysis on petition. He's in opposition for this one fact that they have moved forward with this rezoning petition and would drop them back and may be a job killer as far as his client. Some of the land owners were present and offered them to come forward if they wanted to say anything. He noted his petition is to come in the future, but if they had questions he would answer them.

Commissioner Meckes asked if it were appropriate to discuss this. Mayor Weatherly noted there's nothing before the board for consideration but the proposed amendment to the land use and would be in order to discuss. Attorney Fordham advised if it has any impact on legislative discretion. Commissioner Meckes clarified he was coming before them to change light industrial to residential, with Livengood responding to medium density which is currently the 2025 Land Use Plan to the south of Jessie Drive; petition was filed in July and due to come to next meeting of Planning Board. It's residential agricultural on the 2025 Plan and set for medium density. Additionally the northern side is included in the petition pointing to it on the map noting the acreage. He noted if this were six months ago, his client wouldn't be this far in

to trying to make this work; he's moved forward with the land owners and an agreement for that. The other issue is they have been talking with the town and the commissioners and trying to resolve what they want to do to make sure from his clients standpoint they don't go to far in the petition if they are going to get a dead-end road.

Mayor Weatherly stated his point was well taken; but needed to separate the potential for a specific rezoning with a philosophical discussion of what was the appropriate land use designation for these tracts of land, and shouldn't be clouded by the potential of a rezoning request that may come to them in the future. The board needed to make this determination clearly on a pure decision about what is the just position or potential for good transition between industrial and residential, and had always been clear on that in the past when the board had talked about this and is what they were discussing, not the rezoning; but indicated they had gotten a little far into the specifics but do need to separate the decision before the board – one the planning staff appropriately brings to the board, do we want industrial next to residential.

Mayor Weatherly noted this still in public hearing.

Greg Edgerton stated he was a land owner of one plot in consideration and against the amendment because his understanding is that it always eventually would be residential and right or wrong, was his understanding. He has owned the land for 25 years or so and doesn't clearly see why it would be anything else based on what's around it now; that end of Jessie Drive to SR1010 with a golf course, doesn't see why you would put industrial or office next to a golf course; residential is what would enhance everything up and down the entire strip of land; therefore he's against it and hope the board would be too.

Lewis Smith was aware of Jessie Drive Extension since the County funded the land to connect Raleigh water with Cary, Apex, Fuquay and Holly Springs. He noted the Assistant Manager came to them years ago and asked for a 30 foot easement – the Apex jurisdiction and he wouldn't give a 30 foot easement for a waterline, but if it were a 60 foot easement he would be glad to because he thought there should be a connection between Hwy 55 and SR1010. His comment is he's for a way to get Jessie Drive Extension built post-haste and is the way he sees the issue.

Mayor Weatherly closed the public hearing at 8:10 p.m. and referred the matter to the board.

Commissioner Meckes noted the golf course wasn't residential due to lighting until 12 midnight and to him more of an industrial setting. Commissioner Jones noted residential on the north side with a similar argument about not rezoning the south side of SR1010 west as it is currently residential to the same thing on the north side along the south side of the golf course, with Rowland noting the planned industrial showing on the map Pinnacle Park and noting the street stubs designed to find their way to Jessie Drive to further try to encourage a similar type development of non-residential to develop the town's non-residential tax base and is really when thinking about it Cooper Tools, Tipper Tie, wastewater treatment plant, Potters Industries, MC Precast and to him reads industrial area. Commissioner Meckes was less inclined to cross what would ultimately be Jessie Drive and turn it into residential on the north side.

Mayor Weatherly thought the town had jealously guarded their inventory of property for industrial zoning in Apex and in the past had nibbles around it but when he was approached thought the board was going to maintain some inventory of industrial and if they allow the erosion and intrusion like Commissioner Meckes had said, above Jessie Drive particularly, it's liable to go ahead and consume further up; once that transition is broken.

Commissioner Schulze asked if a site plan had been submitted with the applicant's request for rezoning; he had always main stand as far as protecting the industrial areas and would be willing to sacrifice some if he knew there was some upscale housing coming in with larger homes and lots; his delimea now is that he doesn't know that's the case. Rowland responded there is room for plenty of residential development behind the areas, like Weston Parkway with residential behind and fronting the road of Jessie Drive for non-residential, office, industrial and light – tech/flex. Commissioner Meckes noted they work together, with Rowland agreeing.

Commissioner Jensen noted the large parcel of land below what Rowland was talking about asking how would access with Rowland noting the thoroughfare plan shows roads planned for this through the industrial and office and institutional.

Commissioner Gossage asked the acreage he was proposing, with Rowland not having completed a calculation, deciding mainly that the stream would be the division line and a good place to transition between unlike land uses because it does provide a natural buffer; this is perennial stream and north of Jessie Drive he thought perennial, and was corrected that it was intermittent. Commissioner Jensen noted the difference in thickness of buffers.

Commissioner Gossage thoughts were as far as the location of the golf course, that some people may love to live next to the course, but he would be reticent to sacrifice any of the light industrial unless they were able to replace it somewhere else; he could see potential for other lines to be drawn or ways to work this out and might be jumping the gun a-bit with this particular version; he would like to see staff work on a couple of different, with Commissioner Meckes interjecting beyond the proposed land use plan, noted people living there now so the bottom of one piece if left residential medium residential, you would go from existing residential to medium residential and into flex space – office and institutional on the south side. Rowland wasn't sure he was following him; with Commissioner Meckes noting to take out the "L" tract with Commissioner Gossage noting this was the kind of variance he was talking about where there are different possibilities and maybe if staff were to come back with something different. Rowland responded whatever they do, they have like uses across the street from each other, with Commissioner Meckes responding that wouldn't be the case, and thinks they all agree they are not going to cross Jessie Drive. Commissioner Jones would agree if they off-set it somewhere else, this is not the only industrial location in town and may not be the prime industrial location.

Livengood asked if the town has additional plans – seems to him if confining light industrial and tech/flex into one giant tract of land, maybe limiting marketing capabilities in other areas that US1 corridor area may want to find land and rezone; he thinks it would be a good compromise for his client to have that parcel remain – well it's currently light industrial, but if it were to remain medium density on the 2025 Land Use Plan would be a happy median for his client because at least one parcel of the land possibly under contract would still be working for him and still may meet the town's requirements to buffer through from medium density into the light industrial farther to the west.

Mayor Weatherly felt the question was appropriate for the board to consider; what if this big tract in the middle – a fairly intense industrial operation – manufacturing or Dell Computer, something that would require a lot of trucks in and out – they've approved hypothetically what they would be confronted with – now would we say we are going to put that industrial site next to an already established residential, he thinks not, based on what they have done in the past unless they are ready to go 90 degrees and bare off from what they have always done. So what they have done, the tract next to the residential tract is off limits to industrial, and he's speaking for what he predicts this board would do to protect what's already there and that would be residential, then you move further away before entertaining any kind of industrial development

in this site so that's what he thinks – he's not talked to staff, but obviously what they have always talked about as far as policy issues and zoning is we want the transition area between something more intense and residential, always been O&I, but like flex would do it. He was posing that to them, they are always in the market for something that would provide more job base for the town and if they got it, and it looks like a good tract and the tract to the east – a fairly large contiguous tract asked would they even allow industrial to come into those sites if they already had residential there.

Commissioner Meckes was not talking any residential, nothing on the north side of Jessie Drive. Commissioner Jensen added he would say not on the north side of Jessie Drive because we are limited in looking at the ratio of housing and light industrial we need to protect industrial as much as we can. Rowland added he had met with the folks and did not encourage based on land use plan. Commissioner Meckes noted the Mayor's point well taken, even if the lower portion of the "I" tract if it were residential would still be looking across the street light industrial. Mayor Weatherly added depending on what it is, if it were a warehouse, that's light industrial and would be more inclined to do that, but if it were intensive manufacturing operation, probably would not want to do that, if someone had residential across the street. Commissioner Meckes made his proposal to accommodate both issues and understood, and would never want to do anything that would preclude approving industrial later on.

Mayor Weatherly asked where the town's other larger industrial are, with Rowland responding we don't have a lot. Commissioner Jones added not necessarily relative to this one but do need to look to the west of town, with Rowland agreeing, as well as Commissioner Gossage. Rowland added that Jessie Drive one day will carry a lot of traffic and asked if that was where they would want residential. Mayor Weatherly added they have had a lot of buffers, with NC55 being noted, and Mayor Weatherly wanting to assure there is appropriate buffering.

Mayor Weatherly asked where the proposal is that is on the table; maybe not entirely satisfied exactly as proposed, asking the pleasure of the board.

Commissioner Schulze commented regarding the decision whether or not this is the exact land shape we want to use, he imagines there's tension of the planning staff if they could, if people didn't live along Jessie Drive on the east side – they would prefer to have that strip go all the way down to SR1010, with Rowland responding absolutely; again felt that might create an unnecessary, with Commissioner Schulze understanding with his intention to not reduce the amount, but if anything, with Rowland interjecting he agrees with that, but why they didn't recommend it because of the existing homes.

Commissioner Meckes added but what he would ultimately see, with Rowland responding yes, and Commissioner Meckes adding to stick more residential in there would preclude that as a possibility. Mayor Weatherly asked if we didn't do that on SR1010 WHOPS area, didn't we put on the land use plan there was some residential and we put it on commercial years ago, with Commissioner Jones stating that what it was now, and the Mayor looking at it on the map to the west side of SR1010, the area from US1 – with Commissioner Jones noting it between Knights Play and Jessie Drive, with the north side of Jessie currently residential. Rowland responded all these homes in this area were built under county planning and permitting.

Mayor Weatherly recalled in the WHOPS area - changing from US1 to where the Peakway comes through – Rowland interjected there's some office and high density residential with Mayor Weatherly agreeing, and they had purposely overlaid what was obviously the existing residential, but the land use and in Rowland's presentation when he did that - it would evolve and the natural evolution was to move from single-family dwellings to something more intense and amended that land use; so the argument should be the same for this or the basis for a planning perspective would be the same, even though there are residents along the way,

shouldn't preclude them from having what they think will evolve - natural evolution as far as singling out folks; it's hypothetical. Commissioner Jones added so that we avoid potential confusion as there is in this case. Rowland stated again it was a conscious decision not to take it up there because of that and if the board thinks it needs to be extended that would be... with Mayor Weatherly interjecting they did send a signal to the development community that this is what's on the land use and little late with making the change knowing there was that abrupt division between with Rowland continuing and thinks when it was drawn several years ago that they knew they would have to address this and its gotten to where they are getting inquiries and honestly he thinks one of the reasons is Jessie Drive doesn't exist now and not really a demarcation to take a look at,

Commissioner Meckes asked Mayor Weatherly if he were saying he would like to see it go out to SR1010, with Mayor Weatherly responding he thinks they should consider that with Commissioner Schulze adding he agreed. Commissioner Jensen added he would agree in part that he looks at it as long term quality of life issue, having the work places closer to the houses and that Apex didn't have enough and send folks off to RTP and every other place in the county, on the roads, and thinks it's a good idea to try to maximize what they can.

Commissioner Meckes asked Rowland if he envisioned thoroughfares coming down through this Office & Institutional into all the residential down below, with Rowland responding that he sees roads coming off Jessie Drive Extension and residential being in the area pointing to the map. Mayor Weatherly added zoning is to provide some protection for uses against intrusion of another and he sees protection of an industrial client just as much from a homeowner that may not want that intrusion as the other way around when you put industrial next to residential site; you have people that will bring that in as well.

Commissioner Jones asked if proposing on the south side the area that's in question tonight – the combination of industrial and office and institutional but not proposing anything but industrial on the north side, with Rowland responding they could have done that too and another variation would be appropriate. Commissioner Schulze would like to see more Office and Institutional. Commissioner Jensen stated that's good except for the number of square feet that is already built out is a problem. Commissioner Jones responded he's not saying it has to be office and institutional it could be either one, with Commissioner Jensen interjected or light industrial.

Commissioner Meckes asked if they could have light industrial – with Rowland interjecting light industrial can include office; it's zoned industrial now – he meant it's on the land use plan as industrial and if zoned light industrial it does permit office and flex space. Commissioner Meckes asked if they depicted everything up and down, with Rowland responding it was fine with him; he was trying to make baby steps. Commissioner Meckes continued when you tamper with the 2025 Plan it's always better to do it early on than like we are now faced on US64 – it becomes an impossibility and he appreciates those that made efforts already in some form to do something here, but by the same token he's trying to figure out what the best is for long term solution to the problem. He asked if you changed the land use plan if it necessitates notification to the owners of the property with Rowland responding no; just an advertisement in the paper because it doesn't change the zoning. Commissioner Jensen wanted to assure if this is done, letters be sent to the land owners that is the right thing to do, with Commissioner Jones added especially those residential folks that they are considering, with Commissioner Jensen adding they have every right to know and should make every effort to let them know.

Commissioner Meckes added he remembers when the land down NC55 – residents were there and it was zoned industrial and the propane tank was dropped in the middle of them; he's trying to keep this from happening and could imagine the anguish everyone when through.

Commissioner Jones added that was zoned that way not just on the land use plan; this is a totally different situation.

Commissioner Schulze said his feeling is there's potential for high end housing and always as a board, protected industrial areas in town – it's valuable and we don't have much more of it so his feeling is to go with what's proposed and encourage moving the same type usage down SR1010. Commissioner Jensen added with notice to the people so they know what's coming; he wouldn't want to push it up tonight. Commissioner Schulze liked what he saw in the Weston Parkway and likes Pinnacle Park but would like to bump it up a level to get larger office buildings and make it a main work location; whatever they had to do to encourage this.

Mayor Weatherly stated what he was hearing so far was they wanted to delay action on this and readvertise for another public hearing and maybe options – one be to run the proposed O&I out to SR1010 that would extend from the current line to SR1010 maybe structure this options one and two land use plan amendment and see where the consensus or majority is on a proposal after running this through one more time. He felt lines of thinking were developed by discussing it and productive and unless he heard a motion from someone not thinking anyone was ready to act tonight.

Commissioner Jensen stated he was ready to act on the proposed and made a motion to approve so they could talk about it. Commissioner Schulze was prepared to and made the second to approve as proposed tonight.

Mayor Weatherly stated the motion was to approve as proposed tonight which wouldn't preclude coming back for an additional section. Commissioner Jensen felt there needed to be a transition there; need to do this as far ahead of time as possible, thinking they are late in getting this started and this type transition is important to have in this area plus as an item for availability that this is the type zoning that's desperately needed and more of in Apex.

Commissioner Jones agrees this is the type zoning Apex needs – employment whether industrial or office and institutional or – he wanted to say commercial; our need to evaluate this on merit not withstanding and the timing is best unfortunate and we're having to deal with it in this way; he wishes they had always had foresight to make these decisions well ahead of time and tell everyone what their intent is but obviously impossible. He thinks they need to consider office and institutional to the north side of Jessie Drive whether they wait and do that as a part of another action or defer this he doesn't know, but he's more concerned about the timing – it was predicated on a proposal that was put forth to them.

Commissioner Gossage agrees with that; he feels like maybe we are jumping the gun and he'd like to let this simmer a bit and have staff come back with other options.

Commissioner Meckes felt like Commissioner Gossage and agreed with Commissioner Jones this seemed to have initiated by some activity but by the same token better to do this now than when there is some development and not sure what the right thing to do. Mayor Weatherly said one thing they would do is send a signal to those folks developing plans and would send a definitive signal to them. Commissioner Meckes added they know nothing would happen on the north side other than what's already there. Commissioner Jensen added it might go towards office with Commissioner Schulze stating something he would prefer, with Commissioner Meckes adding but no residential and a message they can send. Commissioner Schulze wanted to ask staff not only to bring back proposals to enlarge the area to SR1010 but also address the O&I space on the north side that's industrial now, and come back with a proposal; he thinks it's appropriate to make it O&I and if they are going to do it do it on one.

Mayor Weatherly didn't know if there were enough votes asked if they wanted to dispose of ... go ahead and vote on the pending motion. Commissioner Schulze was ok to vote on what there now and anything they would do would be in addition to what they are doing, with Commissioner Jensen stating and taken up at a later date.

With no further discussion, the Mayor rested the motion is to approve what's proposed in the agenda with a change on the land use plan from residential to light industrial and O&I and unanimously recommended by the Planning Board. Vote on the pending motion was 3 voting in favor (Commissioners Schulze, Meckes and Jensen) and 2 voting opposed (Commissioner Jones and Gossage). Motion carried 3 to 2.

Mayor Weatherly stated the board's intent is to look at other options as far as completion of the land use plan for modifications in this area.

End of public hearing # 3

David Rowland, Director of Planning
Public Hearing # 4– Annexation # 375
Public hearing regarding Annexation # 375, Joann Wardensky, owner/petitioner, petitioning to annex 0.829 acres into the town's corporate limits; property location is 6515 Roosendall Court, Apex off Twin Creeks Road and north of Old Jenks Road; possible motion to adopt an Ordinance to extend the corporate limits of the town.

Rowland oriented to the location of the property near Holt Road and noting the Sutton Place under construction and wanting water and noting the sewer – wanted to put a house on the lot and access it from Roosendall Court and getting water and sewer from the Sutton Place Development; town water and sewer. The property is vacant and are moving a house onto it.

Mayor Weatherly opened the public hearing with no one addressing this annexation; he closed the public hearing at 8:45 p.m.
Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve the annexation by adopting an ordinance to extend the corporate limits by the acreage noted. Motion carried unanimously.

End of Public Hearing # 4

David Rowland, Director of Planning
Public Hearing # 5– Annexation # 376
Public hearing regarding adoption of Ordinance to extend the Corporate Limits of the Town for Annexation of 62.273 acres including public rights-of-way and owned by the Town of Apex , and located on both sides of Apex Barbecue Road (SR1162) between Kelly Road and Olive Chapel Road.

Rowland oriented to the location of the park property.
Mayor Weatherly opened the public hearing and with no one addressing this annexation, closed the public hearing at 8:46 p.m.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve this annexation by adopting an ordinance to extend the corporate limits by the acreage noted. Motion carried unanimously.

End of Public hearings

Mayor Weatherly called for a recess at 8:45 p.m. with the meeting being called back into session at 9:00 p.m.

OLD BUSINESS

Director of Public Works Tim Donnelly
Old Business # 1 Private Sewage Pumping Stations
Possible motion to adopt a Policy on Private Sewage Pumping Stations.

Commissioner Meckes asked to recuse himself from voting and participation in this item due to self interest.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to excuse Commissioner Meckes. Motion carried.

Director of Public Works Donnelly explained the large amount of development in Apex extends and builds public sewer facilities and goes to the treatment plant and generally what's envisioned; occasionally access to public sewer can't be done by gravity sewer and not cost effective to build a pump station and dedicate it to the town. In the past if they could serve it with on-site sewer it was fine and farther than 500 feet from public utilities could do it that way. Soils don't always lend themselves to this and on a case by case basis tried to apply reasonable policy for private pump stations. He noted for a house, it was normal to put a pump station and lift to the street. To build a building and have a private sewage pump station and it's not practical to build a gravity sewer to the building, they have generally allowed a private pump station to serve that giving examples: Wicker Mart, Arbys. With land getting more expensive and more coming to Apex, there's more pressure to develop small sites and can't justify sewage pump stations. Apex doesn't want to take over pump stations that serve one or two buildings, and want a private pump station – have discouraged this, and better to encourage them to collectively join with neighbors and find a common solution to build a gravity sewer and pump station on a bigger scale. He asked for guidance with most policy envisioning public sewer or on-site but no private. He talked with Cary and Raleigh: Cary does not allow private sewage pump station for residential lot development. Commercial Development will allow private pump station and allows out parcels to be sold; ex. several owners and failed pump station. Raleigh does not allow private pump stations for residential lots but does for commercial development if all buildings are owned by one owner.
He didn't have problem with owner of private station if it failed they would be the one to maintain it; if you have to evict tenants would only have self to blame.

He submitted a policy for adoption.

Mayor Weatherly stated they should have a policy to permit these on case by case basis and not convinced what the standard should be, but tight and restrictive; to assume there should be some leave way to provide this to occur on a strict basis – the proposed policy – not to preclude the argument whether to do this at all – the last sentence approved solely by the public works and utilities director – he was not convinced that's what they want to do. He asked if he considered recommendation of the public works director and approval by the town board. He could foresee to allow this, something goes wrong – an order associated with it then this board has a political problem to deal with similar to private streets. He thinks the board would want to be vested in this decision, speaking for himself would want to be and would be in their laps should something go wrong – they would have to fix it. Donnelly responded the reason was not to take the board's time on the obvious but the complex ones he could understand using home with the basement below grade and wants a pump station.

Mayor Weatherly stated he could put it on the consent agenda and if someone wanted to pull it could and if not would ride through with no time involved with the board. He was concerned that they would get into a situation and be confronted with it and at least let the fault be theirs if there is a bad decision rather than hunt him down. He could understand it's the analogy to a private street is good but doesn't go far enough and thinks a bad sewage system is going to be complaint by more of that nature could be pervasive and the spillage associated with it becomes ... news media says there's a spill in Apex and not make the distinction that it was private. Donnelly agreed with his assessment of the importance of it and thinks his thought was to keep the board from having to deal with it and commendable they think it's important enough and shows interest they wouldn't mind it being on consent if it's routine.

Mayor Weatherly continued he would come to them and recommend it with the facts that it's a unique situation and deserves special treatment and he would be able to back up his recommendation and sure the board would agree with his expertise but at least the board would be comfortable that he went through the paces and were justified.

Commissioner Jensen asked how many of these he sees; he knew neighbors have houses below street level and have a pump and when it breaks they fix it. Donnelly stated most people do the right thing 99% of the time; below grade comes up and he guesses 30 or 40 in Apex; the commercial he thought would have developed on public sewer and didn't he can count 5 to maybe 10 and there may be more. By in large it's done the regular way and looking for policy guidance thinking they wanted to continue to discourage where there's better solutions.

Commissioner Jensen asked if we require bonds if they fail and could tap into money to fix it ourselves, looking at Heather Wood. Donnelly responded he had thought it was their wish to keep government out of this and let people suffer the consequences of failure and in managing sewer you create a public health problem and can't occupy the building – if you don't have safe and sanitary sewer in the building and you are in the town limits they are suppose to get them out of the building and can be fined for polluting; then there's general public health and welfare issues. The mechanism is how big the stick was – rather than requiring them to manage bonds and track them, and call them, - they thought to let people be responsible for it; he hopes never to have to force them out or fining them; those ordinances aren't in place but will have to be in a couple of years; more likely administrative penalty assessed by the public works director or manager for polluting the stream.

Commissioner Jensen asked how much trouble does the town have. Donnelly responded people fix the private system, giving examples of Wicker Mart, and they pointed out it was important they fix it and did, Arbys and Waffle House the same situation. Each time when seeing sewage on the ground call public works first as it could be a line broken; it does take encouraging but they do the right thing; not their top priority.

Commissioner Meckes stated for information only: someone comes every month to service their pump station and works for the Town of Holly Springs in their wastewater treatment plant. He cleans, checks the pumps and there's a back-up pump so if one fails, the second pump comes on and if a pump fails the light goes off and they know there is a problem; it's monitored closely.

Commissioner Jensen asked if we had this, could they require a back-up system. Donnelly stated these type stations if not permitted under the plumbing code because it's one building and only up to grade and permitted under the plumbing code; but if it's one that needs to be permitted by the state are the one that requires the duplex and requires a state permit; those regulations are pretty good.

Commissioner Gossage added as hypothetical and used Commissioner Meckes' business, had it gone in after this proposed policy if they wanted to sell a portion – their large animal section of the Veterinary Hospital they would be unable to do that. Donnelly responded this policy would attempt to preclude that – that's correct.

Mayor Weatherly added this is policy and not an ordinance and had something unique that came up – we would think a restrictive policy would be easy to change vs. an ordinance; policy can be changed here and now.

Commissioner Meckes wanted to make another comment that a separate company owns the pumping station and independent of any business.

Donnelly added this policy was more aimed at the creation of the pump station and might come up if there wasn't already a subdivision of land if someone was proposing to subdivide and there's a private pump station there at that time, they may look at that test and look at the conditions before approving the subdivision.

Mayor Weatherly stated the change he had discussed earlier – he put words in the proposed policy and wanted to make sure... shall be recommended by the public works director and approved by the town board, literally wouldn't come to them for approval without positive recommendation of the public works director; that he was satisfied with the full authority of approval to be the gatekeeper and would provide protection for the board because he had said he didn't want them to be encumbered by every one, then he could flake off the ones that would be unwarranted, unilaterally under his own authority; he was not suggesting the board would want to do that but if they wanted to move in the direction of having the board's preview of these things what authority do they want to give the public works director. He was happy to let him be the gatekeeper, with Commissioners Jones and Meckes agreeing. Commissioner Gossage had the same thought when reviewing the agenda it should be kicked up a bit, so would be fine. Commissioner Jones felt it was the appropriate policy to discourage private and encourage public having said there were some cases otherwise, but thinks the board have the responsibility rather than ... what was said, he would not ... someone came to them without a recommendation and if Donnelly gave a negative recommendation, they still brought it forward, he would not vote for it; he doesn't think they would want to put Donnelly or themselves in this situation.

Mayor Weatherly added he would be comfortable by just saying if you change that one word from shall be ... strike approved... and put in recommended by the Public Works and Utilities Director and then add... and approved by the Board of Commissioners... this would allow him to bring those and you would send the encouragement to folks to tap onto our system at his level, but if there were something unique he would certainly want to see that it was fully discussed.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the policy as amended relative to the Mayor's recommendation. Motion carried with a vote of 4 unanimous votes with Commissioner Meckes being recused from voting.

End of Old Business # 1

June Cowles, Planner

Old Business Item # 2 – Proposed Williams Street Station

Possible motion regarding Land Use Amendment and Rezoning #05CU04 Williams Street Station, Crawford Planning and Design, petitioner, seeking to include Commercial classification to Office and Institutional and High Density Mixed Use classification and to rezone from Planned Unit Development Conditional Use District and Residential Agricultural to Planned Unit Development Conditional Use District classification, 6.1 acres located at 1548 East Williams Street.

Commissioner Meckes asked to be recused from voting and participation due to personal interest; property is next door and could seek access to the pumping station and would have to buy into the corporation that owns the pumping station. He preferred not to be involved. The Mayor asked Attorney Fordham if he should recuse himself on this rezoning, with Attorney Fordham advised that he could ask to be excused and it's a bit indirect but to cause him concern, thinks its fine.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to excuse Commissioner Meckes from participation. Motion carried.

June Cowles, Planner oriented the board to the proposed rezone; PUD mixed use, asking to add commercial classification to the mixed use; this item was continued from the June 21, 2005 meeting of the board at the applicant's request and started out on June 7, and continued to June 21 to incorporate conditions so the applicant would have time to incorporate conditions to include the convenient store with gas sales and fast food restaurants with drive through. The Board was looking at conditional conditions to address design and location. Applicant has included additional conditions to the PUD plan to address allowing the convenient store with gas sales and fast food restaurants with drive through and in Attachment 3 of the staff report which is incorporated as a part of the minutes. The applicant has reduced the uses permitted in the PUD district and the buildings will be located perpendicular to Hwy 55; restrictions to be two and three story buildings to ensure it's not like a strip commercial development; included additional conditions which is local and design features; staff has reviewed the additional conditions and satisfied these conditions are consistent with the design standards for this project. The applicant is present if they have questions.

Mayor Weatherly stated the changes brought forth are consistent and asked if there were any outstanding issues, recalling the placement of fast food and gas sales and have been taken care of. Commissioner Jones noted this is all he recalled. Cowles stated they were looking at gas station canopies and fast food drive throughs so the applicant has added eight new conditions and in Attachment 3; included a diagram showing where convenient store and fast food allowed which is on the back portion away from Hwy 55 and architectural conditions canopies that would not be if the gas station/convenient store would not be a separate building; it would be part of the main building and same with the fast food restaurant.

Rowland added another issue is this is one proposed for a private pump station. Donnelly advised he understood PUD CU with UDO performance standards require public facilities are available; normally at a rezoning, you are not as focused on utilities, but for some reason in PUD you are and as it's proposed now they are proposing a private pump station for sewage solution and have buildings that could be sold and based on the policy just reviewed is in conflict with the concern that if someone bought one of the buildings – who's suppose to take care of the pump station; could be a homeowner's association, but like the private street analogy. Mayor Weatherly asked if this would be a deal killer if they do not approve the utilities as suggested. Donnelly stated he and the applicant had talked about it and may have something to offer.

Manager Radford added there has been a tremendous amount of discussion about this and the very last paragraph of the information sheet says the wastewater issue should not be the primary concern during consideration of this proposal for proposed land use and rezoning, however, would be paramount concern that once they get to the site plan, he would like to reiterate that, tonight they are primarily discussing land use and rezoning at this point and would like not like to hold it hostage as a result of the action made, although it was their intent to place that item immediately before this so they could gain some direction for it.

Mayor Weatherly thought it good, but thinks the petitioner should have the fore knowledge of what they are doing with rezoning and proceeding with that uncertainty.

Carter Crawford, applicant, thought he had just heard that a policy was adopted and what it was that if it's a clear cut case then the director of public works makes the decision and puts it on the consent agenda and if not a clear cut case it comes before the board. Mayor Weatherly responded if they don't get the recommendation of the public works director it doesn't come to them, it's a no and what they just did. Crawford stated it's a no if the public works director says no. Mayor Weatherly continued if you don't get a positive recommendation from the public works director they don't have to deal with it, it would stop there. The policy as said shall be recommended by the public works director and approved by the board of commissioners. Crawford stated if that's the way it works and this can not be dealt with at site plan, asking if that's what he was hearing. Mayor Weatherly responded in fact if there's potential of multiple ownership involved with this, it would conflict with the body of the substance of our policy anyway. Crawford asked if it did come before the board- the policy could be – it's just policy not an ordinance. Mayor Weatherly responded that's right, but he was saying the strong recommendation he heard tonight was multiple ownership of these facilities would be strongly discouraged to the point... with Crawford interjecting he didn't think there was a big conflict with this; he thinks what they are willing to say is that they will abide by the policy of the town and if they need to redraw that one bid of their PD Plan than that's what they will do, with Mayor Weatherly asking if he wanted to proceed with the rezoning, and have held the public hearing and now in discussion.

Crawford stated if anyone has specific questions about other issues, he will be happy to answer them. Mayor Weatherly stated the board is now in general discussion, asking if there questions.

Commissioner Gossage asked that on the gas station, specifically the canopies, was their intent the canopy be attached or be adjacent, he didn't know as a condition of the board, if they had any thoughts on this at all. Cowles responded they were looking at specific location and on Attachment 3 diagram there is a line and also to be attached to the building; to be a part of the one main building. Commissioner Gossage restated this was his question, is the canopy suppose to be attached to the building, with Cowles responding yes. Commissioner Gossage was not sure it was worded that way; seemed to him it could be attached or adjacent and he couldn't remember of if they addressed that. Crawford stated it said fast food restaurants shall not be a separate stand alone building; Cowles continued canopies over gasoline sales area shall be consistent with the architecture of the buildings to which they are attached and adjacent in terms of character, scale and materials. Commissioner Gossage stated it says attached and adjacent and that's his question, is it and/or adjacent or is it... with Commissioner Jones stated they could be attached to one and adjacent to another. Commissioner Gossage added the goal is that they are attached to whatever the main associated building with Cowles agreeing with him.

Old Business # 2 continued

Attorney Fordham asked whether the portion of the PD Plan that pertains to the sewer can be clarified because if there is an approval that would approve something that is in conflict with the policy at this point, and thinks that is what Crawford was referring to, that could be changed but might need to find out specifically what portion of the plan addresses that and determine whether that needs to be modified.

Mayor Weatherly asked could the motion to approve the plan with the exception of issues relating to the ... with Attorney Fordham advising he didn't think they could except something out but think he was offering to modify the condition to fit the requirement. Mayor Weatherly continued they should get him to voluntarily modify the conditions to exclude the utilities... with Attorney Fordham stating he had not seen the exact language of what part of the PD Plan addresses the sewer system but needs to see that and see what needs to be modified.

Mayor Weatherly asked staff if they wanted to help with this; Commissioner Jones asked if it were the specific PD Plan with Cowles stating it's on the plan and showing connection to the private pump station; from what she was hearing, he was going to redraw that. Crawford stated he could redraw it to take the pump station that is drawn on the PD Plan off and could say they would follow town policy.

Mayor Weatherly asked how this needed to be stipulated so that it passes, with Attorney Fordham stating what Crawford had said was sufficient so long as there is nothing on the plan or the text of the drawings that conflicts with what the board desires to approve as long as he's withdrawing that and substituting they comply with the policy. Mayor Weatherly added the record is sufficient based on his verbal assertion, with Attorney Fordham advising the documents could be changed after, with Mayor Weatherly wanting to assure they were all clear with what was being done.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Schulze with the conditions that has been added since the last presentation, plus with the modifications necessary to comply with our policy relative to private sewer. Motion carried 4 and 0 with Commissioner Meckes being excused.

End of Old Business # 2

Kent Jackson, Director of Construction Management

Old Business Item # 3 – Downtown Parking

Kent Jackson, Director of Construction Management led the discussion seeking direction from the board in selecting a layout plan for proposed downtown parking lot along Saunders Street.

Commissioner Meckes asked to be recused from voting and participation, after talking with the attorney.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to excuse Commissioner Meckes from voting and participation due to personal interest. Motion carried.

Jackson gave background information and presented four possible layouts for consideration, reasonable and feasible parking solution. Property is boarded by Saunders, Temple and Templeton Streets – Temple more of a paper street. Staff has tried to maximize parking, and incorporated some stormwater controls and then brought in UDO perspectives. Adam Stephenson Senior Engineer has saved town money for these drawings and more accountable to adjacent property owners.

Old Business # 3 continued

Adam Stephenson, Senior Engineer noted the site exempt from stormwater controls and asked to include those. To increase space, would modify the central business district to include these parcels – the lot will serve the central business district and would allow them to grade through required buffers and the spaces afforded. He noted the stormwater control was quantity only and not yet explored quantity and quality simply because it's a tight area and would drive the cost upward from what the prices are as shown; a lot more grading involved. Since it was not required and exempt this assumes compromise upfront and quantity control.

Mayor Weatherly asked what was the exemption in the UDO that does not require stormwater controls on this, with Rowland responding 2 acres or less.

Mayor Weatherly thought the spaces would be close to 150, with Stephenson responding originally when first laid out were given the parcels to be used, and instructed to include Temple Street, but based on the zoning parking is not allowed and there's an access issue to the Maynard property – their only means of access and dropped the number.

Commissioner Schulze asked if two plans save the house and two not, and noted the house gone either way. He asked what the yellow lines were, with Stephenson responding it's the retention basin. Stephenson stated planning wanted to save the older more significant oak trees which they do in all the layouts; those adjacent and east of the house are saved in each layout as part of the RCA area.

Mayor Weatherly felt the low end of 72 was shocking and reduced by half of what he anticipated the parcels would get, with Stephenson wanting to show the options changing the central business definition showing how sensitive the layout is to the ten feet of buffer which they could still plant a screening and have an offset for the slopes but to not be able to grade in the buffer would have to come off of that and then grade down to parking lot surface – layout is sensitive to that.

Manager Radford advised the Maynards were not ready to sell their property at this time and would be happy to discuss this at a later date, Commissioner Jones asked given the potential for purchase of the Maynard property, and probably using it for parking as well, is one or more of the plans more amenable to expansion than the other. Stephenson stated it would have to be looked out; dimensions are specific and doesn't know any of these that would affect.

Commissioner Jones asked the intent of Temple Street showing it here running north/south and stubbing into the parking lot; why not just stop it. Manager Radford clarified to go what is farther north and west onto the existing Temple Street right-of-way; he has had several discussions with the gentlemen who lives in this house and has some strong concerns about the project and tried to buffer him as much as possible. Stephenson added he has seen the latest plans and pleased they had come as far away as they have. Manager Radford continued vegetation, traffic, lighting and if you come down Templeton, increased traffic will shine lights directly into his front door and has made an arrangement with him to plant additional buffering in the Temple Street right of way and up to the far right hand side of Temple Street even with the left edge of his driveway on right of way. Commissioner Jones noted some vegetation already in that right of way. Commissioner Gossage asked if we would do signage; with Manager Radford responding they had not discussed that with him and he had not requested that.

Stephenson continued the issue as far as using Temple Street for access; the question – he understands the Maynard property is their only means of access. Commissioner Jones added if they buy the Maynard property maybe there is potential for closing that.

Old Business # 3 continued

Mayor Weatherly wanted whatever plan would maximize the number of spaces – there's quite a range and the prices are quite a range too. Stephenson continued that Alternative C is the biggest bang for the buck and not the least expensive but the cheapest per space with the Mayor noting the most space and direct relationship to the cost per space. Stephenson continued it is doing without the stormwater control that is not required but does involve UDO amendment to change the central business district to change the definition to include this area and makes it exempt from the buffer requirements. Mayor Weatherly confirmed they do preserve all the specimen trees – we don't sacrifice any of the mature oaks, with Stephenson responding no. Manager Radford added specifically two large oaks – with Stephenson adding he had four are saved. Commissioner Jensen stated in looking at the aerial photos, it looked like some other large ... with Mayor Weatherly asking what... with Stephenson responding it's probably older photos.

Commissioner Schulze looking at Alternative B presumably someone came off Saunders Street and wanted to get to the far back of the lot near Temple, they have to go against traffic, with Stephenson stating that is right with some having more restrictive movement and has a one way having to circle in the portion across from the Police Station. Commissioner Schulze noted Saunders Street would be an exit not an entrance, with Stephenson responding it would be an entrance but only for the local area, that one section. Commissioner Schulze saw a problem with that – in that people will not know that if they are not familiar with it until they are in there and in a jam, with Stephenson agreeing. Commissioner Schulze stated this one is ruled out for him.

Commissioner Jensen looked at Alternate A even though it's not the most number of spaces, does have the stormwater and he's a advocate of and should lead the way on but still provides 98 slots which is above 72 and above 91 and second highest in slot and still gives stormwater control and total access from Saunders over to Templeton in both directions. Commissioner Gossage asked if he were taking stormwater over buffers, he was thinking D.

Mayor Weatherly asked what happens to the water from the parking lot, into the gutter system, not sacrificing surface area – we will be capturing run off and goes into the subsurface system, with Stephenson answer right, with Commissioner Jones noting it storm sewer. Commissioner Jensen asked where it comes out. Mayor Weatherly noted the huge downtown business district and not sure less than 2 acres would be a droplet in the system – talking about impervious surface almost infinite magnitude to sacrifice that on a small lot seems short-sited to him when they would capture the water anyway and not run down the creek and have the problems they have experienced in other places and not a possibility. Commissioner Jensen asked where the outfall goes, with Manager Radford responding across the street to the edge of the police station and into that stream. Commissioner Jensen understood it was small but to him for half an eternity was done wrong and why continue to do it wrong. Mayor Weatherly responded if he could be convinced of the negative impact that this impervious surface would provide to the universe, then he would obviously – he's not convinced it would have any negative impact and would sacrifice some extremely valuable real estate – surface area, when there's not going to be any difference to the impact to the environment if they run this down – like the water on Salem Street will go.

Stephenson noted the bite the basin takes may show why 2 acres of less this being l.5 acres is exempt. Commissioner Jensen noted they were talking 16 slots..... with Manager Radford stating he probably didn't give as full a response as to where it went; it goes into the stream bed behind the police station and down to the Seymour pond beside the public works building. Mayor Weatherly noted it a huge catch basin, with Manager Radford noting it a large pond.

Mayor Weatherly stated to Commissioner Jensen he was an advocate for regional catch basins, with Commissioner Jensen responding he was but on the other hand he guesses it could be called a catch basin, with Commissioner Jones noting it a natural with Commissioner Jensen responding naturals stay up to the top and act as impermeable service and you are not gaining anything as a retention pond.

Commissioner Gossage likes D because it adheres to the UDO and exempt from the stormwater and don't have to use up space for retention pond and low cost and gives 91 spots and thought it a good compromise of the proposals. Stephenson commented on the retention and in order for it to work appropriately according to design would have to tear out the pipe that goes to the police station and goes under the ramp – aside from additional cost other issues; cost is plugged into the costs but visual tearing it out is substantial impact for some period.

Commissioner Schulze likes C because it has the maximum number of spaces, but likes D because it has a few islands with trees to break up the parking lot with the cars, asking if they could incorporate both – one has slanting parking on the side where D has parallel parking. Stephenson responded he had discovered the missing alternative which exempts all UDO requirements being part of central business, did away with buffers and took islands out as well, and could keep the islands and grade through the buffers so it would be Alternative C and include the islands, with Stephenson agreeing. Mayor Weatherly asked the number of spaces – with Commissioner Schulze noting they would loose 6 spaces; Mayor Weatherly stated no one wants to parallel park anyway.

Commissioner Jones noted with D you end up with a one way bottleneck, wherever you have angle parking you end up with awkwardness in trying to get from one side to the other; Stephenson noted that's with B also. Commissioner Gossage and Jones felt C with the islands was good, with Commissioner Jones noting otherwise it's big expanse of parking space without vegetation. Commissioner Schulze felt the only one way issue would be with the area to the north but manageable and with arrows could see not to go there. Commissioner Gossage added it was a little more intuitive with Commissioner Schulze agreeing.

Mayor Weatherly called for a motion:

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to do a hybrid of Alternative C and D primarily Alternative C with islands so represented in Alternative D, with no parallel parking but diagonal parking as in Alternative C.

Mayor Weatherly asked what this does to the number of lots and spaces and costs with Stephenson responding the cost doesn't change much and it only drops the spaces to 108 dropping 6.

Commissioner Schulze asked if there were other plans to add bench seating, some amenities or is it too far with Stephenson stating that was down the road. A fountain was mentioned where the big oaks are.

Manager Radford noted that included in the budget is $20,000 to demolish the Laura Duncan House and has had a request from citizen that they be able to get the house and move it onto their property located on the corner of Templeton and Temple; they are asking to do this for the sake of saving the Laura Duncan House. He has a price of $23,000 to physically move the house and they have asked the town move it on their behalf since we would have to spend $20,000 to demolish it anyway; basically for $3,000 they save the house. Just today he had a second party tell him in the event the first parties plan doesn't work out for them; they too would like to consider getting the house under the same set of circumstances that the town pay

the $23,000 to have it moved in close proximity to the present location on a private lot and they would re-establish it on an additional foundation and hook it up to public town services. He asked this now based on the fact there's a motion on the floor and it's already budgeted funds.

Mayor Weatherly asked if they could make a contribution and let the responsibility be theirs for moving the house; he wasn't understanding and hopes he wasn't telling him that they expect the town to move the structure and have it placed to their satisfaction on their property; based on what he knows of the structural integrity of that building seems like to him we would want it to be their responsibility but could entertain to make a contribution to the movement there of but not be responsible for what condition it's in when it gets there. Commissioner Gossage added and maybe capping our contribution at $20,000 and if anything in the move should happen to not go as planned the house would then have to be, with Manager Radford interjecting there were a couple of more issues than that – one particularly it's now owned as property of the Town of Apex and needs to be declared at some point as surplus property very early own and go through the upset bid process and if we go through that process, gives Attorney Fordham opportunity to give us guidance on whether or not a contribution could be made toward preservation of the house by having it moved or moving onto someone else's behalf.

Jackson added if they elect to move the house they were talking about a spring time frame of having the parking lot as opposed to ... and reason is they have to think about how the house can be moved and where it sits back up the hill instead of out on Saunders which has to be coordinate with the contractor's work and could be layered and tricky. Mayor Weatherly and Manger commented on the large hole in the house, with Commissioner Jensen not thinking it too structural. Perspective owners have looked at the house.

Commissioner Jensen agreed with Commissioner Schulze in terms of the hybrid but still will vote against it because of the stormwater and agrees with the hybrid thinking it's the best of all. Vote on the motion was 3 in favor and 1 opposed with Commissioner Jensen voting no with Commissioner Meckes excused from voting. Motion carried.

End of Old Business #3

Kent Jackson, Director of Construction Management
Old Business Item # 4 – Peak City Grille Renovation
Jackson led discussion to approve a reimbursement agreement for storm drainage improvements with Regency Home Funding, LLC related to Peak City Grille renovation project.

In the early part of the Peak City Grill project he found a low area on the fire station property and adjacent to the parking lot for the Grill that ponds water during the rain storms and exacerbated when the parking lot was graded and paved for the Grill. The owner of the Grill approached the town about a possible way to solve the problem and solution was to install a drop inlet on the back corner of the fire station property and extend pipe to a drop inlet already planned in the parking lot that goes out to the storm sewer in Salem Street.

He proposed it's a good solution and convenient way to get this done so the proposal of the Peak City Grill was 50/50 cost share for two drainage structures and the 12″ concrete pipe. He included the invoice from the contractor for this work totaling over $6,800 with town's share $3,400 and a reasonable total. Commissioner Gossage called attention to the figures being different. Jackson didn't find all the places with the amount written and noted the overhead and profit was not included and where the difference came in and when editing the agreement didn't find it.

Mayor Weatherly asked Commissioner Meckes if this didn't in some way enhance his property. He's located on the other side of the street and safe with this one.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the developer agreement and that the agreement should state the $3409.81 in all places. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

June Cowles, Planner
New Business # 1 – Site Plan American Ballet School
Site plan for American Ballet School, Jones, Cnossen, and Dolle, PLLC, petitioner for a 3500 square foot building, located on North Salem Street.

Cowles oriented to the site and followed the staff report which is attached and incorporated as a part of the minutes. Located on North Salem Street on 4.08 acres for proposed 3,500 square foot Ballet School zoned Office and Institutional and inside the town limits with parking to the north; portion of site will be developed. Northern portion of the site will remain undeveloped and wooded until the owner applies for future development; generate approximately 39 vehicle trips per day – NCDOT will review the proposed site and approve drive connection and necessity for left turn lane into the site. Building includes two studios and office – brick foundation and hardy plank siding; six sky lights on the roof to bring natural light into the studio. Staff had concerns with the six skylights on the roof and request they be lowered or a different form; applicants lowered sky lights from 5′ 2″ to 3′ 8″. Planning Board recommended approval 5 to 1 with the condition the sky lights be a maximum of 3′8″ in height. Descending vote was concerned with architecture.

Commissioner Gossage asked if staff had an opinion on the 3′ 8″. Cowles responded it will be fine. Commissioner Meckes questioned the architecture with Cowles responding it was the compatibility. Rowland responding it's a contemporary building and the concern was how it fit into the existing area. The Board discussed the look of the building, and noting there was a commercial building across the street, brick, etc. Ballet school is inside the building across the street and there are single-family homes with the veterinary there.

Commissioner Schulze asked if there were color renderings with Cowles responding they would use natural browns and neutral colors with hardy plank siding and red brick for the foundation. He had a hard time envisioning what it would look like.

Peter Cnossen, Jones, Cnossen and Dole Engineers introduced David Smith, the Architect, and noted there is a 30' undisturbed buffer with a 10' set back; reality people walking along the public sidewalks and the drivers – there's a 3'8" of sky lights and certain they will not be the prominent feature people will see; a good compromise to lower the sky lights and still want to keep those, not wanting lots of windows in front of the dance studio but natural light from roof top. The Planning Board member in opposition was in agreement with that in principal but was the language of the UDO not thinking it would allow this type of change. From his perspective, he doesn't see this as a big issue from the view point of pedestrian and vehicle traffic.

Commissioner Meckes asked if it wasn't going to be so shocking since the setbacks are so significant with Cnossen agreeing. Commissioner Meckes noted it a bit unusual for the community but an unusual use as well; esthetically speaking he supposed they would want something a bit different for this type setting.

Commissioner Jensen felt if it doesn't impact the neighbors he felt it was an interesting structure and as long as the neighbors are happy with it and with a 30' buffer, with Commissioner Schulze agreeing it was interesting. Commissioner Jensen confirmed it was an E type streetscape buffer cut see through it but was set back.

The architect passed out image of building he included the church on Salem Street and images of the building set broadside to the road, noting the reduced sky lights, off white in color, hardy plank siding. Commissioner Schulze was not opposed to it, but asked the surrounding adjacent properties that has the Apex Business Center, east are homes, and sitting on a 7 acre lot has nothing next to it, and thinks the land east will be converted to some use besides residential. Commissioner Gossage asked to see how it sits on the property. Commissioner Schulze was fine with the sky lights.

Commissioner Jensen asked if the buffer went from an E type buffer to a B type buffer – with a dance studio you could see through it but would mute it. Commissioner Schulze didn't know, it was not a traditional building, with Commissioner Jensen thinking it was interesting and challenging. Commissioner Meckes asked questions about the lot, and future development. Commissioner Schulze asked what would be underneath the open structure, with architect responding gravel or some type foliage. Mayor Weatherly said even though it's non-traditional as long as it meets other ... with Commissioner Schulze agreeing.

Commissioner Gossage stated from the UDO the proposed site plan does not meet the architectural compatibility of surrounding buildings... with Cowles responding they were looking primarily at the sky lights and roofing and the surrounding area of homes, but the construction can not take on a roof of that type. Rowland stated the only one member questioned the compatibility of the surrounding structures and standards that the board approves for the site plan.

Donnelly reported this is one of the sites that is sewer challenged, however proposes as long as the pump station is the same owner as the building he has no problem with it and recommends approval; does not want parcels to be sold off. Commissioner Gossage noted this would also apply to any future buildings placed on this site.

Mayor Weatherly asked what makes this site so unique they couldn't tap on. Donnelly responded there is no gravity sewer that it would drain to within 500 feet. He noted across the road is a private pump station serving a strip center, but nothing they can go to.

Commissioner Meckes asked relative to this property and the policy passed, why would the pump station necessarily be owned by the same person that owns the building; if separate ownership of the pump station what difference would it make who puts stuff there. Donnelly stated the theory was if the pump station maintenance fails and sewage goes on the ground, the town will have duty to get people out of the building due to unsafe and sanitary sewage disposal and didn't want the situation where the party that is not maintaining the pump station was not suffering the ultimate consequences of loosing... thinking people that have the most interest are the ones using the building and fixing it. He noted the few homes that have this are right on it when it breaks; they are suffering the consequences; even if you lease space, and you have to put tenants out they are going to be made at us for not providing services and would loose the lease and good reason to fix it. Commissioner Meckes noted they would be accountable for the spills and not tremendous impetus for the owner of the pump station to immediately solve the problem; he stands there with the stick. Donnelly responded its been his experience that to threaten to move someone out of a building is more onerous that threat of a fine – he hopes not to get to either point; better to let the money go to the problem. If someone is out of town see my attorney, they will get them out of the building.

Commissioner Schulze asked clarification about the rear elevation and railings. Commissioner Jensen asked staff what the single family residential buffers were with Cowles responding 20' Type A buffer with Commissioner Jensen feeling better; he thinks the building is interesting and not sure what others would think.

Commissioner Gossage agreed the building is interesting, but for someone that drives past it everyday he will vote against it, not know if it were compatible with the surrounding architectural styles.

Attorney Fordham asked in terms of sewer, is the plan clear that the sewer that's going to be approved will serve this one building; if it's approved there's some implication on the plan that will serve the whole site – now is when they have the leverage to say whether it would serve just this particular building.

Mayor Weatherly asked if they wanted to condition the building; Cnossen noted on Sheet 4 of the site plan submittal utility plan – read the pump station will provide private and will provide sewer service for future site expansion as well as future owner residential properties that borders the site. It's their intent to use that private pump station not only for this building but for future expansion; as well as the applicant does own some residential property that is adjacent to this and are going to use the pump station for that as well; he wanted to assure policy was clear that he understands the private pump station is ok provided that it's operated and owned by a single owner and that pump station can be used irregardless of use whether it be residential commercial office and institutional as long as its one owner; that's his understanding. Mayor Weatherly stated pre-assumes you can't sell the other property, with Cnossen adding it has to remain under that single ownership. Attorney Fordham clarified he meant the pump station has to be owned by one person or the properties that is served has to be owned by one person. Cnossen stated one in the same. Commissioner Meckes clarified he could lease all the buildings and spaces out, with Cnossen responding exactly, and Commissioner Meckes continued then he's ok but if he tried to sell with Cnossen interjecting then that's the problem, and wanted to make sure that's clear. Attorney Fordham advised that's what the policy intended to do, but thinks if that's the intent to do now and has the language it has they need to acquire additional language added to it to make it clear that it has to remain under one ownership. Commissioner Gossage stated it sounded to him like the policy was if the properties the pump station is serving can have multiple owners than it can't be done, so the word would be can.

Commissioner Meckes asked how Donnelly would envision – this policy relative to this piece of property seems counterproductive because you could end up with six force mains and six different pump stations in the same piece of property and doesn't make sense. Donnelly envisions for this property as far as policy, as long as one person owns all the buildings and leases them, it would be fine. The problem with allowing pumping stations is... are you encouraging proliferation of lots of force mains and the answer is to stop that you say no; there's enough interest in development that we need to have public. For this site if approving the regional pump station, head waters of the lake, Williams Creek Pumping Station, it will make it possible, to bring the sewer line up through the old horse farm and could come under the railroad and get into the draw that this site drains too; there will be a sewer when that site develops and will be required to bring a manhole to that draw and stop it at the railroad and then future development of land around this site could go under Salem, under the railroad and then down to the regional pumping station. Commissioner Meckes concern was it seemed like if there are six pump stations and six force mains you have six times the potential for problems where if you have one pump station that can be monitored and one force main that can be monitored, there's far less likely hood of significant problems. Donnelly stated he was correct and this policy is more concerned with accountability with separate parties and what happens; scientifically they want to discourage pump stations and have public collection.

Commissioner Jensen addressed the street buffer asking if the applicant would run that up to a Class B buffer that allows see through but still more dense than an E buffer; at least find some medium ground so that it isn't so clearly visual to the area. Commissioner Schulze was not sure this was the standard they want he felt the building was ugly why hide it. Commissioner Gossage added it's an objective standard that based on what he sees when he drives down that road each day is that it's not compatible, not esthetically pleasing. Architect asked if it were the building that is not compatible or the sky lights, with Commissioner Gossage responding it's not the sky lights; when you make a fork onto Salem Church Road, there's a beautiful red brick building with white columns – that's a far cry from what he sees here. Commissioner Schulze agreed with Commissioner Gossage, he has no problem with the sky lights it's the building itself and compatibility – one line in the packet says the town strongly discourages architectural styles that do not build upon and promote the existing character of the town; he doesn't know how anyone could say this is the character of Apex. Mayor Weatherly added Apex is unique.

Commissioner Meckes asked what if it were a museum of art that we were bringing to the community; look at the museum of art we have – with Commissioner Schulze responding it has nothing to do with the usage, with Commissioner Meckes responding it has everything to do with usage, with Commissioner Schulze and Gossage disagreeing. Commissioner Schulze stated it could be used as a ballet school, school, with Commissioner Meckes noting that's the appeal of the building, and with Commissioner Schulze understanding that aspect of it, but it was a big structure. Mayor Weatherly added he didn't think anyone was saying this is an obnoxious design but thinks they should defer to the owner as to the style he would want and doesn't believe this would be objectionable to the neighborhood or Apex and doesn't think it goes that far out of bounds. Commissioner Schulze said he did and thinks it's incompatible. Mayor Weatherly added he thinks the owner has the right, with Commissioner Meckes interjecting if it were downtown than he would agree, but everything doesn't have to look exactly the same.

Commissioner Jones asked if he were concerned with the architectural elements or the building materials, with Commissioner Schulze responding the elements; building materials he had no problem with. Commissioner Gossage added changing the building materials would go along way in addressing some of his concerns. Mayor Weatherly called for the question. Commissioner Jensen added a buffer would tone this down. Mayor Weatherly added he didn't think it would make any difference; so far no one else has said, with Commissioner Jensen saying he was asking.

Commissioner Jones compared this building to the regional library, with Mayor Weatherly calling for the motion.

Attorney Fordham advised the board to remember in their motion the language didn't seem to restrict the sewer within the policy and may want to read it and place a condition. Mayor Weatherly added they could make the motion to say, with Attorney Fordham advising they could add a condition, and Mayor Weatherly continuing it must be consistent with our policy on, with Attorney Fordham adding with the respect to the text that relates to sewer service; it can't be extended if it violates the policy. If they approve it without having a proviso on it then down the line someone could make the argument it was approved to serve this other without restrictions. Mayor Weatherly responded just so it's consistent with our policy.

Mayor Weatherly called for the motion.

Action: Motion by Commissioner Meckes and second by Commissioner Jones for approval of the American Ballet School site plan, with the proviso for wastewater management as previously established policy with a sky light height of 3′ 8″.

Commissioner Jensen again was concerned with the front buffer and has not been resolved and was hanging on it to a degree; if the it were a B buffer instead of an E which you look straight through it and this is a different building and could be toned down a bit if it was ... the building is not the great attractor like a McDonalds, or something. Commissioner Meckes stated the architect didn't want to hide the building, with Commissioner Jensen stating a B buffer doesn't hide – it mutes and E buffer doesn't mute. Cnossen stated the architect agrees to change the E buffer on the street to a Type B buffer. Mayor Weatherly stated the motion needed to be adjusted to accommodate this condition, with Attorney Fordham advising yes.

Commissioner Meckes amended the motion ....with an approval of the sewer conditions as previously mentioned and changing the front North Salem Street buffer to a Type B bravo Buffer from a Type E. Second by Commissioner Jensen.

Mayor Weatherly called for the vote on the motion as amended. The vote was 3 in favor and 2 opposed with Commissioners Schulze and Gossage voting no. Motion carried.

End of New Business # 1

Director of Public Works, Tim Donnelly
New Business # 2 - Town's Soil Erosion and Sedimentation Ordinance
Donnelly presented proposed changes to Town's Soil Erosion and Sedimentation Ordinance and presented a cleaner version of the ordinance. State ordinance has changed and this is a change to the town's and thinking better and more restrictive. Changes are noted on the cover sheet. Commissioner Jones commented on those who perform land disturbing activities that 20000 is the limit. Donnelly stated if this is the board's wish they would work with consultants and send a letter stating the changes and get it on the website. All site plans come through and will be picked up there as well.

Mayor Weatherly asked about an incident where a land owner had a mature stand of timer and wished to harvest it and not for development what permits required by ordinance. Manager Radford responded it's a non-structural development permit and takes about a week to review and then he would be issued a permit. Without doing that he's not able to get a development permit for four years. Lots of folks have the will and business plan to not use the property for four years and replant. Mayor Weatherly asked the cost – Manager Radford believed it to be $25.

Rocky Ross, Soil and Erosion added non structural tree removal permit is not necessarily logging, they can go in and remove the area – reason developed is they go out and get into the buffers; Mayor Weatherly wasn't talking stripping and then put site plan and no buffers to protect. Ross stating tree harvesting is $25.00. Mayor Weatherly recalled a person wanting to cut the trees and re-harvest and the town held him up with logger and equipment on site – Kelly Road sometime ago and didn't address the remedy for that, not knowing why it took so long.

Commissioner Meckes asked when the hurricane dropped 10 inches of rain, asked what type storm with Donnelly responding 40/50 year storm, sediment erosion control structures blow out on construction sites and if it's over the design storm and they are timely in repairing them nothing happens. Ross stated the design standards are for a 10 year storm and in a 50 year event he couldn't enforce anything; its policy he goes out fines the developer and gives him inspection noting item. Donnelly stated the only problem would be if someone were slow to replace the structures and could be financial due to the hurricane; if they have equipment working – this is the first thing to repair.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the changes as noted. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session Items to be discussed.

CLOSED SESSION

Possible motion to move into closed session to discuss a Personnel Matter and to receive legal advice from the Town Attorney regarding the Memorandum of Understanding and Partnership Regional Wastewater Facility. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to move into closed session at 10:45 p.m. for the purposes stated. Motion carried. Minutes of Closed Session are recorded separately. The Board of Commissioners came out of closed session at 11:52 p.m.

With the Board of Commissioner being back in regular session the following action was taken:

Action: Motion by Commissioner Meckes and second by Commissioner Jones to increase the Manager's salary by a 2% merit increase, award a bonus of $1,000 and continue the benefit of three weeks of annual vacation, and to recognize all of Manager Radford's service time in the Local Government Retirement System as Town of Apex service for the purpose of calculating retirement health benefits. Motion carried.

All business was concluded.

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Schulze and second by Commissioner Meckes to adjourn at 11:57 p.m.

The above minutes were approved on the 2nd day of August, 2005.

Georgia A. Evangelista
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 2, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order with all the Commissioners present. The invocation was given by Commissioner Meckes.
The Pledge of Allegiance was led by Mike and Chris Becker, Scout Troop # 216. Mayor Weatherly extended a welcome to those in attendance.

PRESENTATION

Mayor Weatherly recognized Apex citizens for an "act of heroism," and read and presented a *Public Expression of Appreciation*. On June 30, 2005 Lisa Fields and Ron Young administered aid to an injured lineman with Lee Electric who suffered shock while performing service on the town's electrical distribution system lines. Due to their unselfish act, the lineman's life was spared.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. The Town Clerk noted amendments to the minutes on pages 4 and 7. **Action:** Motion by Commissioner Jones and Commissioner Jensen to approve the amendments to the minutes as presented. Motion carried. **Action:** Motion by Commissioner Jones and second by Commissioner Jensen to approve the consent agenda. Motion carried.

1. Minutes of July 19, 2005 Board of Commissioners Meeting as amended.
2. Minutes of July 19, 2005 Board of Commissioners Closed Session Meeting (recorded separately).
3. Annexation # 378 - Resolution declaring Town of Apex Intent to Annex Town-Owned property (Substation), 5.330 acres located at 2030 Laura Duncan Road (SR1308); public hearing August 16, 2005.

4. Resolution asking the North Carolina Department of Transportation to abandon certain sections of Zeno Road (SR1161) from the State Highway System.
5. Piggyback on a bucket truck with dump chip body bid – bid award April 8, 2005 to Altec Industries, Inc. in the amount of $115,608 (town has money budgeted for the purchase).
6. Developer Agreement between Town of Apex and DDR related to construction of sewer infrastructure.
7. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. With no amendments to the agenda, the meeting agenda was set.

PUBLIC HEARINGS

There were no scheduled public hearings.

OLD BUSINESS

Kent Jackson,
Director of Construction Management
Old Business # 1 – Rail Crossing Corridor Study

Kent Jackson, Director of Construction Management, reviewed and led discussion regarding a draft comprehensive Rail Crossing Corridor Safety Study related to possible closure of rail crossing locations in downtown. Staff is working with NC Rail Division towards gaining approval from CSX Transportation to create two new at-grade street crossing locations for the Apex Peakway. A Resolution of Intent, to study potential of closing two at-grade rail crossings within the downtown area in exchange for the new at-grade crossing for the Peakway, was adopted by the Board of Commissioners on June 21, 2005. Staff presents the study as part of the application package for CSX. Study received input from NCDOT Rail and Town Staff. Crossings being considered are Chatham Street, Moore Street and Center Street with study addressing each crossing and how it should be treated. Recommendations and Impacts of the recommendations are included in the report.

Danny Gilbert, Rail Safety Consultants, has been retained by NC Rail Division as project manager for Apex's application to CSX and was present to answer questions regarding the discussion of the study. The study is attached. The next step is to send a comprehensive report with the adopted Resolution from the last meeting to start dialogue with CSX to work towards an agreement. This is not the last pass through the board, and nothing is final until there's a written agreement with CSX.

Commissioner Jones questioned on page 4 of the report Traffic Volumes and conditions stating, the note that NCDOT map from 1998 did not reflect Hunter Street Extension from Laura Duncan west across the railroad tracts, with the data using 1998 for Hunter Street crossing as 7,400 asking the unit of time for this and that it was confusing, there was no crossing but 7,400 trips across the crossing. Jackson explained he didn't know the complete answer, however, the map of this area of Wake County Streets looks at the traffic count and most likely took the numbers to the closest point in question and was probably taken at Old Raleigh Road. Commissioner Jones noted the extension of Hunter Street happened well before 1998 and confusing it didn't show that. Jackson will do additional work to figure this out.

Commissioner Schulze recalled talking about a fly over asking if this was for North Salem Street, with Jackson recalling talk about a fly over or a bridge at two different locations; one for the CSX line through Trackside and one south of town would be a bridge and ramp. Manager Radford noted the thing that keyed the North Salem Street fly over was the eventual addition of high speed rail and required town to reserve enough corridor along the Peakway to get the elevation up over the first set of tracts.

Commissioner Jensen recalled talking about a fly over at the other set of tracks and are looking now at-grade and believes he questioned this before, if there's a fly over across that set of tracks, asked if the town would have to close Chatham Street also; agrees with the Downtown Merchants it's extremely important, He looked at the volume numbers and if Moore Street were closed the traffic would flow over to Chatham Street and those numbers would be up to 4000 or so; and he hates to see both of those streets closed. He noted they try to preserve downtown and are going opposite; may well have to put a fly over across at least one set of tracks asking why we don't do it now and preserve our town. Commissioner Schulze agreed with the sentiment and would like to at least explore that possibility; he doesn't like the idea of closing Chatham Street, and probably a big hit, but long term might be worth it.

Mayor Weatherly noted there was reference of a strong opinion that it should remain open to pedestrian traffic, asking who makes the call on that; if closed to vehicular, whether it was Moore Street or Chatham Street or both, asked if the railroad could dictate if closed to vehicular could make the call it could be closed to pedestrian traffic as well. Gilbert responded in his talking with CSX on a couple of occasions; and his belief speaking for NCDOT Rail Division and not CSX, in his experience, if they were to close the roads, he doesn't think they would object to pedestrian traffic; they are looking at exposure and opportunity for collisions; pedestrian crossings people would come across; their main concern is collisions with vehicles. He thinks if they make this a point in the argument with CSX he thinks would look favorably at adding pedestrian crossings and they realize they are needed. Mayor Weatherly stated ultimately if it became an issue, asked would they dictate whether there could be a pedestrian crossing with Gilbert responding he thinks it would be a part of the agreement, with Mayor Weatherly adding if we got to that point, would say "no deal" if it didn't allow pedestrians and wanted to go in that direction.

Mayor Weatherly asked if there were an estimate of the cost of a fly over, with Jackson responding in the neighborhood of $2.8 million for specific, the crossing here; one track. Commissioner Gossage asked if there would be any private investments from folks looking to develop in that area.

Mayor Weatherly commented on the price of $4 million for the bridge over US64. Manager Radford stated the Trackside homeowners would want access to Salem Street with a high percentage wanting to go north to RTP and would get on Davis Drive, and this would add additional costs that you wouldn't have at US64 and Beaver Creek where it's truly a bridge over a highway with no access. Commissioner Meckes clarified because there was not enough room to come down from the fly over to get onto Salem Street without going past it, then some means by coming back. Manager Radford stated the 100 foot right-of-way they had talked about acquiring between the two homes would not accommodate a way to get back on Salem Street in that same corridor.

Commissioner Jensen commented on the tracks to the east and to do a fly over that one, you don't have a problem with Salem Street with that, with Manager Radford agreeing, with Commissioner Meckes thinking it wasn't the high speed rail corridor, with a response that it was. Commissioner Jones commented it would cut down one grade crossing. Commissioner Gossage asked if it would be a federal unfunded mandate when the high speed rail comes in and they say it has to be a grade separated crossing and a bridge needs to be put in or would there be federal funds that comes along with that. Gilbert responded if the speed is 90 mph or more there would have to be a grade separation, if not there would be collisions; with a grade separation and the cost were $4 million today, could add 30% at time of construction or $6 or $7 million, and hasn't seen too many $1 million grade separations. Commissioner Meckes asked if Hunter Street would have to be grade separated as well if high speed rail comes through, with Gilbert responding with high speed rail, there are other issues thinking 90 mph and a new crossing would have to be grade separated with existing crossings they can be protected up to a certain speed, not recalling what it is, but thinks with 125 mph everything must be grade separated. Jackson asked if they have speed zones for instance when coming into a municipal area, with Gilbert responding it's rated on track classification; noting the importance of safety issues, noting Boylan – Raleigh, Cary area - NCDOT is raising speed from 59 to 70 mph improving safety issues based on federal regulations but can come through if certain criteria is met at the crossing to accept these speeds at grade crossings.

Commissioner Gossage asked if with the high speed rail they would grandfather in crossings that are at grade that existed before, with Gilbert responding it depends on the speed. Commissioner Gossage was trying to understand if the train were going 75 mph for the crossing here and the other crossing they were talking about putting in further up it probably would not be going 90 mph. with Gilbert responding he didn't think there's anything in writing now that says the speed will go up to 90 mph; they are talking in the future if speeds exceeded 90 mph then you would have to have a grade separation, not just existing, but on new crossings like being requested now. Commissioner Jensen wondered if there were grant opportunities and would be looking at the future if it was put in now and would hope the Manager could search for possible grants. Commissioner Meckes could see commissioner Gossage's point; the purpose is safety, with Commissioner Jensen adding and not wanting to close all crossings in the town. Commissioner Gossage added and the ability to allow this area to have future other than what we see.

Commissioner Meckes expressed he was torn about the idea of spending $3 to $5 million at the Peakway and Hunter Street remains the same; he's trying to see the logic in this. Commissioner Schulze added it would save the town from closing an extra street, with Commissioner Meckes adding that is speculation at this point with Commissioner Schulze adding to a point but is what they are trying to avoid. Commissioner Meckes added this is the whole idea, he's not inclined to fine the railroad very forgiving in regards to their edicts, with Jackson responding that's a logical argument but unsure in reality if that's the way it would go. Commissioner Meckes felt if this was basis for their argument, then he hopes they would see this in writing somewhere before they go out and build a bridge. Gilbert asked the timeframe for the Peakway project with his understanding is in the very near future; and talking grade separation they were talking about delaying this project tremendously; he continued CSX would prefer a grade separation, but under the constraints he understands the town is in with the Peakway project, they need something soon, and the way to get it soon is at-grade. Commissioner Meckes asked if once Center Street and Moore Street is closed, he wouldn't expect there would be any going back and getting one of them open, with Commissioner Gossage interjected that's a good question, asking could they put that in the contract that when the fly over is constructed they would be able to go back and reopen the streets that were closed. Commissioner Jones added he doubts it, its about the need to build a fly over here because of speed and as said earlier, a half mile away are you want to reopen an at grade crossing; it doesn't make sense, with Mayor Weatherly not thinking they would agree to that. Gilbert doesn't think in his experience with Norfolk Southern, he didn't think they would agree; reason they want closures is to reduce the liability, with Commissioner Meckes adding it's a nationwide mandate to close every crossing they can; that's the whole intent, not to come back and open one up later. Mayor Weatherly commented it would be no incentive for them to go back and open them up. Commissioner Meckes new it was not a legal mandate, it's a company mandate.

Attorney Fordham advised in order to grant properties rights to cross in one place they try to negotiate the closing of other places. Commissioner Jensen commented that's the problem – one place crossing and have to close others, plural, which bothers him. Commissioner Meckes felt it goes back to negotiation tool; we have no tools to negotiate. Manager Radford advised that up until recently, it has been a 2 for 1 and now they are asking a 3 for 1. Commissioner Meckes added they were in the position known as groveling. Commissioner Jones noted another issue; these are separated but are counting them as two crossings whereas the ones to be closed have both sets of those tracks at the same crossing, so in affect, are closing four for two. Gilbert noted the CSX policy and has been this way for a number of years, wants 3 for 1; they are agreeing two for one, but they are the minor private crossings also; it's not just CSX, having worked on national committees over the United States, every railroad in the nation has a policy that they will not accept any new crossings and the reason is the exposure – with highway traffic increased, train traffic has increased – they have to have a way to reduce liability and exposure; one way they are looking at it is to try to consolidate crossings. The whole industry has decreased collisions over the last 15 to 20 years because of these, not just because of closures, lots of other issues – they have decrease collisions 70% and that's despite of the increase of highway and real traffic; it's not just CSX, Norfolk Southern did it, Burlington Northern Santa fee, Union Pacific, Kansas City Southern, everyone is looking at how they can reduce exposure; their policy days say 3 for 1 and they are getting 2 separate lines; there's not as much exposure on the other one, but where you have Amtrak there's much more exposure.

Mayor Weatherly addressed Manager Radford stating as far as the Peakway project and the proposed development, any kind of sensitive delay would probably kill that proposal, with Manager Radford agreeing it would. Mayor Weatherly continued it wouldn't kill our Peakway, could wait to do that stretch whenever, but he was saying the driving motivation now is potential development and guess it needs to come into play if they want to see any movement on that sooner than much, much later. Commissioner Meckes added approval doesn't necessarily preclude their pursuing every other option that might be available to them. Mayor Weatherly responded up until the time they actually sign the agreement he guesses they have other options available to them; there will be a public hearing which was presumed when they started this conversation, and before making a final decision would be subject to a public hearing.

Commissioner Schulze thinks it's important not to be short-sited in talking about the viability of downtown and he doesn't want to take a short-sited look at this and risk loosing the downtown. Commissioner Jensen agrees, and looking at it now are trading parts of the downtown for the opportunity for a developer to develop in Trackside and he doesn't see the great rush if we are going to be trading away or looking at trading away part of our heritage basically, with Commissioner Schulze agreeing, and Commissioner Jensen continuing we are looking at trading away from the folks that are here now for the folks that might be there later and doesn't look like a good trade to him either, with Commissioner Gossage and Jones agreeing with that.

Commissioner Jones asked Jackson what was he needing from the board tonight, with Jackson responding he was hoping to get any edits or modifications they wanted made to the report; if they continue on the timeline with the urgency for Trackside they have had, then it would be important for them to finalize the report and forward it to NCDOT in the near-term, but optional.

Commissioner Meckes appreciated what had been said, asking is it also fair to say it's only going to get worse in terms of what they will be able to do and negotiate with the railroad; asking if this is a fair statement, or did they suppose this proposal is good today and good in 10 years. Gilbert responded there was a lot of national push to mandate some type of national policy on grade crossings because of the accident in Raleigh today and all over; somehow the catastrophes that are occurring all over the state has to stop and some committees of transportation research boards, federal highways, and federal railroads with grade crossing initiatives – there's a lot of push to give some type larger support to the Federal Government to mandate closings; what he's hearing here, he hears everywhere and not just Apex. Some places have 20 crossings within a mile and now the federal railroad administration is looking at their 1994 guide for grade crossing closures; he doesn't know there will be a federal mandate, but there's a lot of push and in 10 years if things continue to go the way they are, there will probably be some type guideline that will say on high speed rail line you have "x" number of crossings they need to go away. Commissioner Meckes continued, it's conceivable they could have these close anyway and not have any additional crossings in exchange for them, with Gilbert responding possibly, but not knowing what the future holds, all he was saying is there's a lot of push. All Class 1 Railroads are lobbing congress to do something about these collisions and there's lots that can be done; CSX has 34,000 crossings, Norfolk Southern has 34,000; there's a lot of crossings they want to get rid of.

Commissioner Jensen asked with 34,000 crossings, there are a lot more in our Town and he's seen elsewhere when a person wanted to develop a piece of property and were not to the zoning requirement, they could buy another piece somewhere else and donate it and be allowed to be... has it been done where a town would go out and buy the closing of three or four railroad crossings elsewhere in exchange, with Gilbert responding he has negotiated deals as such, but you have to remember they want the high exposure crossings, the ones that have lights and gates; these three crossings closed on the private side doesn't have a lot of exposure; 10% of all collisions occur where you have private crossings and they would like to get rid of them because you don't know when they will be developed and they want need to be there if Trackside is developed, but they would, but if you have two or three very seldom used crossing, they want take it in exchange for something where you will have 20,000 people. Commissioner Meckes asked the likelihood someone else would have a crossing that has 10,000 vehicle crossings a day. Commissioner Jensen felt you may be able to pick off ... if you are looking at $3.5 or $4 million dollars you have some room to try to find other opportunities that maybe they would exchange; you never know until you ask.

Mayor Weatherly said they had discussed this a bit, asking if there were a sentiment they either go no further at this point, or resurrect this issue later, or do they want to see some movement on it toward some movement that will not engender a final decision, but some movement.

Commissioner Meckes asked to go no further would end Trackside, with the Mayor responding right; he asked the Manager to address this. Manager Radford responded, yes, to go no further ends Trackside north and south, with Commissioner Schulze asking indefinitely not permanently, with Manager Radford responding certainly indefinitely; Trackside north has been purchased and closed on, bought and paid for and are ready to commence construction in the spring and have done so based on what movement the town has made thus far in regard to our discussion about closing the necessary crossings; the fact that we re-align the crossing of the Peakway at Salem Street when they moved some 400 feet, talking about the quad gates there that would enable additional and enhanced safety; have taken those developers a good ways down the road at this point - that was the intention to close at some crossings in order to be able to effectuate the north crossing.

Commissioner Meckes stated it hadn't been mentioned that especially the north side, Trackside north is largely residential which will only enhance the viability of downtown; he believes it will be significant to population base in close proximity to the downtown for community events; for himself he's reluctant to pull the plug on this deal; as the Manager had indicated they have talked about this for years and it's been a dream and maybe in lightness as to the feelings of the downtown merchants; we did a survey and they didn't want Hunter Street closed, but asking if it were fair to say they could live with Chatham.... and Manager Radford interjecting he had laid a copy of the survey for each of them and noted question # 13 that says the Town may be required to close either or both Center Street and Chatham Street, would you be in favor of or opposed to these closings with 39% in favor 44% opposed 17% other. If one had to close, which would you prefer: 54% Chatham 27% Center and 19% other. Manager Radford noted Moore was a given.

Gilbert added what NCDOT & CSX would like is to find out if they are interested in this project and would be better for them to select 2 crossings to put in a resolution; they are not tied to anything until that agreement is signed by all parties; this would keep the project going if there's some type resolution that said they are interested in these two crossings; six months down the road, say Chatham Street is not the one we want, this is the one we want – that can be renegotiate, no problem, until the agreement is signed, you don't have an agreement; all this does is to allow the opportunity to keep the project going and let NCDOT and CSX know they do want to negotiate further. Commissioner Jones recalled the resolution done in June.

Commissioner Schulze remembered that and recalls they were not obligated at that point and giving some indication of the intention but not locked into it, and he was thinking back and felt he was pressured to make a decision and its a tough call and he doesn't felt he led anybody anywhere, keeping his options open like he was told he was able too and kind of taken back by the fact that he's being pressured to make a decision right now.

Commissioner Jones commented they didn't need to make a decision now. Manager Radford stated they have the ability to pass a resolution that calls for the closing of any one of the three and hold the public hearing and ascertain the feelings of the public and maybe give it time to soak.

Commissioner Schulze asked what if they decide they don't want to close anything, with Manager Radford responding then you don't have to do it. Commissioner Schulze asked, if then are they leading the developer further down the road. Mayor Weatherly responded that's why he wants to be sure they are not being disingenuous with conversations that are being held with the developer on their behalf basically that indicate their movement toward that resolution.

Commissioner Meckes added you go back to the time they plowed up the azalea bushes, all was with the idea we were putting two at grade crossings; we have come out in support of two at grade crossings; that was condemnation process, with Manager Radford responding it would be, with Commissioner Meckes continuing this was early spring with Manager Radford responding last winter. Commissioner Gossage asked if he were suggesting they were legally on the hook, with Commissioner Meckes responding he was not suggesting this, but saying they have led folks down the primrose path with the idea they actively support Trackside north, that they moved to condemn property to allow for there to be two at grade crossings and then to come at the eleventh hour, he's pretty uncomfortable with this.

Commissioner Jensen commented that he didn't see condemning the azaleas means two at grade crossings; it means an at grade crossing next to Salem Street and does not mean. Commissioner Meckes continued that was right, they had discussed the fly over with Commissioner Jensen agreeing and continuing he didn't feel bad at all about discussing a fly over and if they have to put this off for a while until they can find out how they can get funding that's not going to cost an arm and a leg and also possibly look into other crossings maybe they could buy that they had talked about; he thinks they need to think this thing through before they do what they are talking about doing to this town, with Commissioner Schulze agreeing..

Commissioner Meckes stated he would love to see what the Downtown Merchants have to say; he believes these projects and doesn't know how much commercial business development is proposed in Trackside south, or even if they have gotten to that point, but suspects most of it would be along Hunter Street which is in close proximity of downtown; lets don't discount the draw that our downtown has – its uniqueness it has for folks; they have to go around left end to get to it, he believes folks will do that.

Mayor Weatherly stated they had discussed this actively for at least two years and thought he had the strong impression they were, even though they didn't like the ultimatum given by the railroad, they felt they were moving in that direction of having to make a choice and a little surprised tonight, they get here, as if this is a new issue they are discussing for the first time; he doesn't know where they want to go on this, he's a little taken back to the lack of, with the ambiguity that's hasn't been here before, he thinks, he's never experienced, they have talked about the fly over, obviously that's kind of like a pipe dream, sure we can do that, a better alternative but he doesn't think anyone has ever really .... with Commissioner Meckes interjecting he was thinking of Bills' $1m and kind of the number he had in his head too. Mayor Weatherly stated he remembered ... with Commissioner Meckes interjecting he didn't remember the $3 million, with Mayor Weatherly continuing he doesn't ever remember anybody saying lets talk about finance as if that was a serious alternative for us, but he's trying to gage where they are tonight, whether they need too ... it's not an issue; they have talked about it everyone of them has though about it and considered it for months and months, so tonight, he asked were they going to move forward with at least taking a step and adopting the study so they can proceed or do they just want to say table this until further notice?

Action: Commissioner Meckes made a motion to move forward with the study and seek additional input, but he's totally opposed to stopping this dead in the tracks, because if they do, it's done.

Mayor Weatherly restated the motion, to approve the study as presented. He then noted there were two specific recommendations for closure contained in this report, and he continued and then also to schedule a public hearing. Commissioner Meckes stated this was right, to have some input from folks in downtown, everybody, but specifically folks in downtown; they are supportive of additional residential growth in the close proximity of downtown and realize what that positive impact is going to have on their business. Mayor Weatherly noted this was infill growth, a primo location for infill, asking if there was a second to the motion.

Commissioner Jones made the second to the motion. His reason was the same, this was ground they had been over for two years, and he doesn't want to close any crossings; he's sort of resigned to the fact, that they are going to have to - that fly over over that portion was grade separated crossing, fly over or what ever you want to call it, was too expensive and didn't know what the high speed rail is going to bring, if ever it comes to us. One change he would like to make in the report, says, The Town of Apex recommends the closing of Moore Street and Chatham Street; he knows this is semantic, but would like it to say, ... at the advisement of the Rails Division of NCDOT or to meet the requirements of..., we recommend the closing of this too. Not that they are throwing this out as a recommendation, we are reluctantly recommending we do this.

Commissioner Jensen stated .. we consider not recommend. He's not going to vote for this anyhow. Commissioner Jones understood, but under the circumstances, with Commissioner Meckes stating he agrees, the burden of closure is not an edict of the Town of Apex, they are negotiating with a bohemia, we are not negotiating, we are grabbling with a bohemia, trying to get the very best thing we can for the Town of Apex and when the odds or the cards are stacked against you, sometimes you have to take what you can get, and that's his feeling.

Commissioner Jones was hopeful at the time of the public hearing and they have to take action, they can find out the legitimate possibility of us doing this. Commissioner Meckes expressed he was a downtown property owner and has looked forward for years and years for Trackside and what it will mean to the downtown and thinks they are selling the whole thing short. Mayor Weatherly stated one more point needs to be raised when they talk about the extraordinary expense of a fly over to make this happen; they still have another piece of the Peakway that is going to have to be completed before that project is finished and which will undoubtedly require a fly over; we are talking big bucks to do what's required; we better be bank rolling money now to do what we know is going to be required; this is an option that might not require $4+ million – we know there will be millions involved already in if we ever want to see the Peakway completed; hopefully we can make a circle a circle but to contemplate having to do that twice is almost like they are talking about something that is never going to happens.

Commissioner Gossage wanted to clarify if they approve the motion what are they committing themselves to? Mayor Weatherly stated tonight we are only moving this draft report, prepared by staff, which basically sets up our proposal to the railroad in return for a crossing at this location, the Peakway location, we would close specifically the crossing at Moore Street and Chatham Street; the details are contained therein, but that is the heart of the document, and they are then saying that is the position of this Board and they are going to move it to public comment with a public hearing at which time he assumes after that maybe some period of reflection after that, they will then formally state that is their formal proposal to CSX railroad for them to consider, asking if that was correct, did he state that reasonably, with Jackson responding right.

Commissioner Schulze stated we had already been accused of leading a developer down primrose patch and further doing that now. Mayor Weatherly responded if he were not serious about this study, then vote against it. Commissioner Schulze wants to pursue the public hearing and pursue further the study, but wanted to make sure it's the right decision. Commissioner Jones and Commissioner Meckes thought they would get the message we needed to give them the message. Commissioner Schulze continued he had been told up to now, that all options were on the table, that we would not be locked into anything, and before he decided to close any crossings, he wanted to be darn sure it was the right thing to do. Commissioner Jensen in looking back didn't see that they had committed or at least he didn't feel they were committing when they voted to have studies done; you have studies done to evaluate where you sit, and we are suppose to have a study done so the Town Manager could go down and visit with CSX in Florida and have a negotiating position; we voted for studies, we didn't vote to commit.

Commissioner Meckes again stated we have been excited about Trackside for 10 years and held Trackside out to be the most wonderful development that could come to Apex as the Mayor had said infill, enhancing the downtown; will have the strollway that ultimately will lead from all of Trackside right into the downtown, pedestrian crossings across the railroad tracks, it doesn't have to be vehicular but bike trails, everything; people can get on their bikes and ride into downtown Apex.

Commissioner Jensen added when we put sidewalks in Surry Meadows we would be able to do the same thing and come down and the problem he has with this is, yes, its going to develop but lets make sure it develops and he's not sure it will be so beautiful, but make sure it develops and doesn't impact and send a negative way, and the other problem he has with voting for this thing, he doesn't feel he has enough information; he would like to find out if there are other options for funding something like a fly over; he would like to find out if there are other opportunities to go elsewhere or to somehow buy down other crossings; they haven't even discussed this. He would like to step back and look at the vote to sale the property at US64 and Lake Pine, and afterwards, he had almost voted no for it and join Commissioner Schulze and he didn't and he regrets that, badly, as he drove by that property and sees a for sale sign there, the guy is flipping it. Manager Radford responded to Commissioner Jensen's concerns that there had been a series of signs on that property, there were signs there when the town placed theirs for sale, and is a general advertising sign for not that piece of property but another one down Laura Duncan, not for that piece of property; we have sold it and closed on it. Commissioner Jensen stated ok, it's not flipping, but after that meeting he felt he would like to have had additional information, he thought for that and in terms of what the asking prices were for out parcels; he used this as a comparison, thinking he doesn't have enough information to vote properly on this.

Mayor Weatherly asked Jackson what information there is other than what's in the study, this is suppose to be comprehensive to provide them and its audience the rationale for their proposal; what other information would there be relevant to their making a decision in his judgment. Jackson responded this first of all focuses on safety from the perspective of cars and trains and they have not done a lot of research into peripheral areas that have been mentioned other than they did do enough preliminary design to determine that they could construct the fly over and made a preliminary estimate of what that might cost one year ago or so, and he's not aware of any other tricks that's out there.

Commissioner Gossage stated he didn't have a real problem with going forward with this study; what he has a problem with is kind of the same thing Commissioner Jensen is expressing, and that is it seems to him there might be other parties interested in funding a fly over; now maybe that they have an interest in funding a fly over and they still no, we are not going to do it, we can make you do it. Commissioner Meckes responded they can't make us do it. Commissioner Gossage said he didn't know, with Commissioner Meckes interjecting existing grades are exempt, grandfathered in. Commissioner Gossage responded it wouldn't be grandfathered in because of high speed rail corridor, so eventually it's going to have to be a fly over. Gilbert responded that it depended on what happens to the rail line, whether Amtrak trains go up to 90 mph; he doesn't know any plans at this point in time.

Commissioner Gossage stated it's not a guarantee that it will be a fly over someday, with Gilbert responding it's not a guarantee that it want be, but it will have the devices that will satisfy the needs for higher speed because it will have quad gates, median barriers; you want to preclude anybody from being on the track.

Commissioner Schulze asked if there is an economic impact as far as which crossing we decide to close, and would want to know this information. Jackson responded certainly it's addressed from the perspective of traffic, with Commissioner Schulze noting this was part of the equation.

Action: Commissioner Meckes withdraw his motion. He moved to table this for 30 days so additional information may be provided to answer some of the questions that have come up this evening. Second by Commissioner Schulze. Motion carried.

Commissioner Jones asked what they were directing staff to do to bring more information in the next 30 days. Mayor Weatherly asked if they wanted to hire a consultant to do an economic study. Commissioner Schulze wanted to see what their options are. Commissioner Meckes didn't want to see what the options were he wanted to make a decision and proceed. Commissioner Schulze responded if it were going to cost $200,000 to do a study, then he didn't want to do that. Commissioner Meckes responded, then we just vote the whole thing down. Commissioner Schulze then stated he needed to know what the options were, he's being put on the spot now. Commissioner Jensen stated he mentioned this before, he would like to find out if there were other opportunities for funding, this hasn't been done, and he would like to find out if there is any opportunity for buying down other tracks and discuss this with CSX if we have to, and what they would recommend. He would like to see how we can not impact our town.

Mayor Weatherly addressed Gilbert, noting this a quick and dirty assessment of that question, with him being perceived as an expert in this matter, asked what pools of money are there that communities, municipal governments can tap into to finance the facility they are talking about. Gilbert didn't know what funding was available through NCDOT but he doesn't think there is a lot of money out there; he doesn't think there is money in the sate to help with grade separation; CSX is not going to put money in grade separations; he doesn't know what other moneys are out there.

Mayor Weatherly added appropriation by Congress would be a ridiculous thought; it's possible. Gilbert continued this particular grade separation is going to help the town of Apex and the surrounding areas, but he can't see where they would find a lot of funding; remember this, if you find any crossings they have to be on CSX. Commissioner Meckes asked the likely hood or motivation that someone would sell their crossing to us. Gilbert responded in 36 years, he had seen it happen one time; that one time and the reason it occurred, the county reaped the benefits of the grade separation. He hasn't seen anybody – no one wants to close a crossing; he doesn't think they would find... Commissioner Jensen interjected he knows it's a long shot, but we have 30 days to take a look at it. Gilbert continued he could look at a track chart of CSX and give some ideas. Manger Radford would like to see a track chart of CSX and look at some towns to determine if there is a town hypothetically 3, 4, or 5,000 people that have two crossings that for in this case could be a couple of hundred thousand dollars influx in revenue to them; it's worth a phone call, it's worth a visit.

Manager Radford noted Selma had 9 and closed 4 in swoop and aren't anymore to be had; for those four got $30,000 and the paving of a street, 13 years ago. They were closed for NCDOT to find a way to close as many crossings as possible; they were redundant, some were 60 or 80 yards from each other. That's what Commissioner Jensen would like to find. Commissioner Meckes asked their average daily volume; some were as low as 600 cars.

Mayor Weatherly stated they were going to ask staff to look at funding options they can identify that can help us defray the cost of a fly over. Commissioner Meckes wanted to hear from the Downtown Merchants Association. Mayor Weatherly stated his motion also included the public hearing, asking if he wanted to go ahead, with Commissioner Meckes responding they could provide input without a hearing, with Mayor Weatherly continuing formally through the official leadership of the Downtown can present us with a position paper on that if they would. Manager Radford noted they are meeting tomorrow to discuss it.

Commissioner Schulze wanted to see if an economic impact study can be done to decide if the options of closing one vs. the other the economic impacts on the downtown; not knowing if there's a company that does that kind of study or the cost. Mayor Weatherly stated it would be no problem to find someone to do this; we need to have the scope well defined or they could do that "until the cows come home." Commissioner Schulze agreed.

Jackson will submit through the Manager an outline of what he had heard and could email it to them and go from there. Commissioner Schulze for the record stated he didn't dispute anything, thinking Trackside will be a value to the Town and trusts it will happen someday; he's excited about it and doesn't want to take anything away from the future of Trackside.

End of Old Business # 1

Kent Jackson,
Director of Construction Management

Old Business # 2 – Laura Duncan Sidewalk Project

Kent Jackson, Director of Construction Management gave a handout of the design progress report of the Laura Duncan Sidewalk Project. Adam Stephensen Senior Engineer for the Town had studied the impact to significant trees that were 6" diameter trees or greater for this project; they surveyed the proposed corridor within 25 feet of the pavement. He noted the trees stating no trees of this size will be cut for this project; closest is questionable as they would get close to the roots. One option is to have Bartlett Tree or an arborist help out with the project, looking at specific cases. Recalled the Mason Street tree, heavy fertilized has bounced back – roots were impacted by the project. A nominal amount of fill could impact the grade around and on top of the roots; could grade around and leave the area open and pipe drain under the sidewalk to the ditch. Commissioner Jones called attention to one he was worried about having to go in addition to the one closer to the high school. He was glad to see no trees had to be cut except for the tie-in. The impact being minimized was the goal, with the standard off-set 12 foot, relocating driveway pipes and ditch line to have a standard off-set throughout.

Commissioner Jensen noted all trees to the house sides and no wiggle room, not being able to go closer to the roadway.

Mayor Weatherly stated this is a progress report asking the action that needed to be taken. Stephensen would like to move forward with the design and close to having a completed construction plan to forward to NCDOT; next step is to obtain encroachment agreement as they did for the North Salem Street sidewalk; this being the same cross section template assuming they are not going to have any issues, asking they formally adopt the plan.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the plan as presented. Motion carried unanimously.

End of Old Business # 2

Kent Jackson,
Director of Construction Management
Old Business # 3 – Sidewalk Construction and Left Turn Lane Construction
Kent Jackson, Director of Construction Management, led discussion of feasibility of constructing sidewalks along Rainsview Drive and Samara Street in Surry Meadows and adding a left turn lane into Vintage Grove from Old Raleigh Road. As a result of the public hearing for the Seagroves Farm PUD project, the Board expressed their interest in looking into this.

Commissioner Schulze, noted at the time, the developer had negotiated with the neighbors for these sidewalks and this fell through. With approval of the site plan, sidewalks were not a part of the plan. Developer in an effort to meet the community half way, still offered to pay for a portion of the sidewalks as noted above with the total cost $47,770. Developer has offered to pay up to $9,000 or 1/3 of the cost whichever is less, thinking with the town would then pay 1/3 and the community getting the sidewalks would pay the balance 1/3. Issue: do we want to put in these sidewalks and who will pay the cost. Commissioner Schulze was uncomfortable asking the homeowners to pay 1/3, as they do have a homeowners association, and asking what they would do when there is no homeowners association, how would you make those folks pay 1/3. There's some concern about precedence being set with putting sidewalks in these neighborhoods. He feels the town would benefit from paying the balance since the developer would be paying $46,000 in transportation impact fees for his development, with a portion going to mitigate his development. He noted this could be considered under that vain. As far as precedence installing sidewalks in existing neighborhoods and the fact a neighborhood is being built adjacent to an existing neighborhood allows him to not say this is a precedence. He would be in favor of putting sidewalks in and would elevate pedestrian issues the people of Vintage Grove and Surry Meadows have raised during the hearings.

Mayor Weatherly asked if there were issues regarding easements that should be addressed. Jackson responded there would be some construction easements and as far as permanent easements, there's existing street right-of-way and the curb is there, and could channel out and install sidewalks. Commissioner Jones asked if the homeowners or individually or as an association seen this, with Jackson responding they have not, and has no feed back from them.

Jackson continued this is the best picking of the side of the street based on looking at different things. On Samara he noted the outside of the curb backs up to Seagroves and more heavily landscaped and why he picked the other side; Rainsview side because if the streets were laid for Seagroves, that's the side they would have the sidewalk on.

Commissioner Jones agreed with Commissioner Schulze they should not somehow try to assess the homeowners for this; our ordinance didn't require it when this was developed, though it should have, and hind site is 20/20. He continued this is a way to rectify this and he's hopeful they have enough contingencies in some of the projects that were approved in the bond issues that they may be able to fund all or a portion of this; continually they estimate what sidewalk projects will cost and put them in the bond issue and later find out what the real cost is and maybe have some money available. Jackson projects a savings on Laura Duncan, with Commissioner Jones noting maybe this is a way to help fund this one.

Commissioner Meckes addressed the precedent concern asking if it were because there would be sidewalks put into an existing subdivision. Mayor Weatherly responded that he had expressed that concern. Commissioner Meckes asked how this was different than the Laura Duncan Road sidewalks. Mayor Weatherly stated that was being done for a number of reasons, high school location and pedestrian traffic. For example, his neighborhood doesn't have sidewalks, and can foresee precedent being set – the town did this for Surry Meadows and for whatever good reasons, but also have good reasons for their neighborhood as well. He continued he's saying that is a precedent, once they go down the road that they are going to fund sidewalks, how do you say no, this is justified more than then the next. He thinks the big difference is the impact fees being paid by the developer; we don't have to come up with the money, it's being paid for the purpose of mitigating impact.

Commissioner Jensen had no problem with the precedent on this; they have a reason for doing this and the reason the board passed a zoning change to allow for the development next door, and it will substantially impact this neighborhood and he thinks when this is done as a board, you have a moral obligation to try to minimize the impact. Mayor Weatherly stated he wasn't arguing against the need, he's saying as a public policy issue, they are establishing a precedent that in the future could set the stage for additional requests for similar benefit; he was saying as a matter of fact and not an objection of any kind.

Commissioner Meckes was inclined to agree with Commissioner Schulze, and Commissioner Jensen – the impact has come about because of additional development, a situation unique to this particular neighborhood; to go to Knollwood and say Surry Meadows and Vintage Grove got sidewalks, we want ours too – what was the precipitating factor that brought about a change within their pedestrian traffic – none. Mayor Weatherly added there may be limited, but some of the other neighborhoods that do not have them could seek development.

Commissioner Schulze continued the Town Manager had mentioned they could treat this as an off-site credit where the developer pays the full fare and we would give him a credit towards the impact fees, and would not have a precedent there. Mayor Weatherly felt this was a good way to work it out, with Commissioner Jensen and Jones agreeing.

Mayor Weatherly thinks the developer made a commitment earlier to fund a bit more than $9,000 but whatever he's willing to do now would be a credit in excess of that, and if we are able to work that out; we would want to extract whatever they could.

Commissioner Jones followed up on Commissioner Jensen's point that they did approve the rezoning, and not the site plan yet; he recalls one of the conditions and when he voted for the rezoning was that they consider the feasibility of sidewalks; we've done so and its feasible and would like to hear from the homeowner's association before, but would like for them to move forward with the plan; he lives within a couple of blocks from the high school on Knollwood Avenue that cuts from Laura Duncan to US64 without sidewalks and doesn't have a problem with precedent; this is a different situation.

Commissioner Jensen noted access easements have to be acquired too; that's what the neighborhoods give up – part of their front yard. Mayor Weatherly asked if they could formally communicate with the homeowners' association in this neighborhood and asked for a review of this by next meeting; he's been told they have, and what route they choose to use, have a petition signed by everybody that could be impacted by a sidewalk on their frontage as in agreement and whether that follows this route our not is problematic.

Tim Carley stated he had it on the other side of the street, on the north side of Samara, thinking it's cheaper to build due to the slopes. Mayor Weatherly asked if he were saying he had an agreement with the property owners, and he responded he did and would dust those off and bring them back in; as far as precedence he asked how many other neighborhoods have infill development that will impact them; they are willing to work with the town on this in any way; they can switch the sides; they were told it was easier to put them on the outside, and usually on the outsides of neighborhoods. Mayor Weatherly continued Jackson had said his route was less landscaped. Jackson said during the survey, it seemed there was less obstacles on the inside of Samara, with Carley responding he would get the signatures for this. Manager Radford asked if the question were whether or not the homeowners association might still be in for making a payment, with Mayor Weatherly interjecting, no, no, no, they were with the right-of-way question. Carley stated he was trying to help, so when the letter came to them.... with Commissioner Jones interjecting putting in sidewalks will disrupt their front yard and he wants to hear from them that that's ok. Carley responded they do respect that and doesn't want them to have a board room full of people and rather have this up front. Commissioner Meckes noted this would be a greater impact from what has been said, where you have more of a slope which you go up higher and get a level and then you have to drop off. Carley understood it would be cheaper to install them on the other side.

Mayor Weatherly asked Jackson how they need to proceed and do so along the lines they would assume they could expedite the funding up front by the developer with credit being reimbursed to him and/or the company and to what ever contribution he's going to make as a part of that as well.

Commissioner Schulze continued that another part of this item was the stripping on Old Raleigh Road, not controversial, for the turn lane as part of this proposal. He was comfortable to approve this with the sidewalk projects.

Mayor Weatherly asked the cost for this, which is $1600+. Jackson advised as of today, they have a quote for this work from Clark Pavement and is considerable more than noted – price $5,700. Mayor Weatherly stated stripping off, NCDOT sometimes requires it be taken off a considerable ... to restripe. Jackson felt they had been too conservative in their limits, and underestimated what the NCDOT standard was on their street; he feels sure Clark is familiar with NCDOT standards and sure their limits are probably right. Jackson wanted to point out the difference from $1600 to $5700.

Mayor Weatherly asked if there was a motion to proceed subject to the approval of the affected homeowners, then staff could proceed to get necessary signatures or whatever is required for easement purposes and then reroute as necessary – costs if anything might go down. Jackson was confident on the costs for the sidewalks.
Action: Motion by Commissioner Schulze and second by Commissioner Gossage to move forward with sidewalks along Samara and Rainesview Streets and getting the necessary permits and approvals from homeowners and for the record make clear the developer of Seagroves Farm has volunteered up to $9,000 for this project and they should look into the possibility of doing an off site credit arrangement and also pursue stripping along Old Raleigh Road and not to exceed $5,700. Motion carried unanimously.
End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

John Allen, 202 S. Hughes Street addressed the railroad crossings closings that would affect the residential area between Chatham Street and Moore Street. 1) He noted if they are closed to vehicles and left open to pedestrian and bikes it would be a big inconvenience to those folks in that neighborhood. He noted Center Street is often blocked by trains several times daily; each time they will either go to NC55 and get into traffic or go up to Hunter Street to any point west. 2) the study which was done, he had read and appreciated the study, as it talks about pedestrian crossings, request pedestrian crossings, but doesn't say they are guaranteed and sure the town can't guarantee them – its up to CSX; if pedestrian crossings can't be guaranteed, it will be a huge change to the quality of life in that part of town, for them not to be able to walk up town without having to walk to Center or NC55, will completely change the way they live, and one of the reasons they live in town, fixing up an old house, so kids could walk in the neighborhoods, walk the dogs and ride their bikes, walk up to the festivals, etc – he asked they keep this in mind; he knows there's a public hearing, but wanted to get a jump on it. 3) Keep in mind high speed rail is not a given; sounds like with the federal government cutting contract funding who knows if it will happen. 4) If there is no pedestrian traffic across the tracks and those crossings are closed, another setback for the town is that whenever there is a festival on Salem Street – all those that park around the Methodist Church and those areas will not be able to get to the festival, even with the parking deck wouldn't hold that many cars; that's a cost to the town as well – he thinks going forward, try to look at how to proceed with Trackside without taking away from the existing part of town and the people who live there and work there. He thinks there's a way to satisfy both parties and come up with a good solution. He appreciates their listening.

Herman Jaffee, presented to the board an energy kits that costs $26.00 that could save $100's over a few years; he was encouraging the town to promote energy conservation with the public. He noted the passage of the Federal Government Energy bill and the Progress Energy announcement of a 9% residential rate hike. He further noted a smaller kit offered by the Energy Office and noted the town could consider promoting at least the energy saving light bulbs. He stated the Kit was being sent to the town, and with that the Manager thus gave the kit to Mr. Jaffee and thanked him for his efforts.

Erica Layko, Surry Meadows expressed appreciation for the boards efforts to get the sidewalks installed, and stated they would do all they could to get the petitions signed for the sidewalks.

End of Public Forum

NEW BUSINESS

David Rowland, Director of Planning

New Business # 1 – Temporary Off-premise Advertising Signs

Manager Radford led discussion regarding temporary, off-premise advertising signs, noting complaints regarding the various signs on any given day in town or that crop up especially on the weekends when enforcement staff is not on duty. Town's ordinance doesn't allow for off premise signs in any way what so ever. Staff has done periodic weekend enforcement, however, stopped after complaints from the real estate community and individuals trying to sell their homes; over the last three and one-half years have allowed real estate in some places on weekends as a result of people having need to sale a high commodity in their way of their homes. Various kinds of signs were lined around the room and could pick up 75+ signs everyday. Staff was looking for direction due to the tremendous number of complaints including some from the board recently. A copy of the existing sign ordinance was given to the board. David Rowland, Director of Planning and Lisa Parrish were available to answer questions.

Mayor Weatherly asked the Town Attorney to give political parameters of the town's ordinances and what flexibility staff might have. Attorney Fordham advised when talking about signs, you are talking about the First Amendment; and with the first amendment you are talking about certain principles that have to be followed. In the area of the First Amendment there are particularly rigorous; usually government bodies have a lot of discretion in the public interest with regard to free speech and in the First Amendment there's a lot less discretion. The first principle to keep in mind is that generally speaking you can not take the content of the sign into account as you regulate that when you differentiate between and unlawful signs it needs to be based on content neutral reasonable time place and manner, rules not rules directed to the content. Another principle is that if you have something on the books that should be enforced, that it can undermine your ordinance if it's not enforced, particularly if there's a policy of not enforcing it. The next principle to keep in mind is that unless there is a very specific reason directly related to some very serious public health issue, you can't distinguish between various types of businesses based on the content. The last principle would be that if you allow commercial signs in a particular manner you also have to allow non-commercial signs – concretely here if you were pass an ordinance allowing all these types of commercial signs you have to allow non-commercial signs the same type of latitude because non-commercial speech is more protected than commercial speech.

Mayor Weatherly noted consistency is the key both in enforcement and the ordinance says so. He noted he and the Attorney had discussion to frame the discussion within legal parameters and gave very good advice as to what the courts have said about restriction of First Amendment.

Commissioner Schulze asked how the law applies to a business to allow one month's signage asking if that would be discrimination, with Attorney Fordham advising that if you allow all businesses to have one month, like a grand opening, and is not discriminatory and already allowed.

Commissioner Jensen recalled agricultural products are separate, apparently they are not, asking if this is what he was saying; strawberries are part of the town's heritage. Attorney Fordham noted they had visited the strawberries about every year for the last ten years and unless you allow all seasonable businesses to advertise in the same way, doesn't think it's a line you could defend, not sure the court would recognize that line. Commissioner Jensen confirmed if it were specifically seasonal, it could be allowed. Attorney Fordham responded that if you allowed all seasonal businesses to advertise off premises during their season you could have that type regulation. Commissioner Jones questioned life insurance, with the Attorney advising it would be pretty wide open. Mayor Weatherly noted soccer had a specific season.

Commissioner Schulze clarified the message he was hearing is that real estate can't be treated separately from anyone else. Attorney Fordham advised the ordinance allows on premises advertisement signs but in terms of general off premises signs it would be hard to defend. Commissioner Gossage wanted to know how they could defend the ten days for a grand opening, with Attorney Fordham advising it's non-discriminatory. Rowland advised it was 60 days. Commissioner Jensen asked if you had a garage sale, you could have a grand opening ... with Commissioner Gossage adding or a grand opening for putting your house on the market. Commissioner Meckes noted the intent is to not get around this.

Mayor Weatherly asked if there were a definition for grand opening in the ordinances; that something like a soccer registration would obviously be a stretch to consider them under that provision, with Commissioner Jones noting the Knights Play Challenge a weekend affair once a year. Mayor Weatherly stated a grand opening should be for the opening of a new business. Rowland responded there is no definition for grand opening. Mayor Weatherly stated so conceivably a business could declare grand opening or reopening or new stocking, new inventory. Attorney Fordham advised he thinks a grand opening would have a meaning that is generally recognized in the public.

Commissioner Jones asked if seasonal is defined, knowing they have talked about agricultural. He also noted year after year the discussion of parade of homes; real estate being one thing, but parade of homes was the sentiment that we let that happen in affect is an event. Rowland responded that with the parade of homes, and talking with Mr. Kirby Home Builders, we have a provision that allows if it's an event sanctioned by the Town of Apex, like Peak Week, Home Builders Parade of Homes, we do allow them during that time period. In the past the Board passed a proclamation supporting the Home Builders Parade of Homes. Manager Radford also added that in talking about grand opening, they are on the business itself and not off premises; and allowed 60 days on premises, example: Peakway Market Plaza with a grand opening sign and legitimate.

Mayor Weatherly hears a complaint from a business is always proceeded by," why can't I do it when I see it everywhere else." To say the ordinance applies to everybody, and we are trying to do it, doesn't hold any water when they can site day after day; he's eat at a local restaurant with a sign issue and have about given up, but always sited somebody else in violation and that we were picking – selective enforcement because we were doing it and they were convinced we were given the other business preferential treatment; there lies the biggest problem he sees – consistency, we either have an ordinance and that the Attorney had already defined there is no subjectivity within the ordinance, it's either all or nothing basically as far as temporary off-premises sign is concerned.

Commissioner Jones asked how we enforce it; thinks we are doing the best we can Monday through Friday, asking what's before us on the weekends; this is why this is on the agenda; what do we do on the weekends.

Manager Radford responded we have the ability to do selective enforcement on the weekends; it doesn't take a terribly long period of time to go around either on Saturday morning, or afternoon, or Sunday morning or afternoon; it may not take long to get the message out; weekend before last they absconded with some illegal signs that were on NC55 at Peakway Market Plaza and some other places; took them by surprise and as far as he knows the signs have not been put back up there. Lisa Parrish, Zoning Enforcement Officer, noted several of them out over the weekend at Peakway Market Square. Commissioner Schulze had even seen "Click It or Ticket" signs. Manager Radford stated there is a section in the Ordinance that allows them, instructional signs by municipality or other statewide organization.

Commissioner Meckes asked if there were an exception for non-profits. Parrish responded they could have off premises sign permit, but have to be on private property.

Commissioner Schulze asked about a past issue where a lady owned two pieces of property and renting a home on piece and put the sign on the other piece the house was for rent, and didn't allow it at the time. Rowland responded it was rented.

Manager Radford added that Cary has instituted an open house system, with Rowland adding they have a system where you actually get signs that are all alike and you fill in the blank there's an open house on a certain street – standardized. Mayor Weatherly asked the limitation on time, with Rowland no knowing, but it's a test case for them and not permanently acted in their sign ordinance. Mayor Weatherly added Raleigh was going through this and understood through the news media count, they didn't have an ordinance restricting temporary off premises signs but now ... with Rowland interjecting he thinks they have one, they haven't had enforcement, they have enforcement issues.

Mayor Weatherly asked the Manager if he were looking for some direction, and he responded for discussion and he was hearing we abide by the ordinance which will include every sort of sign in accordance with what the Attorney has recommended that no signs be treated differently than others; no particular type of commercial signs be treated differently and includes weekend and consistent enforcement.

Mayor Weatherly allowed Carol Kisch to come forward with a request for an off-premises sign for her business at 102 W. Chatham Street. She doesn't understand when the government can amend the constitution and the town can't amend a sign ordinance. She noted all that's being put in and going in. The Mayor responded to her that what applies to one business must apply to all business equally and is all that's been said; the town could through the ordinance out and not have any restrictions, with Kisch interjecting she was not asking that, she asked for an amendment for the entire historic district in the downtown area. She noted it a special part of town and not just her, she does need it, she did it illegally and then the sign was snatched, but she got it back but it's not out. Her business increased almost ten fold with the sign up and in the last month she's not been in the store much. For a week, no one came, and the merchants are good about putting signs in their windows, but there's been nothing. This is the second time she's come before the board, and it's not just about her, but the entire downtown and what it's been and should be. She doesn't understand why an amendment can't be made especially for the historic downtown area. People come and move here and come into the stores and tell her one of the reasons they moved here was for the downtown. Lots of folks are walkers in the downtown.

Attorney Fordham interrupted her and advised that no one had asked the question whether there could be different regulations in different districts, and you can, if they are rationally related to the intensity of the use in the district; the question has not been asked before tonight. Kish responded that this is the question she was asking. She had put a sign on the corner and it sat there for two weeks, then she changed the sign to say more retail and didn't advertise her store, thinking it would be legal and had an arrow, no one bothered it, and then it got snatched.

She's not sure at this point, but does know that she has to make it work or she has to get out again; it's up to the board and they had just said is it ok to do this .... she's emotional about this... what can be done. Attorney Fordham responded he was looking for direction from the Mayor for any legal questions that he wanted him to answer; he'd be happy to answer. Kisch continued that when talking to the Mayor he made her feel like she was trying to ask him to break the law and she was not, with Mayor Weatherly responding they were discussing the current ordinance when they had a conversation on the street, and said they would investigate if there were options. He continued that she was asking for an off premises sign advertising her business that would applicable to every other business in the downtown historic district, asking if that specifically would grant her some remedy. Commissioner Meckes asked if more retail addressed the issue, with Kish responding it did address the issue and was what she put there on the corner in front of the bakery with their blessing, not blocking the sidewalk.

Kish asked Lisa if when she went in and asked if that were their sign and they had said yes, would she have left it alone? Parrish responded it didn't appear to be their sign however she checked and she believed the tenants property goes to the curb and there is a special section in the downtown district that they can have signs in front of their businesses, with Kish interjecting she was going to say it was, but was not the point, it's hers, and if she had said it was hers, they would have left it alone. Point, it said more retail, no name on the store. She didn't know how to ask for help. Parrish added she had talked to her the first time, but with no name she didn't know who the sign belonged to, and it said more retail and had no idea where it belonged or who to speak to about it.

Commissioner Meckes asked the exception, with Parrish responding in the downtown district they are allowed to have "A frame" signs out in the sidewalk in front of their business as long as they do not impede pedestrian traffic; they have to be taken in at night. Commissioner Meckes asked on a permanent basis, with Kish saying she took it in at night, and Parrish added in front of their own business, not off premises. Kish stated she would talk to the bakery and they will put a more retail sign out in front of their store and it would be theirs.

Commissioner Schulze suggested that they install some kind of sign similar to what's seen in the mall, a directory, only on a more flexible basis, not so much permanent so you could change them as businesses come in and out where there would be names of all the stores and their addresses downtown and a map of the downtown district as far as boundaries, and then you could advertise every business downtown and anyone walking up and down the sidewalk could see that there's more retail; he's thinking putting them on both sides of the street – the baker and the florist, or a place where people walking would see.

Commissioner Meckes asked if there were more retail downtown where you cross the intersection of Chatham and Salem and there are, and conceivably you could have some signage the town would put up there, with Commissioner Schulze agreeing. Commissioner Jensen thinks they could be in a couple of places, if it's a directory, thinks it's the right way to go, to push all the downtown and it's not just one business you help, but everybody. Commissioner Meckes was adding you could have a slot and the arrow pointing what's down what streets, with Commissioner Jones adding like what's in Blowing Rock, with a lot of businesses down side streets and the signs are kind a large and tacky, but could be something that fits our downtown. Kish added if too small people would not see them when they walk down the street. Commissioner Jones stated it could be something that fit into the look of downtown with the other commissioners agreeing.

Mayor Weatherly asked if they were describing something that is within the current ordinance. Rowland responded he would have to give this some thought; maybe they could do some generic type sign that would go on the light posts on the corner and have it fit in with the no parking signs and make it a part of the scheme of things. Commissioner Jones added it could say parking in this direction, or restaurants, or retail with Commissioner Meckes adding and with the parking lot would want to address everyone's attention. Rowland added it would be in the right of way on the sign. Commissioner Schulze suggested one be put in the parking lot for folks who enter downtown would know where to go. Kish asked how it would get folks to come around the corner to her business. Commissioner Jones stated it would be something that said retail, or more shopping and point them in that direction. Rowland will come back with something. Commissioner Meckes told Kish to feel free to have some input. Mayor Weatherly addressed Rowland that as he start developing something and before he came ask Kish's input and tell her what date this will be on the agenda – her input would be good before it comes to them and see if it would satisfy the need for that business, and then will consider it before the Board with the Attorney's input.

Bonnie, with Edwards and Jones stated the downtown business association has no objection for more retail sign and not a big issue. She noted Kish had done a lot to contribute to the downtown and thinks everyone is on the same page and sees it as a benefit to the downtown area. Kish had started Christmas on Salem Street and President of the Association and gives a lot; she supports the request for her business as well.

Commissioner Jensen was hearing if Kish gave the sign to the bakery shop they can do with what they want to do with it on their property; it's up to them. Kish asked if this were correct, with Parrish responding she was looking at off premises signs because it's not advertising the bakery, it directed you down the road. Kish stated they have retail in their and are selling pottery. Rowland added the Board should remember what somebody sees there, will start doing somewhere else. Kish responded she was saying more retail, and they take the sign and there's retail in there, it's their sign to keep. Mayor Weatherly asked the direction folks would be directed into their shop or down the street. Kish responded the arrow did because it couldn't be put on the corner, it would impede traffic so it pointed into their shop.

Attorney Fordham advised the board that they should not get involved in interpreting the ordinance as to specific facts; that's the zoning code enforcement officer's call. Mayor Weatherly stated they would ask Planning to come back with a suggestion that meets the ordinance and if not, give them some options to modifications in the ordinance and see if it meets the test of the board.

End of New Business # 1

Tim Donnelly, Director of Public Works

New Business # 2 – Capital Project

Possible motion to create a Capital Project to initiate the Design and Easement Acquisition for the proposed New Hill waterline.

Tim Donnelly noted the map in the agenda packet, and advised the board from New Hill meetings about the wastewater facility, folks had asked questions about how they would get utilities. Soils around the area do not lend themselves to wells for development of property and do not perk well and is hard to develop on septic systems. They were asking for sewer and obvious the wastewater treatment can bring and they are also asking for water.

Town has been working on a facilities plan that will eventually take water to that area and in order to build and support the wastewater treatment plant, it's a lot easier to do if you have a good source of water. The project partners would like for the town of Apex to supply that water to the plant. The town's fire station is also there near the regional plant site. He proposed to stay on schedule with the project to initiate the design of the waterline that would go to the regional plant and to the fire station. Budget proposed is for $225,000 for design and easement acquisition. Design is an estimate of what the engineering fees would be and soil borings, etc. and the acquisition is what it may take to record easements and pay for any easements if needed; $50,000 is a grab figure not knowing until you design what it might be, but will get it started. Later date will come back with hard numbers on cost of construction. He continued they may not realize this waterline has been in the CIP for a couple of years as the western pressure zone, and has to start somewhere. They have looked at it and probably will not do a full pressure zone much later if ever, but will be an interval part of that.

The are looking for a way to do it without a pressure zone; using ground storage tanks out there instead of elevated storage tanks.

Commissioner Jones clarified the proposed water line was the blue line on the map, with Donnelly responding it is and may could do more to shorten that; line goes from a 12" line to a 16" line and hopes other segments will be built later; this is the minimum to get it started. Actual routes could change, but mostly how it would be; question to run either an 8" or 12" to the fire department will be made later with more engineering data. Conceptually this is a good idea of the route that will be taken.

Commissioner Jensen asked why they are going from 12" to 16" with Donnelly responding back to the east towards Salem Street, there's a dotted 16" and will be filled in later by future development; 12" can support the 16" line for the needs that will occur in New Hill, but ultimately would like to see it all connected and looped, with the dotted lines showing 12" and looping with more development to the west.

Commissioner Jensen asked if this were being pushed more for the wastewater facility, with Donnelly responding the benefits are that the project partners will need water for the plant and either will be provided by Apex or Holly Springs and Apex has volunteered and there has been no objections from the project partners, but with Board's direction could change. The Fire Department would also like to have a reliable water source, currently have a railroad car they get water out of and some other sources and not as acceptable as they would like, and finally the citizens basically say if they have the regional facility what benefits does it bring them and it's wastewater and water available under town policies would be able to hook on.

Commissioner Jensen asked if it stopped at the wastewater facility site, he assumed it could without any trouble continue down ... with Donnelly interjecting the expectation is that the partners would incur the cost of bringing it into the site and following the town's rules; if they wanted to bring it down to the next road which he thinks is Shearon Harris. They may choose to bring it in that way and meet the town's rules and the partners would share in that cost. This is what Apex would do as a minimum and the partners take it from there.

Commissioner Jones asked how long the design process would take, with Donnelly responding approximately 7 to 8 months with the easements being more difficult; there may be areas we have to go off right of way and some fee sample that they can't use.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the plan as proposed. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no Work Session Items to be discussed.

CLOSED SESSION

Possible motion to go into closed session for the following items:

1) to receive legal advice from the Town's Attorney regarding an Interlocal Agreement for the regional Wastewater Management Facilities.
2) to discuss an easement related to signal work at the Peakway and Ten-Ten.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session at 9:20 p.m. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Jones and second by Commissioner Gossage to move back into regular session at 9:48 p.m.

With the Board back into regular session, there was a motion made by Commissioner Jones and a second by Commissioner Gossage to approve an Interlocal Agreement and the Exhibits, with revisions as presented by the Town Attorney. Motion carried.

End of Regular Session

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Meckes and a second by Commissioner Gossage to adjourn at 9:50 p.m. Motion carried.

The above minutes were approved on the 16th day of August 2005.

Georgia A. Evangelist
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 16, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Web site: www.apexnc.org

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

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

RECOGNITION

Mayor Weatherly recognized Commissioner R. D. "Doug" Meckes with a Proclamation to observe and celebrate *Dr. Doug Meckes Day in Apex*, Wednesday, August 17, 2005, and also presented him with a desk plaque in appreciation for his dedicated service as Commissioner to the Town of Apex. Commissioner Meckes will be moving to Washington, D.C. working in a new capacity. Commissioner Meckes made brief comments noting it a privilege to serve both at the Apex Veterinary Hospital and as an elected official. This meeting is Commissioner Meckes' last official meeting as Commissioner, leaving the seat of Commissioner vacant and wishing the town the best, and having served as Commissioner for the Town of Apex from December 1995 through August 2005.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Commissioner Jensen and second by Commissioner Jones. Motion carried.

1. Minutes of August 2, 2005 Board of Commissioners Meeting.
2. Minutes of August 2, 2005 Board of Commissioners Closed Session Meeting (recorded separately).
3. Annexation Petition # 379, M&G Ventures, LLC., owners/petitioners, petitioning to annex 1.45 acres into the Town's corporate limits; located west of Crown Pointe Boulevard, Lot 2, known as the Andrew L. Clark property; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing on September 6, 2005.
4. Findings of Fact, Conclusions of Law, Ordinance Rezoning #05CCU04 Andy & Susan Mullins, petitioners, property location 1548 E. Williams Street; changing the zoning classification of the lands hereinafter described from Planned Unit Development conditional use and Residential Agricultural District to Planned Unit Development Conditional use District.
5. Budget Ordinance Amendment and Capital Projects Ordinance Amendment (traffic signal at intersection of Center Street and Apex Peakway).

6. Resolution to adopt the Capital Area Memorandum of Understanding for Expanding the N.C. Capital Area Metropolitan Planning Organization in cooperation with the US Department of Transportation, to include the Town's of Angier, Bunn, Clayton, Franklinton, and Youngsville, Creedmoor, Counties of Franklin, Granville, Harnett, and Johnson, and Triangle Transit Authority.
7. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford asked to amend the agenda to include under New Business two site plans, one for Apex Methodist Church and one for the Clark Paving, and asking they be considered prior to the printed New Business item # 1 since they did not make the consent agenda. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to add the two items. Motion carried. The regular meeting agenda was set as amended.

PUBLIC HEARINGS

David Rowland, Director of Planning
Public Hearing # 1- Annexation # 377
Public hearing regarding Annexation #377 Seagroves Farm, LLC., and possible motion to adopt an Ordinance to extend the corporate limits of the Town of Apex by 66.10 acres located on SR1010 including public rights-of-way and known as the Seagroves Farm Property.

David Rowland Director of Planning oriented the Board to the location of the Seagroves property on SR1010 noting it had received a favorable PUD review and was to be developed; in order to receive water/sewer the property must be brought into the town's corporate limits and is currently located in the town's ETJ.
Mayor Weatherly opened the hearing at 7:12 p.m. and with no one addressing the request for annexation, closed the public hearing. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to adopt an ordinance to extend the corporate limits by the 66.10 acres.

Commissioner Jensen stated with this annexation they were turning their backs on the parks and recreational greenway plan adopted 2001; property map showed the site, with many looking at an opportunity to correct problems in the past to incorporate a reasonably size park for children to have recreation facilities for the 1000 homes for the 9-15 year olds, noting only a tot lot, pool and tennis court in Waterford Green but nothing to satisfy those needs. He noted interest in the town to have opportunity to purchase part of the Seagroves Farm with the property haven fallen to a single opportunist developer, and calling it a back room scheme, and not having put the property up for sale. He stated he would vote against the annexation, not wanting to loose niche of his own integrity. He continued the Board represented the homeowners as delegates and negotiators in this situation, with staff doing the best they could to get the best from this situation and felt as far as the board's position, it hadn't happened, and was last opportunity to do so. He continued the people had voted them into this position and put their trust in them, and needed to be able to keep that trust in them by what they did tonight. He asked in the least this be put off, noting the developer had not completed his commitments, he had been told, and in his opinion - to say no!

Commissioner Jones responded that while he agrees the property had been on the parks and recreation master plan as an opportunity to explore, like other pieces of land they had been able to procure, and unlike other pieces of land it wasn't for sale. And if it was in his opinion a back room scheme, he doesn't think the board should take that into consideration when making decisions regarding rezoning and/or annexation; an opinion is just that, an opinion. This property unfortunately had not been for sale to the town and had it been thinks they should have considered buying it, otherwise however, it fits within the Land Use Plan adopted by the Board and meets the Unified Development Ordinance requirements, and had approved the rezoning, and he doesn't feel they can hold the process hostage waiting for it to be put up for sale.

Mayor Weatherly understood from the situation the previous owner prior to her death made a conscious decision in what she wanted done with the property - her whole net worth going to charitable causes, churches and others, having been discussed previously; and continued to make that scurrilous allegation is unconscionable for a public official. Commissioner Jensen responded he didn't make an allegation, he made his opinion with Mayor Weatherly agreeing that was right, and continued that be it as it may thinks the owner of the property had every right to designate what she wanted to happen and wanted the maximum value upon its sale to go to the things she thought it worthy to receive her estate, and glad she was able to do this.

Mayor Weatherly called for the vote on the motion to approve the annexation. Motion carried with a 4 in favor vote and 1 in opposition vote, with Commissioner Jensen casting the opposing vote. Annexation was approved and became a part of the corporate limits.

End of public hearing # 1

David Rowland, Director of Planning

Public Hearing # 2 – Annexation # 378

Public hearing regarding Annexation # 378, and possible motion to adopt an Ordinance to extend the corporate limits of the Town of Apex by, 5.330 acres owned by the Town of Apex, and located at 2030 Laura Duncan Road (SR1308) and known as the Town of Apex Substation property.

David Rowland, Director of Planning oriented the board to the location of the property, being the Town of Apex Electric Substation site, and located in the ETJ, and wanting to bring the property into the town's corporate limits; substation is currently under construction.

Mayor Weatherly opened the hearing at 7:20 p.m. and with no one addressing the request for annexation, closed the hearing and called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to adopt an ordinance to extend the corporate limits of the town by the 5.330 acres, thus bringing the substation site into the town's corporate limits. Motion carried.

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 Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Tracey Gritz, Waterford Green expressed her opinion after all was said and done. She referred to the emails and Commissioner Meckes noting the possible pay offs and as a homeowner and nieve believed the right thing would be done by the board and town, and noted all people talked, and then the lawyers and noting the town would receive $100,000 and upsetting. She has lost faith; board was suppose to be there for the people and not the money or lawyers; had she been an attorney could have had edge, but discouraged as a person living in town and was upset.

J.C. Knowles, Secretary to the Downtown Business Association and Goodwill Ambassador to Downtown expressed on behalf of the merchants, a big thanks to Dr. Meckes for all he had offered and for his interest in the downtown.

Mark Vanderhoff, citizen and business owner of Piggy Back Market on Salem Street downtown, noted a significant impact to the downtown if railroad crossings were closed for the Peakway that has yet to be built; significantly impact to traffic flow Center Street to downtown from US 1 south Waterford Green and new subdivision; closures would harm downtown business; Salem Street business district during growth and actively promoting itself as a local destination, regional and state destination and to funnel traffic away from this area would be a severe detriment. Respectfully requested considering alternatives to be that are in compliance with DOT and CSX guidelines that would use under-grade crossing for the Peakway and eliminate the need to close any of the crossings downtown. H understands they are looking to find ways to avoid any crossings, and supports that and need to follow up any alternative a viable one so these crossings are not closed.

Pam Huelsman, Rusty Bucket, is concerned with the economic impact of possible closings of the crossings into the downtown area and concerned with the future of downtown and consider this and any decision regarding downtown in the future.

Mack Thorpe, Rusty Bucket, is concerned with potential closings of Center Street and Chatham Street and asked the board to be concerned with the closings of Center and Chatham Streets; it's been a prosperous year on Salem Street and has a great fear the merchants could see a significant impact on Salem Street should those two streets that are outlets for traffic be closed. He knows the need for parking and may not need it if those streets are closed; asked to be considerate of Apex and the impact of this action to the community particularly those that are merchants.

Mayor Weatherly advised the before the board makes any decision on the possible closure, which is under the point of a sword from the railroad to get any additional crossings is the only reason they are entertaining this at all, and emails he's receiving either didn't understand that or left that part out of their equation; they are not taking this initiative because they think it would be of some value other than the value received from additional crossings and the only way to receive any additional crossing to complete the Peakway or any other reason is to close crossings; they have no other option. Before making any decision there will be a public hearing to allow those that have interest in this matter have their say and will thoroughly consider all comments before moving forward, but needs to be said over and over again, they are not taking this on their initiative for any other reason that that's the absolute and adamant response from the railroad – no, no, and no to any additional crossings unless the town gives three to one – close three and get one and take it or leave it – if they want to see any additional transportation needs met in Apex that requires crossing a railroad, they will have to do that whether they are talking about this one here or the other side of NC55, and is the fact of life. He asked them to understand they are not doing this to do any mischief to the downtown, they are doing this because they have to consider this if they want to complete the Peakway; considering our options and unless they consider it the answer remains no.

Commissioner Gossage added that to close both Center Street and Chatham Street was not an option. Mayor Weatherly added this has never been on their list of potential options that he's aware of. Commissioner Jensen added they were talking at-grade crossings if they did fly-overs would not close crossings.

Heather O'Sullivan, 311 Olive Street, and downtown business owner looks forward to the hearing regarding the closures of crossings, and address the Seagroves Farm project was not opposed to the annexation, but noted the discussion about the historic properties and would like to make sure it was a condition on future approvals as a resident and member of the advisory board working to maintain the town's small town character, thinks it would go a long way not only showing current residents but visitors that we take pride in maintaining our small town character and still offer opportunity for growth at the same time.

Pat Vanderhoff, Piggy Back Market, downtown expressed concerned, and as far as the two out three crossings, she doesn't know why is even an option; she didn't want to be the women that spoke earlier six months from now and being disappointed because she thinks there are options besides closing and that money could be sent for going under; if you take the heart of downtown and reroute everyone around it and away from it and then take the arteries that are left into the heart of it and cut off that supply – turns us into another Cary and she lives there and wants to move here and say she's proud to live here and hopes she can say that.

Steve Adams, Peak City Grill, shared concerns about the crossing, but will talk about that later. He expressed appreciation to the town for the support given to him during his project. He was told the Rotary Club did not want to have lunches in his restaurant due to the lack of parking, noting a parcel will become parking, and further wanted to assure the plan for parking on Seaboard was not forgotten thinking the downtown is going to come alive knowing the board would make the right decisions in the future about the options available to them, asking if this could happen. Manager Radford commended him for the beautiful job done to his restaurant, and responded there had been some difficulties in working with one of the property owners on Seaboard Street, and will abandoned one of the owners properties to complete the rest of the parking, and yes fully intends to have parking not knowing the time frame today, but is not dead and will have 31 spaces with parallel parking – loosing only 7 spaces. He will have 40 employees; restaurant will open Monday, August 29 for lunch.

End of public comment

NEW BUSINESS

Add-on New Business # 1
Rosetta Radtke, Design Planner
Site Plan – Apex Methodist Church Parking Lot
Rosetta Radtke oriented the board to the proposed project for the church for a three phase parking lot addition located at 204 Olive Street. Landscape/buffer meets the UDO requirements. There will be 56 parking spaces phased in including three handicapped spaces with 88% on the side and rear. CSX will remove existing right of way shrubs and will be planted back; older cedar being kept in place. Olive Street sidewalks, curb and gutter - fee-in-lieu. Planning Board and staff recommend approval.

Mayor Weatherly asked if there were any discussion; there being none, called for a motion.
Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the site plan as presented. Motion carried.

End of New Business # 1

Add-on New Business # 2
Jennifer Leaf, Planner
Site Plan – Clark Property

Jennifer Leaf, Planner oriented the board to the proposed plan for the property currently zoned Light Industrial Conditional Use and planned office space in the existing industrial park which was permitted under the old Town ordinances prior to the Unified Development Ordinances. RCA is not permitted under the old ordinances. The plan includes a 8,700 square foot building with five offices with the fifth one being occupied by Clark as a plumbing office and leasing the rest. Elevations show a one story building with brown brick with red and grey brick accents; rear light beige/cream painted corrugated metal; compatible with character of surrounding buildings. There are significant street, rear, and side buffers. There are 39 parking spaces and two handicapped spaces. UDO is not applicable. Leaf responded to Commissioner Jones questing regarding comparison of the ordinances; she had compared the two with buffers being similar and not having RCA, or side/rear parking; however, noted the curves of the street goes to the side of the biding and pretty much up with the UDO. Planning Board and staff recommend approval of the site plan.

Mayor Weatherly asked if there were any discussion; there being none, called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the site plan as presented. Motion carried.

End of New Business # 2

Commissioner Gossage
New Business # 3 – Consideration of Change in Name of Governing Body

Possible motion to adopt a Resolution of Intent to consider changing the name of the governing body of the Town of Apex from "Board of Commissioners" to "Town Council."

Commissioner Gossage presented a Resolution of Intent to consider changing the name of the governing board of the Town of Apex from "Board of Commissioners" to "Council". The procedure is a three step process: 1) Resolution of intent being presented at this meeting 2) setting a public hearing for the September 20, 2005 meeting and 3) final action to change the name on November 15. The Mayor advised this would be name change only and does not affect the form of government. Commissioner Gossage noted the actual change to council-manger form of government was made in the 80's and this would bring the title descriptions in line with that change. Commissioner Jensen asked the costs with the change. Commissioner Gossage responded there would be minimum costs involved and had done a case study with Holly Springs Town Clerk Joni Powell. Her response was minimal costs with their change having occurred last year; really coming down to the Ordinance and how flexible the Ordinance is. He read Powell's response that their Ordinance stated all Town papers would be valued regardless of what term is used to refer to the governing body, with terms being interchangeable and the town has a reasonable amount of time to change its forms, applications, etc. with the regard to the expense of modifications. They used all their printed materials and when they reordered they changed the print orders accordingly. This was flexibility of the ordinance and if made inflexible and said everything had to be changed now, then you could incur more costs. Commissioner Gossage stated the action for now would be to adopt the Resolution.

Attorney Fordham advised the first step is the Resolution of the 3 step process and states the Board's intent to consider the issue. Commissioner Schulze was not opposed to the process, but preferred the process be delayed until after the election to avoid any confusion. Commissioner Gossage agreed and reason for the third step being pushed to November 15, 2005 so it would occur after the elections. He asked the Clerk of Holly Springs if there was confusion generated by this, and she responded a few citizens and staff members, however found many people who had moved there from other places were used to town council and easier to say than Board of Commissioners and felt they were ok with it.

Mayor Weatherly called for a motion.
Action: Motion by Commissioner Gossage and second by Commissioner Jones to adopt the Resolution of Intent to begin the 3-step process. Commissioner Jones at first had reservations, now no big deal making it simpler and having talked with people relate more with council than board of commissioners; having had an uncle who served as the "weed commissioner" in the 40's and 50's and received complaints of over-ground lots, noting former commissioners of fire, police, over ground lots, etc., and not any historic value by changing the name, but getting with the times. Commissioner Jensen noted anyone wanting to run for hirer office – it would look better on the resume to say Town Council rather than Commissioner. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

Tim Donnelly, Director of Public Works
Work Session Item
Tim Donnelly, Director of Public Works recalled the Board had authorized the design of the Williams Creek Regional pumping station that is an integral part of the overall sewage collection plan for Trackside. A review of the force main and sewage collection options associated with the Williams Creek drainage basin pump station design was presented by John Grey of the Wooten Company, Engineer, noting benefits and challenges: Option 1 – Force Main to Hwy 55 Interceptor; Option 2 – Gravity across Peachtree Development, and Options 3 & 4 – Gravity Sewer to Salem Street. The options all provide for sewage collection in the Williams Creek Basin but have varying costs and impacts on the level of additional sewage collection that is provided to the properties South of US64 and west of Salem Street. Some of the options require developer participation in order to realize cost savings. The options are attached that reflect the benefits and challenges of each, map for each option and option costs opinions. Donnelly asked the board to consider the options and provide guidance on selected sewer force main routes for final design. Donnelly further asked guidance on the board's desire to initiate easement acquisition to put it into the park.

Mayor Weatherly asked how much the need for the force main was predicated on the development of Trackside, noting they were at stalemate and ground to a halt on moving ahead with that, asking if this were a major part of the need for this. Donnelly responded to provide sewer collection in the Williams Creek Basin, which would be properties draining along Laura Duncan, under US64, behind the Winn Dixie shopping center and down to the park on Laura Duncan, the horse farms and even land up to Salem Church, all is draining towards the regional pump station with Trackside being the focus and a key piece in his mind and why the board was interested in this project; all the other lands are without sewage disposal – example the ballet school, if the pump station is in place you would envision in a few years as development occurs there would be gravity sewer and not have to worry about private pumping stations.

Donnelly addressed issues regarding Option 2 Peachtree development schedules and land owner issues in Option 4 not interested in the force main but gravity to the rear of his property; costs go up with gravity and down with developers building them, but on their schedules. Commissioner Jones asked the reason to be on the developers schedules talking about Peachtree, when not on the other tracks, asking when seeking easements, why it couldn't be done with Peachtree if that's the route they wanted to take. Donnelly stated developers must design sewer lines to fit their development and know the site plans where you don't put them in the middle of streets, etc, and town gives them acreage fee credits; if they have a design that wouldn't change town could build it and then have a way they reimburse the town however in his tenure with the town, this has not been done, but conceivable, noting the key component is having the sewer line designed that fits their final site plan or so close it doesn't cost them lots, or remove roads, or miss up stream crossings; it's a hybrid that was mention – who's money goes first and how do you get it back is the problem.

Manager Radford had looked at all options and felt Option 3 would be best option, however most expensive upfront, with ability to do the project on the town's schedule not being held up by someone else's schedule and doesn't create a hole in the system that might hold up a project somewhere up the basin, and at the same time, enable the town to get acreage fees back sooner and would bring more acreage fees as a result of the fact those from Peachtree or whoever chooses to develop it in the future, would get into it more quickly and pay additional fees. Town would put in the sewer all the way opposed to developers putting it in all the way; Grey added this was not one of the options but if the wanted to price it could look at option 4 and transfer $173,000 to the upfront initial cost would be $580,000 estimate; being a $2.7 or 8 million project if done this way.

Commissioner Schulze asked if costs occurred to the town if they did their own schedule would developer fees be paid back with Donnelly responding if comparing it to the force main option, where developers build an 8" gravity sewer lines and would pay acreage fees as well. The return for building all gravity and set up a mechanism to bill them it would be adding value to their property and they would probably be trying to give us easements vs. buying easements for force mains and would also pay their acreage fees. He continued there are probably ways to access the for this, he knows there is for roads, and could assess if land owners are willing and in the right places could work, but difficult without knowing what will be done; Peachtree works great and can make the sale however the upper part is harder.

Mayor Weatherly asked if this was just for review and discussion. Donnelly was hoping for guidance by the board and may choose to ponder, but know the design can't be finished until staff receives guidance for developer steps forward; they could build the gravity or force main or build to a certain point can do so; question, how quickly do you want to get the sewer to Williams Creek Basin, how important or valuable. Manager Radford stated this could return in the next couple of weeks and give them additional information and would give the board opportunity to think and get feed back. Mayor Weatherly was satisfied with this.

Donnelly reported on the park and pump station project for the new substation, noting that in building this, town will have to grant easement across the park for a transmission line for Progress Energy to tap to the sub station. Federal grants were acquired to improve the park, and requires if the park is converted to another use the town must provide like property. They asked the National Park Service what they thought, not viewing this as a conversion, but said yes it is and will have to provide like property. Mayor Weatherly wrote some letters to the Senators for help from the park service but nothing has been heard, and time being the essence since the substation must be fully operational next summer due to power load growth. He mentioned this with the pump station item since plans are to put the pump station in the park; folks that sent the map to the National Park Service had fore site to envision gravity sewers in the park but couldn't have know there would be a pumping station, not a big site, but would be conversion by their rules. Plans are to work with parks and recreation to get land for conversion so they could grant easement to Progress Energy for the substation, and with the pumping station, a like for like and do this all at once to get these projects done. Mayor Weatherly added the first letters were not received, and had regenerated both, noting an acknowledgement has been received, and need for an answer due to the deadline date and could work on this and get the right person at the park service to give us an answer. Commissioner Schulze asked the amount of property for the easement and pump station, with Donnelly not expecting the park service to rule a conversion as there's already a transmission line there with trails underneath it; no substantial impact to the park but significant to the park service. Mayor Weatherly noted the amount of money with the initial grant is insignificant in the scheme of what's been invested in the park through the years. Attorney Fordham advised less than one acre, with the equities being heavily in the town's favor and its appeal to the park service through the senators from his letter; whether it would work or not, he doesn't know, but the equities are very much in the town's favor.

Commissioner Jensen asked about the cost of land if it were like kind, with Attorney Fordham advising the rule is that it has to be of like value - dollar for dollar. Donnelly responded the park land has been valued, no appraisal done, but in looking at general land values around Apex is $30 to 40,000 an acre. Since they are not removing the property from park service and only providing an easement and only a partial part of its value, when taking an easement do not pay the full value, but a partial value, wonders what was the fair judge of that number; if $40,000 acre, and how big a project the substation and the cost of the easements for the pump station, it's not a big price. Commissioner Jensen felt they could pick and get more parkland. He noted its complicated. Mayor Weatherly stated it seemed simple, and if you get the right bureaucrat would look at it reasonably, their initial decision looks irrational to him.

Mayor Weatherly closed the Work Session saying the board would see this again.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session at 8:16 p.m. to consider and establish the Board's negotiating position with respect to the potential purchase of property adjacent to Public Works Department. **Action:** Motion by Commissioner Schulze and second by Commissioner Gossage to move into closed session for the purpose stated. Motion carried. Minutes of Closed Session are recorded separately. **Action:** Motion by Commissioner Schulze and second by Commissioner Gossage to move back into Regular Session at 8:52 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board a motion was made by Commissioner Gossage and second by Commissioner Schulze to adjourn at 8:53 p.m. Motion carried.

The above minutes were approved on the 6th day of September, 2005.

Georgia A. Evangelisti, MMC
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 6, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
Vacant Seat

Web site: www.apexnc.org

Mayor Weatherly called the meeting to order with Commissioners Jensen, Jones, Gossage and Schulze present. Mayor Weatherly gave the invocation and led the Pledge of Allegiance and extended a welcome to those in attendance.

PROCLAMATION

Mayor Weatherly presented a Proclamation urging all citizens to join together in fuel conservation measures during the Hurricane Katrina crisis along the Gulf Coast. Manager Radford shared conservation measures being taken by the town's staff during this time.

PRESENTATION

David Winslow

PRESENTATION - Proposed Performing and Cultural Arts Center

Update / presentation from David Winslow, Winslow & Associates, Winston Salem, N.C., regarding feasibility study for private fundraising for proposed Performing and Cultural Arts Center; anticipating construction costs to rise and needed every penny earned to make the project work. Recommends: 1) adoption of a $1 million goal: $800,000 for building expansion and technical enhancements and $100,000 over a three-year period seed money for creation of an arts council assuming certain benchmarks are met, and $100,000 for expenses associated with planning and implementing the campaign including costs of campaign counsel, fund raising materials, travel and communications expenses; and 2) Allocate appropriate Town resources to support the effort including: Staff support (an administrative assistant 5 – 10 hours a week, continued access to key elected and staff people, and minimal office and meeting space.) He noted the town "blessed" to live in a community that is growing and easier to have a fund raising campaign when the perception is that the town is going some place opposed to the opposite, and confident Apex is alive and well and has a strong community spirit and banking on it to make this campaign succeed. Recommendations and Executive Summary are part of the enclosed Study. Winslow is confident the money can be raised. Mayor Weatherly noted a critical part of this is that they do the additional renovation for the architect to have one set of plans which is more efficient, and get construction done in a more timely fashion. This item will be placed on the September 20, 2005 agenda for decision.

End of Presentation

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to approve the consent agenda. Motion carried.

1. Minutes of August 16, 2005 Board of Commissioners Meeting.
2. Minutes of August 16, 2005 Board of Commissioners Closed Session Meeting (recorded separately).
3. Findings of Fact and Conclusions of Law and Ordinance for rezoning #05CU07, Comstock Holland Road, LLC., petitioner, located off Holland Road, and changing the zoning classification of the lands from R-40 (Wake County Designation) to MD-CU (Medium Density Conditional Use) District.
4. Annexation Petition # 380, Andrew L. Clark, owners/petitioners, petitioning to annex 3.678 acres into the Town's corporate limits; located on the south side of Investment Boulevard; 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing on September 20, 2005.
5. Budget Ordinance Amendment # 4, Capital Projects Ordinance Amendment, and Capital Projects Ordinance.
6. Minor change to contract with Haden Stanziale related to design of Beaver Creek Greenway allowing them to use NCDOT survey for the I-540 corridor in order to design the greenway and acquire easements/encroachment agreements necessary to accomplish same.
7. Resolution to approve Municipal Agreement with NCDOT regarding bridge inspections.
8. Contract with Motorola to purchase equipment for Computer Aided Dispatch system.
9. Amendment to Interlocal Agreement regarding use and support of Wake County 800 MHz trunked radio and computer aided dispatch systems.
10. Service Area Allocation Agreement with Progress Energy regarding right to serve electric customers in Beaver Creek Commons phases III & IV.
11. Resolution Awarding Contract for North Salem Street Enhancement Project.
12. Resolution authorizing notice to landowners of Town's intent to enter upon lands to conduct investigations of site conditions related to the proposed New Hill Design and the development of plans and specifications for routing of utility infrastructure.
13. Request to declare 1989 Simion Duplex Fire Department Ladder Truck surplus property.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set asking it be amended to include two additional closed session items: 1) Discussion with Town Attorney regarding the Butler property, and, 2) Receive legal advice from the Town Attorney regarding Chanticlair Drive. **Action:** Motion by Commissioner Schulze and second by Commissioner Jones to amend the agenda to include the two additional closed session items. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

Rosetta Radtke, Design Planner

Public Hearing # 1 - Rezoning Case #05CU10

Public hearing and possible motion regarding Rezoning Case #05CU10 Diversified Communities, petitioners, seeking to rezone from Residential Agricultural to Planned Unit Development Conditional Use District classification, 23.11 acres located at 1006 and 1012 Olive Chapel Road.

All those desiring to speak during this hearing were administered an oath by the Town Clerk.

Rosetta Radtke, Design Planner, gave a review of the proposed L'Hermitage on Olive Chapel Road and requested rezoning from Residential Agricultural to Planned Unit Development Conditional Use. Planning Board unanimously recommended approval with the following conditions which the applicant has agreed to and listed in the attached staff report which is incorporated as a part of the minutes.

1. Amenities are to be built in Phase 2 due to the size of Phase 1 (35 single-family units)
2. Town of Apex policies for water/sewer are to be met.
3. Parks and recreation requirements are to be met.
4. Use of real stucco vs. synthetic.
5. Applicant is to obtain signatures of property owners outlined in the PUD of the UDO (has been obtained).
6. Olive Chapel Road improvements completed in phase 1.
7. Fence to be installed along the Bolch property to protect it from trash & debris during construction.
8. Applicant to comply with the requirements regarding storm water runoff.

Staff received significant information after the Planning Board made their recommendation; there is a proposed easement, and to date, property owners have not been contacted by the applicant. Planning wanted to make the Board aware of this situation and recommends two additional conditions for consideration: 1) petitioner change the wording to proposed easement at the next drawing date for accuracy and 2) the easement be obtained before going to the stage of construction drawings. Applicant also agrees to the two additional conditions.

Radtke oriented to the location of the 23.11 acres, with proposed 35 single family homes, 75 townhomes, and 100 condos with dual access off Olive Chapel Road; major road A will bi-sect the property and stub to the north; stub street to the east and cul-de-sacs because of environmental reasons with proposed easement shown to the sewer hook up. Town homes will back to back with amenity area shown and surrounded by condo's and townhomes as part of the small area plan – called the Zeno Road Plan with the Comprehensive Plan in mind with some expected retail and O&I added, fulfilling the small area plan for residential. Natural features on site has combination of open fields, stream and pond, number of clusters of large trees primarily along the periphery of the property and adjacent properties; applicant is willing to work with staff to preserve as many of the resources as possible that are viable, certainly in buffer, RCA areas, and non buffer and non RCA areas as amenities to the site. The pond will be drained and put back as a pond and made part of the RCA with plantings and some stream channels also part of the RCA and part of the storm water benefits as well. 210 units will be added over the course of three phases; single family first, with road improvements first, amenity center and then townhomes and condos second and third. There will be street front buffers on the major corridors, sidewalks on all linkages including the cul-de-sacs, with one portion without sidewalk not being linked and shown on the plan. The proposed development satisfies the UDO requirements, the 2025 Land Use Plan identifies the area as mixed use, and the proposed plan meets all the Transportation Plan requirements; and all TIA recommendations in the building of the widening of Olive Chapel Road. Project has requested paying a fee-in-lieu to satisfy the parks and recreation requirements. Architecture/design of the proposed will be compatible in scale and materials to the adjacent areas, and compatible between the residential types, and compatible to the scale of existing single family residences and fitting in with condos; similar materials of the different housing products; real brick, stone, and so on with prohibited materials of vinyl siding. Project will use utility services from the Town of Apex; storm water being addressed by the surface ponds for quantity and quality.

Commissioner Jensen asked why the fee in lieu would be applied for recreation with Commissioner Jones noting the application fee had not been discussed by the Parks & Recreation Commission, only the merits of fee in lieu or if dedication was appropriate for this particular site, and John Brown may have some recommendations as to how the fee would be spent. Mayor Weatherly asked the number of acres involved in the 23 acres with Manager Radford noting an acre per unit or l/35. Commissioner Jones noted it a small amount and reason for fee in lieu being a preferred option in this particular project. Commissioner Jensen noted l/35 acre per unit, with Radtke noting the total number of units, with Commissioner Jensen noting this being 4 acres; and commented the Seagroves property received 5 acres. He had a problem with this and reflecting on Waterford Green – charging a fee in lieu but no direct plans to use it in the area and adding houses and should designate where to use the fee in lieu; he thinks this is a huge mistake and having done it over and over again, should stop doing this.

Mayor Weatherly noted the value of taking the fee in lieu and being able to maximize the acreage when you take money for one to the next, and able to do an enhanced recreational project, vs. an acre or a half to put a Jungle Jim, and further noting the master plan calls for where parks are placed for the community of Apex, all parks.

Commissioner Jensen again stated they were talking 4 acres, asking where these fees would be used and they should be applied to this area; fees are set up for a park for the people buying these houses, using the example of Waterford Green, and to use these fees elsewhere in another part of town, they can't come back and fix the situation thus making a big mistake and need to change the process.

Radtke noted private recreation facilities in the amenity area, that of a 10,000 square foot club house and pool – a high end recreational complex and some open space being preserved there. Commissioner Jensen pointed out 10,000 square feet building is one quarter acre and he doesn't like to see kids having to go across town for recreation.

Mayor Weatherly opened the public hearing with all those speaking having been sworn.

Sal Musarra, Land Planner, Kimley Horne & Associates, 3001 Western Parkway, has worked closely with staff on the mixed product type on the 20+ acres, similar architecture, with single family being adjacent to the existing single family, toward townhomes, and condominiums a third phase produce type, in an area proposed for retail or mixed use development, thinking progression in density makes sense in term of the small are plan for this site. Environmentally, have worked with DWQ and staff to look at existing pond and stream features, maintaining all stream buffer areas and proposing defused flow into the buffers which is good for water quality; pond in need of repair will be drained and brought up to code, landscaped and make it a water feature for the project and has worked closely with DWQ to make this happen, becoming an amenity and part of the stormwater management system for quality and quantity. There are two points of access and in discussion with staff and NCDOT looks as if this will work. He recognizes the concerns and noted a couple (two) acres of recreation within the property located centrally around the pond, and will include a 10,000 square foot club house that will have outdoor facilities, some open space. John Brown requested some open flat usable space for the community and have accomplished this in addition to the facility including a pool and tennis courts, ability to do tails around the pond area and leaving a lot of the site naturally wooded, noting the stream buffer through the middle of the project. Environmentally and from a recreational standpoint they are serving the potential residents of this community. Brown felt the residents would be served well and felt there are other locations based on the master parks and recreation plan that the money could be put well to use. He noted the commitment to the quality development, and commitment to conditions Radtke had read off and happy to meet the conditions of the project; applicant's intent is to make this a high end high quality community for Apex, and are working on landscape plans and streetscape beyond minimum requirements to make this a showcase project.

Jim Sylivant, 1108 Olive Chapel Road, two lots west of the project, spoke in favor of the rezoning brining a high end development to the community and increasing property values, being a nice neighbor to have. He addressed concerns to get assurance from the board, certain things would be followed that will impact him if not followed. He has a three quarter acre fish pond fed by the 23 acres and surroundings that drains into the existing pond and a stream that feeds his pond; presently it's wooded/pasture land and when it rains the flow rate is diluted and comes in fairly slow; creek and pond can contain it. He's reviewed the plans; proposed development has enlisted an engineering firm to do a water study, but he didn't see and felt was missing was a distinction between flow and flow rate, mentioning flow after development will be same as the flow before development, noting buffer areas retaining ponds, etc. but doesn't see clearly spelled out is the rate of flow or gallons per minute that will be dumped on him. He noted if not diverted to another creek or drainage area, the flow will be the same and eventually he will get all the water from the 23 acres. He is concerned about how fast it would be delivered to him. It doesn't make mention of water quality, having to deal with nutrients from laws, and oil/gas run off of storm drains that will feed into this and nothing to address this, except there will be bio-retention ponds. He has no way of knowing how affective they will be and would be disadvantaged to come later and say he's not satisfied with the water quality and delivery. He noted north of his property is Carriage Downs, his first experience with growth that was close to him; he was purchased map plans, reviewed them in detail, particularly the part adjacent to his land and satisfied what was proposed would be ok. Another creek from Carriage Downs comes on his property; he found out as the process proceeded they didn't follow the plan filed with the Town, and he wrote and documented nine major points violated.

One was they would only remove trees sufficient to build homes; first day bulldozers clear cut the whole area; developer stated wetlands area would not be filled with pipe, would require culvert pipes over each individual driveway, implying there would be some absorption into the ground before it reached him, instead backfilled the entire area and put in a 42" drain pipe about 250 feet long that accepts stormwater from the whole project. He tells these details asking for the board's help, as a citizen, it's a disadvantage for him to listen to a project, and read about it and find it ultimately wasn't followed and he's not been able to get any recourse for it even now. He deals with a tremendous flow of water from Carriage Downs and wants to head this off. From what he's seen about flow rate and quality of water, he's pleased there will be bio-retention ponds, but urged there be kept close watch, so a citizen is not blind sited by going out and seeing sets of trees are gone, or something different has taken place that's not what they got approval for. He wanted to hear from the Board that he will have that support in enforcing and not let the developer make changes, minor or major that doesn't come before the attention of the public or certainly himself. He wanted to hear something from them that he could feel good about. Mayor Weatherly responded the plans adopted will the plans the enforcement officers will insist to be complied with, without questions.

Masarra agreed with everything Sylivant had said, having spoken a couple of weeks ago; they welcome his involvement, and any other neighbors with the stream as they develop the construction documents and detailed engineering plans; welcome them to come and sit down for them to explain the process; again they are doing a couple of things that goes beyond the normal for storm water control, and in some cases for water quality, are doing double treatment, taking water runoff into a bio retention are and into the stormwater pond where it gets another level of removal of suspended solids; they are doing this and the defused flow through the buffers; they would be glad to review plans with him and had spoken previous. They are committed to designing for a 25 year storm for the project with the code being a 10 year storm; everything will be designed by the engineer for a 25 year storm which will help with the rate issue and does understand it's a rate of flow so the rate of this development will not exceed the pre development rate of flow. Beyond this, would spend as much time as need to on the drawings or in the field to address these concerns. Sylivant wanted these be added to the conditions for approval; he's heard before everything would be done just fine, and didn't have responsibility of the actions of other people, but for his own protection, would like to see this added to the conditions that the board bases the approval of the project on; and if something happens in the future, he could point to rate of flow, as one of the conditions.

Commissioner Jensen asked about the letters he sent regarding Carriage Downs to staff and wanted to know who they were sent too and he would like a copy. Sylivant responded he would send him a copy, but didn't want to mix Carriage Downs with this. Commissioner Jensen noted with the UDO we require they not exceed pre development flow rate, but that flow rate can get up to where the peak was and flow a long time and then come down, where the original peak would only go up and come down for a short period of time and yes the flow rate is less than or equal to the pre development amount rate, but the flow volume during the storm can be 300% greater; you are dealing with volume and one of the problems he's up against with the UDO. Sylivant stated he's gone on record with these concerns and requests these things he has concerns about be put in as conditions so they are not just that he mentioned that, asking if this is possible.

Mayor Weatherly responded they react to whatever the petitioners imposes upon himself and don't impose those, but will make a decision on the project as presented and if he wishes to add conditions, that's his option. Sylivant understood he could not change those conditions. Mayor Weatherly responded after adoption the plan itself, he can not change it subsequent to their adoption unless he comes back to them and asked for them. Sylivant reverted back to his Carriage Downs issue, and maybe he should personally make him aware of what happened and not continue to take up time. Mayor Weatherly responded and to mix that with this potential development is not fair to this one. Sylivant stated he was in a situation and was his understanding and from his point of view would have said the same thing; can't change the plan, but did change the plan and no resolution to put it back now; he could talk with staff and town engineers to find out what was done to mediate, but can't put it back. He had called him and asked about the quality of water, so it's not something he's bringing here, but been trying to work with Planning coordinator but didn't get an answer back in time for the meeting, but thinks it's appropriate to put his concerns in as conditions; if they recommend to the council that they give the approval.

Bob Bennett, lives adjacent to the property and as much impacted by the development as anyone, and expressed, not to deter from this development, but thinks it's a good idea, wanting to protect what land he has, because its a beautiful piece of property and pretty there, and wants to express concerns: the easement had not been discussed with him, and asked what this means to him and the circumstances and what it means to him and his land; he noted it on the map and wanted to understand more fully if they ask permission, and doesn't know. He also asked a fence as well to be in place for protection on the side of his property to protect it from building construction, etc. as Bolch had requested, asking to talk with the developer. Also, his driveway has a drain where the run-off from this property has potential to impact it, making sure things are done to protect it and not destroy the driveway. He noted a big rate of flow would affect his driveway. He noted the beautiful big trees that had been there for years, and hopes they would be protected through out the construction process and not be cut down as he thinks they are very attractive. He was concerned with the water run off and noted the steep hill that goes down his driveway and has a lot of water running down the driveway and could get worse if not handled properly during construction and would come down the other side of the driveway and would have a severe problem with water in this area. He noted the location of his septic system and whatever the easement should talk about it and the impact it might have. He also has a watering system in his yard and wants to make sure it's protected. He also noted the location of the city water line that comes down the drive way and wanted to make sure they knew where the line was and there was no impact during construction process and protected. He asked how the fencing would work due to it having to cross the creek. He concluded he encourages development, but has a piece of paradise there and would like to protect it and hopes they would treat their property, as if it were associated with their property, you need good neighbors and would like good neighbors as well.

Masarra responded from the applicant's standpoint, and would add Bennett's property to the fence so they are now conditioned to have a fence along his property and the Bolch property, will commit to that this evening. Mayor Weatherly asked if he wanted to make that a condition on the rezoning and he responded yes. Mayor Weatherly asked if this was sufficient. Attorney Hank Fordham responded if it's spelled out clearly. Bolch added the existing condition is not spelled out correctly.

Mayor Weatherly asked to finish the public hearing and then would clarify the conditions.

Bob Bolch, 1420 Zeno Road, stated he wasn't in favor or against, has the property to the north of the development. He stated Bonnie's minutes didn't transcribe the condition correctly, trying to use very specific wording when requesting a condition from a developer because he knows the affects of doing so. Also, he applauded his other neighbor; the developer can tell you know anything he wants but unless it's in the conditions, it can't be enforced and he has had occasions where some things were in the conditions that wouldn't be enforced. His wording was solid wood fence to be installed along the northern property line before construction begins. That was the exact wording he used, and the exact wording the developer agreed too, but is not what was transcribed by Bonnie. The intent is here and says to protect from trash and debris during construction but can't do that unless you build the fence before construction begins and can't do it with a wire fence, it has to be a solid wood fence; he doesn't think there is any problem with that, but would like to change the wording of the condition to be what he originally specified at the Planning Board meeting. Mayor Weatherly asked if this was the spirit of the agreement; was this literally the agreement.

Masarra stated for practical purposes he would like to during construction not put up a nice fence that may get impacted during construction; if they could put up a fence suitable to control trash/debris and address his concerns during construction, and then come back with a permanent fence after construction, then he thinks it would be a more appropriate solution. Bolch asked what kind of fence he was talking about, a wire fence, with Masarra asking during construction, with Bolch responding yes. Masarra stated they could come up with something which could be wire with silk fabric, with Bolch saying it wouldn't do it, with Masarra continuing they could commit as a condition to work with him as to what would be appropriate. Bolch stated that was not what he had requested, and not what he had agreed too. Masarra stated he guess what he agreed too they will create a fence there that would be suitable to address the issue with him, and if he had some ideas on what that should be, with Bolch responding he had said exactly what he wanted, and he wants exactly what he said he wanted and what he had agreed to last week at the Planning Board meeting.

Mayor Weatherly stated they would see what he was agreeing to when they finished the public hearing and then specify that in the condition and let the board vote on that. Bolch added if his condition is changed from the Planning Board then this hearing needs to be rescheduled so he could have an opportunity to file a protest petition.

Mayor Weatherly asked if this is a condition upon which the Planning Board made their recommendation, asking if he has some specificity about the fence in the minutes. Radtke responded once it was brought to their attention they had double checked the minutes and unfortunately "wood" wasn't in there; if her impression is worth anything, she thought a solid wood fence was what was being talked about; not knowing if this is legally worth anything, but she did check and the wording was not in her minutes. Bolch added he couldn't control the minutes, first he had seen was when he got this document. Masarra stated the applicant would commit to a solid wood fence during construction. Mayor Weatherly stated they would clarify that when the motion is made later and should satisfy Mr. Bolch. Bolch expressed a thank you.

Bolch continued another concern was the easement asking how this could be submitted with an easement on his neighbors and his property, and there being no discussion about any easement and the chances of having this easement are zero. Mayor Weatherly responded staff was clarifying that to say there is a proposed easement. Bolch asked if there were an alternative place for sewage to go with Mayor Weatherly responding he had no idea. Bolch asked what happens in the situation where the easement is not granted by the property owner. Mayor Weatherly responded he wouldn't have the answer to that, but either staff or the petitioner certainly could he guessed.

Commissioner Jones added under the recommendation that they put forward to the board, is that there wouldn't be any construction drawings until there was an easement, so regardless of what decision is made tonight. Mayor Weatherly asked if there is an alternative of having the easement at all. Massara responded no sir, they will need an easement, and it may not be in that exact location, but will need an easement to serve the property. Mayor Weatherly continued that if and when they adopt this, it would be up to him to get the necessary easements before they can proceed. Bolch commented about him being on his property with Mayor Weatherly responding that was up to him.

Bennett stated he was unclear about the easement, asking if that mean they would come and speak to them about the easement, with Masarra responding he would, with Mayor Weatherly adding that would be necessary.

Bennett also noted two fences, one pre development fence perhaps and one afterwards, asking if he were talking about two different fences and which one was he talking about in terms he had described. Masarra responded he believes now they are talking about a solid wood fence during construction and thinks it would probably make more sense that they make it the quality that would serve as permanent fencing for the project.

Amy Rahn, 1411 Zeno Road, was administered an oath by the Town Clerk and stated she has the corner property and make sure that it's added that she also have fencing along her property line the same as other her other neighbors. Mayor Weatherly asked if she currently has fencing with Rahn responding she does have fencing now, but wants wood fencing to separate her from the neighborhood. Mayor Weatherly stated this would be specified when they get to the motion.

Bolch requested the wording of the conditions be read aloud, with Mayor Weatherly responding they would for the record.

Herman Jaffee, was administered an oath by the Town Clerk, and asked why didn't Diversified and Planning Board meet with the people who are next to this property; they had spent over 35 minutes discussing this which could better have been done at the Planning Board with these people so they wouldn't have had to have spent 45 minutes here now; he asked him to direct the Planning Department to move up the preliminaries to that sort of stage at this time, so they don't have to spend all that time. Mayor Weatherly stated this is generally what happens.

Mayor Weatherly asked if anyone else wished to speak, with no one else addressing this item, the public hearing was closed at 8:00 p.m. and he referred the matter to the board.

Mayor Weatherly asked clarification of what conditions were accepted by the petitioner.

Attorney Fordham asked Masarra to very specifically state the three conditions; the one related to the map, one related to condition that construction drawings not be considered until the easement is obtained, and the third related to the fences, and to name each property along which the fences will be installed and the type of fence.

Commissioner Jones added and in addition to the conditions that were not modified by those, that were in the original planning board recommendation; he'd like to clarify those; originally there were eight (8) conditions that came to the Board in the recommendation.

Attorney Fordham advised there needs to be a specific agreement to that too.

Masarra stated the following:

Regarding the fencing; he thinks the applicant will commit to constructing a solid wood fence around the project perimeter specifically adjacent to the properties of Mr. Bolch, Ms. Rahn and Mr. Bennett.

Commissioner Jensen asked what height? Masarra responded six (6) foot fence. Manager Radford informed the UDO provides for only six (6) foot. Mayor Weatherly stated this was the maximum height. Bolch interjected there was an eight (8) foot fence at the medical center. Manager Radford will check. Mayor Weatherly asked Bolch if six (6) foot was ok with him. Bolch responded six (6) foot was ok with him. Mayor Weather stated they would settle with six (6) foot.

Masarra continued he would like to add that construction would happen as appropriate to the phases of construction so it would be in sequence with the phases of construction, so they are constructing the fences adjacent to the property as appropriate to what ever phases is under way, prior to beginning each phase of construction. Bolch interjected litter can come a long way; he has been picking up litter from Carriage Downs from the townhouses on the other side of the property. Mayor Weatherly asked Masarra to continue.

Massara stated the applicant would also commit to obtaining signed agreements for sanitary sewer easement prior to development of the construction documents for the project. Attorney Fordham asked if it were prior to consideration or approval; it definitely had to be prior to approval before submission. Massara added before submittal. Someone asked this be repeated. Massara restated that the applicant will obtain an approved sanitary sewer easement from adjacent property owner or owners prior to submittal of construction documents.

Massara stated he would read the prior conditions. Attorney Fordham added the last thing was the map would be amended so the map shows it as a proposed easement so that the document the board potentially might approve would not say easement, but proposed easement. Massra stated the applicant would commit to modifying the existing maps and exhibits for the project to show the sanitary sewer easement as a proposed easement at this point in time.

Massra stated they had previously committed to and agreed to conditions that follow:

1. The amenities would be built in Phase 2 of the project due to the size of the Phase 1 development
2. Town of Apex policies for water and sewer would be met in full
3. Parks & Recreation requirements for fee in lieu would be fully satisfied
4. Applicant will use a real stucco product
5. Applicant will obtain signatures of all property owners for the control of ownership documents as required prior to going before the board; in fact this has been done and he has copies of that
6. Improvements to Olive Chapel Road for the TIA would be done in concurrence with Phase 1 activities
7. Applicant commits to compliance with the requirements of the Town of Apex and the State regarding stormwater run off and stormwater management
8. Applicant will commit to design of the stormwater management system to the 25 year storm

Mayor Weatherly asked Attorney Fordham if this is sufficient and entered into the record that the motion could contain the conditions as so described by the petitioner. Attorney Fordham responded yes.

Mayor Weatherly asked if there were further questions of staff.

Commissioner Jensen commented that staff had mentioned there was 120 units and he noted it's 210 units. Radtke stated she had said 35 single family and 75 townhomes and 100 condos. He continued divided by 30 comes out to seven acres for parkland and he appreciates the applicant is looking at two acres of recreational facility beside 10,000 square foot unit, less that is 5 acres of parkland that needs to be somewhere in this area; 5 acres some folks may not think it's very big, but as he recalls the Seagroves, some folks said that's big enough. He gets confused about what a good size park is from meeting to meeting, but thinks its reasonable to take a fee in lieu but at the same time, they need to plan what a good size park is 5 acres or 20 acres is going to be put somewhere near by so kids can get to the parks without crossing major highways which makes the parks basically useless unless their mom drives them around; that's the problem we have. Mayor Weatherly responded that is what the master plan is for.

Mayor Weatherly asked if there were further questions to staff, there being none, called for a motion.

Action: Motion by Commissioner Jones for approval with the conditions presented as modified. Second by Commissioner Schulze.

Mayor Weatherly asked if there was discussion on the motion to approve. Commissioner Jones addressed Commissioner Jensen's concern, advising there are cases where the Parks & Recreation Advisory Commission recommends fee in lieu, this being one of them; we can't always take land because the land may not be appropriate or an appropriate site, and he's not saying this one is not, but we also need funds to develop the park land that they get through dedication and this is one of those cases. They are providing two acres for this particular site and there are some greenways and other things that are in the vicinity that would connect to existing parks and hopefully some new parks. It was the recommendation of the Parks and Recreation staff and the Parks and Recreation Advisory Commission for a fee in lieu rather than a land dedication for this particular request.

Commissioner Jensen responded that he does appreciate that and he understands the reasoning that they need money, even though they have a huge bond issue coming down that will help get other parks going; he hears from the people at Beckett's Crossing, they need a place for the kids to play; when they were concerned with traffic driving through their subdivision, they were concerned there was no real park in the vicinity for the kids to play and that's his problem, not that they are taking a fee in lieu here, it's that they need to get some sort of a park that kids can get to so they aren't playing on the street and they don't have to cross major areas.

Commissioner Jensen expressed a thank you to the applicant for doing the 25 storm design and it helps.

Manager Radford asked a point of clarification; will they require the fences be erected before the construction of any phase; he heard it both ways. Mayor Weatherly responded the final by the petitioner, with Commissioner Jones interjected they can't require him to make an offer, but could accept an offer, with Mayor Weatherly continuing clarified by the petitioner and offered would be they would construct each segment of the fence as appropriate with that phase of construction, with someone saying prior to commencement of that phase, with Mayor Weatherly continuing prior to the beginning of that phase of construction. Massara responded correct. Manager Radford was satisfied with this. Bolch wanted to look at the action of the Planning Board. Mayor Weatherly stated evidently there was some confusion at the Planning Board, but that's what's been offered.

Mayor Weatherly asked if there was further discussion, there being none, called for the vote on the motion. Vote on the motion was unanimous to approve.

End of Public hearing #05CU10

Jennifer Leaf, Planner

Public Hearing # 2 - Rezoning Case #05CU12

Public hearing and possible motion regarding Rezoning Case #05CU12 Cummings Property and Dominion Properties, Inc. Kent Cummings, Dba Cummings property & Dominion Properties, Inc., petitioner, seeking to rezone from Wake County Designation R-30 to High Density Multi-Family Conditional Use District classification, 0.41 acres located on E. Williams street between Bobbitt Road and Straywhite Avenue.

All those desiring to speak during this hearing were administered an oath by the Town Clerk.

Jennifer Leaf, Planner, advised this rezone is north of Miramonte Subdivision noting the entire tract was previously rezoned to high density multi family conditional use, with this small piece not able to be rezoned at that time the rest was due to administrative problems with paper work; that has since been straightened out, and proposes the same conditions on the larger rezone. The conditions: all uses allowed under high density multi family will be permitted except: Apartments, Communication Tower, School (public or private). The rezone is consistent with the land use plan which calls for medium density and high density residential mixed use in the area. Staff recommends approval as well as the Planning Board and meeting on August 8, 2005. Staff report is incorporated as a part of the minutes.

Mayor Weatherly asked if there were questions from staff, there being none, opened the public hearing at 8:15 p.m. for those desiring to speak in favor or opposed to the rezone to come forward. There being no one, closed the public hearing, called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the rezone as presented. Motion carried unanimously.

End of Public Hearing #05CU12

David Rowland, Director of Planning

Public Hearing # 3 - Rezoning Case #05CU13

Public hearing and possible motion regarding Rezoning Case #05CU13 Orville & Linda Dixon, petitioners, seeking to rezone from Office & Institutional to Mixed Office Retail Residential Conditional Use District classification 0.36 acres located at 214 W. Chatham Street.

All those desiring to speak during this hearing were administered an oath by the Town Clerk.

David Rowland, Director of Planning, noted this a part of properties that was not included in the recent rezone of the properties on Chatham Street for mixed office, residential retail to allow that area to be used for residential and orienting to the location of the property that didn't get in on time and has the same conditions as the others. Planning Board recommends approval, as well as staff.

Mayor Weatherly asked if there questions from staff, there being none, opened the public hearing at 8:17 p.m.

Orville Dixon, noted his property, noting as currently rezoned, he could not pass the property on to his children, and should anything happen to the structure, could not rebuild as a home, and asked consideration to change it or make it residential.

With no one else addressing this item, Mayor Weatherly closed the public hearing at 8:18 p.m. referring the matter to the board. With no further questions to staff, Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage and second by commissioner Jones to approve the rezone. Motion carried unanimously.

End of Public Hearing #05CU13

David Rowland, Director of Planning

Public Hearing # 4 - Amendment to Central Business District

Public hearing and possible motion regarding an amendment to Section 8.7.7 Central Business District and Section 12.2 of the Unified Development Ordinance to expand the area as follows: East: From Seaboard Street to railroad right-of-way; North: From Center Street at N. Salem Street to the property line at 316 N. Salem Street; West: From Templeton Street to the property line located at 215 Saunders Street; South: From Commerce Street to the western property line at the Senior Citizens park located south of Saunders Street.

Director of Planning David Rowland oriented the board to the location of the property in question with proposed parking lot. Existing central business district is shown with proposed expansion including park and police property on Saunders Street, extending down to the railroad tracks to include the old freight depot. He recommended the expansion: 1) parking lot if built would be outside of the existing central business district and thinks it appropriate to have the parking lot for the downtown area, that it be within the central business district designation. 2) by having it in the central business district, they do not have the buffers they have to work with in terms of a more suburban type setting and allows some grading and on undisturbed buffers allows them to grade within them, but at the same time the property will be replanted so it's not going to not have any buffers, it gives more flexibility. 3) The police department and park is not in the central business designation and thinks it appropriate to include those in the central business district. Planning Board and staff recommend approval of expansion of the central business district.

Mayor Weatherly asked if there were questions of staff.

Commissioner Schulze asked on the west side, the line goes through property showing a house, with Rowland responding they had followed the property line and might be the line is off set or not correct and not noting it bisected a house. Commissioner Jones noted satellite or Arial photos can be a bit off. Commissioner Schulze wanted to head off any problems that would bisect property, picking one side or the other noting it an existing house. He was ok if it were a satellite image, but if not, move the line and bring the house in. Rowland will check this, and unsure of the urgency for action. Manager Radford assured no urgency, however, Commissioner Schulze may be right, that it would be an unusual property line at best, and think it would go further to the west than exhibited. Commissioner Jones asked the consequence of having the residence in the central business district, with Rowland responding none, and zoning wise could use it for residential purposes, and if single family home and torn down and built back wouldn't go through site plan; it's an existing lot and not sure of any damage that would be done to the house zoning wise. He stated it could be taken to the next meeting for consideration, not realizing it went through what appears to be a house, and could adjust the line.

Mayor Weatherly added that any motion made, could specify that it follow the property line irrespectively; map is not necessarily exact, with Rowland agreeing.

Commissioner Jensen asked if all property owners were notified as it affects them, with Rowland responding no; it was advertised, but was not a zoning change, but did what the ordinance calls for. He doesn't see a down side of having the property within the central business district with Mayor Weatherly clarifying it doesn't change the zoning or uses, with Rowland noting this was correct.

Commissioner Jones asked the downside of having property adjacent to you in the central business district, say to those on Woodbrier Street, behind their homes would be central business district rather than it's designated zone, with Rowland responding again, it doesn't change the zoning and if the property was developed or was taken down and reestablished with another house, there's no requirement for buffers between like uses, so it doesn't affect buffers either.

Commissioner Jensen asked how it affects stormwater management requirements. Rowland responded again the zoning is not being changed, with Commissioner Jensen thinking the central business district had minimal if any requirements placed on it. Rowland responded if its zoned B2 Central Business District, that does not require it, but this is a designation and not changing the zoning.

Mayor Weatherly asked if there were further questions, there being none, opened the public hearing at 8:25 p.m. and with no one addressing this item, closed the public hearing and referred the matter to the Board.

Commissioner Jones asked clarification on the replanting of the buffers, with Rowland responding his understanding when Engineer Adam Stephenson laid out the parking lot, in order to maximize the spaces, he needed to do some grading in the buffers, but they will be replanted and establish them per the town's standards. Commissioner Jensen wanted to know what trees would be taken out and are they going to replace them with the same diameter trunk trees when replaced. Rowland responded he didn't know, with Director of Construction Management Jackson responding without the parking lot plan he can't remember, but remembers the focal point of the lot being the large trees near the Saunders Street by the house to save, two or three large trees, and outside of that doesn't recall what the plan shows. Rowland continued the main trees or the big oaks are to be saved, with others smaller size.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the expansion of the downtown business district and with regard to the boundary on the west side, leave it up to staff to determine the accurate portrayal of the line, with Mayor Weatherly interjecting, it should follow the property line and not go over the property line that's shown on the map.

Mayor Weatherly asked if there was further discussion, with Commissioner Jensen stating he was surprised and thinks they should notify people by mail in a situation like this and it's for property, and second thinks it's interesting we are changing into a business district so we can grade into the buffers when we hold poor developers feet to the fire on these to a much higher standards. Mayor Weatherly called for the vote on the motion, with the motion being carried unanimously.

End of Public hearing #4

David Rowland, Director of Planning
Public Hearing # 5 – Annexation Petition # 379
Public hearing and possible motion to adopt an ordinance to extend the corporate limits regarding Annexation Petition # 379, M & G Ventures, LLC., owners/petitioners, petitioning to annex 1.45 acres into the Town's corporate limits; located west of Crown Pointe Boulevard, Lot 2, known as the Andrew L. Clark property.

David Rowland, Director of Planning, introduced Annexation # 379, oriented to the location of the property and surrounding land uses, with the subject property needing town water and sewer.

Mayor Weatherly opened the public hearing at 8:30 p.m. and with no one addressing the request for annexation, closed the public hearing, and referred the matter to the board.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve Annexation petition, #379. With no discussion, the motion carried unanimously.

End of Public Hearings

OLD BUSINESS

Kent Jackson, Director of Construction Management
Old Business # 1 - Downtown Rail Crossing Study
Presentation of follow up information related to the downtown rail crossing study.

Kent Jackson, Director of Construction Management, responded to a request from the board on August 2, 2005 about the economic impact to the downtown business district, construction costs for various grade separation design alternates for the Peakway, and assisting the Manager in the feasibility of a buy down program to allow Apex to maximize our downtown access by funding rail crossing closures in other cities, or towns.

Economic impact to the downtown business district – difficult to pinpoint, however, talked with the Chamber for their perspective from the downtown business owners, and potential resources that may be used for consultants that specialize in this type study. Cheryl Bynum was not aware of any resources that provide a product of this type; she shared closing crossings in the downtown is viewed as a strong impact regardless of number of combination. A staff memo is attached; had referred to target marketing or Strategic Economic Development Plan prepared last year. He noted traffic circulation is a contributing factor to viability of downtown to the retail in general, noting this a general statement. He talked with Steve Schuster, Clearscapes, proposed Cultural Arts Center, in regards to Center Street, a front door; not desirable to have the main approach to the center be closed, and would require significant more signage to direct folks to the facility. A pole of some of the downtown business owners. Strategic Economic Development Plan: talks about developing your brand and marketing as a significant piece to economic development; creating gateways into the town. In thinking about the 3 streets for consideration in closures, Center Street lends itself most to becoming a gateway in observation and based on the statement in the Plan.

Manager Radford responded to the request from Commissioner Jensen, noting request in trade of wetlands, nitrogen, and asked why not trade crossings. He noted this a credible idea, noting 11 towns with 15 crossings that are comparable in scope to average daily traffic on Center and Moore Streets and another 82 that are comparable to Chatham Street.

He looked first at the most comparable to Center Street, having the greatest deal of concern. He noted it difficult to get a municipality to close a Center Street elsewhere that is as important to them as ours to us; basically 6,000 vehicles daily, as few as 12 trains and as many as 34 trains on this list. It was easier to find comparables to Moore and Chatham Streets. He had been told no in various ways, but has had maybes in different ways, and still working with municipalities across the state. DOT rail was not excited about proposing to close crossings in other states and clear they were not willing to make necessary lighting improvements and approach improvements to crossings that we would have remaining in Apex if those crossings were on the S.C. Department of Transportation system. For the Hunter Street crossing he noted the value of $174,000. He talked with the Managers of these municipalities and $50,000 for these crossings. He has determined the cost of a fly over for both railroads with and without access to Salem Street is $9 million. $50,000 purchase for 3 crossings elsewhere pails in comparison and leaves our existing crossings open. It will take more time to get through the crossings, but at the same time has merit and asked for authority to pursue them while simultaneously ascertaining the feelings of the public in regard to the closings of crossings downtown so two things can be done concurrently, because the projects on the table are continuing to move and also asked they be mindful of the fact the additional crossings of Salem Street and railroad associated with it is not necessarily to benefit a particular development but to enable us to complete the Peakway project that was voted for and approved by the bonds. He asked time for continuing to make a deal on three crossings somewhere in order to be able to save all of ours, and if successful in doing this, he will chase three more in order he might arrange and reserve a south Peakway crossing so six at $50,000 would be $300,000 but simultaneously call for the public hearing to ascertain feelings of the public to move this process.

Mayor Weatherly asked if there were objections to authorize the Manager to continue to pursue this, and hearing none authorized the Manger to proceed and bring back a report.

Commissioner Jensen commented that $50,000 or $300,000 total, and thinking about that amount for a parking lot puts it into perspective that even a higher amount if we had to do this to preserve the town, he thinks is money well spent.

Commissioner Jones assumed if someone said $50,000 is not enough, we say $50,000+ he would let them know this, with Manager Radford responding he was right and would negotiate.

Mayor Weatherly thanked both of them.

End of Old Business # 1

Commissioner Bill Jensen
Old Business # 2 - Resolution
Commissioner Jensen requests consideration of a Resolution Requesting Full Evaluation of Additional Wastewater Sites by the Western Wake Partners.

He began noting Partners in getting ready to vote, County Commissioners requested additional 30 days in looking for the site C, and it didn't take place. Having received numerous calls, he's a mechanical engineer, but has done civil engineering and has looked at other sites that seem to be comparable in terms of photography and need to look at these sites; sites on preliminary report that seem to be reasonably good Site 20; a site one mile south of the present site which has good photography with minimal cost impact and knows it wouldn't be fully appreciated by Town of New Hill but at the same time is far better than what they have; one suggested in the same corridor " Brick yard" in Chatham County which would weigh it out, but have looked at sites in Chatham County amongst the last three as one of the sites. He read the Resolution of Request and commented on site C as far down as it is, could be a Beaver Creek Crossings situation and money into the town in terms of tax opportunities. Site 20 noted had asked further evaluation of this site and looked good on the second run through. He noted a site 5 miles form the corridor should be looked at; he felt it couldn't cost a lot more money to develop and is away from homes and town center and not the perfect situation, but better. He noted a short time for public comment and evaluation when considering it was three years into the making and the folks of New Hill didn't get the idea this was taking place when announced through Cary. He noted the Board never voted to approve the Site C and knows there was a mix up that was inadvertently sent to Cary and were unable to call it back. He took part in the meeting that he thought were just talking with Cary, and noted it gave a nod by the Board by the way they went about to resolve the problem. Feels New Hill will become an integral part of the Town of Apex, and feels the site C will be detrimental to the community, and to the future tax base. He can imagine future boards look back and asks what they were doing. He thinks it's critical these two major cross centers have opportunity to develop into commercial or whatever.

He concluded they are under gun by the state, but could guarantee if they take more time and don't meet the deadline they will not shut off Jordan Lake water to us and will look at it and say the partnership tried to do the best they could for the community including New Hill.

Action: Motion by Commissioner Jensen to adopt the Resolution. There was no second to the motion.

Mayor Weatherly stated due to a lack of a second the motion failed. Commissioner Jones stated he had looked long and hard consideration to support of this resolution agreeing with most of the whereas, making clear the site has not been approved but recommended with a permit application presented to the State. He has some issues with the site, not liking where it's located but does think from a timing standpoint is under the gun and has no reason to believe the review by DNER and the other State agencies will be nothing but thorough and impartial and if this site is not the right site or an appropriate site that will come to light. He does think there are ways to continue to identify a site that might be better, but it's his opinion after discussion with a lot of folks involved, passage of a resolution would not lead to a cooperative effort in that regard.

Commissioner Jensen asked what he meant by cooperative effort, with Commissioner Jones responding exactly what he had said from our partners. Commissioner Jensen wasn't saying stop what's being done in respect to DNER, but was saying they should look at alternate site; why, one good reason, what if DNER turned it down; likelihood is small as they are not looking at its impact on New Hill or what it does in terms of the community; they are looking at it as what it does for environmental impact. He noted the part with the State, may say it's not a good site, but not looking at it from any view point other than their specific view points on environmental concerns down the line and different.

Mayor Weatherly responded there are a lot of aspects to be reviewed before a permit would be issued; he knows Commissioner Jones had an alternative site, and maybe the one being talked about some time ago that he was involved with in basically talking with folks, but have moved beyond the point where this is now and are in the process where the state is considering the permitting of the facility; if that falls out because of action by DNER, then they would not be dilatory in meeting our requirements for the permitting of water from Lake Jordan; if they delay because of action or the partnership may take, then that would be seen in a different light by the environmental management commission.

Commissioner Schulze commented on the reason he didn't support the Resolution and does agree with a lot of the intentions, he thinks going in to this, they all agree to the process and thinks important all the partnerships abide by the process, or it breaks down and partners going off doing what they want, whenever, and thinks it's important to abide by the process, and he will continue like Commissioner Jones to evaluate selective sites but thinks they should continue with the process and let it work its way through and if it fails because of the process, then so be it.

Commissioner Jensen responded to the comments that the process now is a linear process and he's talking about an area or collinear process and he's not saying they have to do this, he's saying the Apex Board expresses its desire... asking do they have the desire and is the question, or do they not. Mayor Weatherly responded the fact of the matter is that Cary on behalf of the partnership is in possession of the site; they are the owner of the site which obviously allows the other environmental impact statement to proceed otherwise they can't do the impact statement unless you are in possession of the property; so the fact of the matter is Cary took that action on behalf of the partnership and the partnership does own the property, therefore, the rest can proceed. Commissioner Jensen responded apparently the board doesn't understand what he is saying; he's not saying they should stop what they are doing, he's saying they should ask to do a bit more on the side. Commissioner Schulze commented this can be done without a resolution also. Commissioner Jensen asked how, since they had not spoken; the board had been silent and relied on saying Cary has the ball, and that Apex has a part of that ball and part of this facility and are going to be a part of it for 50 years to come as New Hill will be a part of the facility when they get stuck with it. He thinks just by going on a parallel effort to evaluate and be ready; this is common sense be ready in case DENR by chance in a million rejects this; thinks it's a natural thing that smart planners would want to do and not talking about land in Cary, or Morrisville, they are talking land in New Hill and New Hill being our sister community and that will likely become a part of us eventually and us a part of them; melted together, talking about us in the whole situation and they are talking about eliminating an opportunity for a large commercial area and impact on a historic district; we wouldn't want to impact our own historic district in this manner, asking why we would want to impact New Hill's district in this matter, asking why not take every step they can to try and prevent that.

No further action was taken.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Buddy Holland, 207 Center Street, called attention that Center Street was the noisiest street in Apex, with heavy traffic and the rail crossing needing maintenance, having lived here 60 years and since last October has exhausted all his calls and efforts regarding this street, with nothing being done. Anticipates a stop light on Center, noting it becomes SR1010 and would be a tragedy to close Center Street due to revitalization of downtown; new restaurant has opened and there are no places to park. If he had money he would pay to have the crossing repaired him self asking the cost to close one street. Manager Radford responded it was what had been offered and not what it would cost to close; not the value or worth but what was offered. Commissioner Jones offered that Holland was not wanting to close the street crossing, but fix it so it's not as noisy, noting in that driving over them, timbers and spikes are loose and need replacement, much as Hunter Street when it was done. Manager Radford added it could be fixed with wood and spikes and traditional timbering and gave an estimate cost of $35 or $40,000, with other materials running over $150,000. Holland responded they are not done with wood now, with Manager Radford responding they will repair them with wood. Manager Radford noted numerous phone calls had been made to NCDOT and CSX to try to get this crossing recognized and addressed, and have not done so.

Herman Jaffee asked addition to UDO two items for conserving water and electric for Apex citizens; again noting conservation kits contain 2 bulbs and 2 water flow washers for about $3 and recommends flyers in bills making the kits available to the public. Ask be proactive on conservation of electric, water, and land. Recommend large four-lane bridge with walkways for trackside development. Ask they request from ElectriCities the list of all members for distribution of kit. He awaits the Board's action.

Tonya Forbes of New Hill, formally resided in Apex, and owned a business, still owning property in Apex, but not proud of it, being dismayed at the planning by the Town in regard to the planned wastewater treatment facility. She noted with exception of Commissioner Jensen, the others didn't have the courage of their convictions, noting Cary expresses concern of their reputation, noting actions of Apex mirror those, and the reputation of Apex is not far behind. New Hill residents attend June meeting of the Apex Board and left with the impression Apex would ask for 30 day delay of the condemnation so other sites might be evaluated; instead, received phone call between the Mayors McAlister and Weatherly. She noted disingenuous behavior of Mr. Donnelly in asking could they hook to the system, and responding anyone can hook up as long as they meet the requirements; not truthful. She asked if it would be more truthful to say, you can hook up as soon as you are annexed – 15/20 years, asking if this is more accurate. She continued Cary doesn't own the land; have sought condemnation and to say they own it is not the truth. She doesn't believe to do the environmental impact study you have to own the land; believes that to be untrue. She noted they are aware New Hill residents contend that sites south and east of New Hill are better suited for the project in terms of social, cultural and environmental issues; further contend approval for the selected site was given without careful review of data on the part of Apex, Holly Springs and Morrisville. Questions about cost data, site 20 and other sites south and east of US1 continue to be unanswered after two months. She noted earlier it's good to have good neighbors, asking if this is how Apex tends to treat their neighbors in New Hill for the rest of the time they are neighbors and Apex absorbs them, then what happens.

Mayor Weatherly asked Town Attorney Fordham the legal status of the ownership of the property. Attorney Fordham stated under Chapter 40A at the time of condemnation is filed, the title does pass to the entity that filed the condemnation, so Cary does own the site. Mayor Weatherly restated so on behalf of the partnership is the legal owner of the property, with Attorney Fordham responding yes.

David Bristol, New Hill, noted kids attend Apex schools and reads Apex Herald, noting the article of finding a treasure and giving it back; other New Hill folks struggling to maintain their treasure after being taken away. He stated Cary owns the land after condemnation, but it was forcefully taken from them; not the land only to the family who had owned it for generations, but a loss to the community, asking what they do when they smelly sewage at the 2 churches, playground, and community center planned at center of town, and where it's being put and wrong. He noted the Board had not courage, other then Commissioner Jensen to say they should stand up to the partners when going down the wrong path and had the right idea, using wife as a partner example. Environmental impact statement is a linear process, with three sites being forwarded: one in the center of town, one taken off of the list previously because it was not appropriate, so added acreage to it and put it back in, and a site in Chatham County and not wanting to deal with intergovernmental agreements and put it back in. He asked what site DENR would think is best; they are stacking the deck, and would be blind not to see it. He noted sites ranking higher in earlier studies on Progress Energy land and should be considered. He wished they would vote forward the resolution presented by Commissioner Jensen, as they were done an injustice in New Hill.

Mark Vanderhoff, appreciates the update on the railroad crossings; he agrees to allow more time to the manger to consider publics feelings, and noting people place a high priority to preserve the character of the town in order to maintain a unique identity as we grow, and see the newly restored downtown with specialty shops, restaurants, and historic buildings. He noted surrounding historic district has unique homes and walk tour is a great way to experience Apex's past. He noted this from the Mayor's statement on the town's website, and believes closure of the railroad crossings would be a detriment to the newly restored town and if they do close them, a walking tour will be the only way to see Apex.

Don Grimes, was glad to be able to say he forecasts they would continue to act in a civilized and responsible manner as has been shown and commends the plan to find substitute crossings that could be purchased in lieu of what he regards an extremely drastic change in the downtown if they had to resort to closing those intersections. He noted it a quality of life issue and planning issue; whole concept of interconnectivity with every single plan looked at and talking about destroying interconnectivity in this particular situation; this is not the last to hear about this and continue the Peakway have to confront the same issue on south Salem Street, asking how many we give up to sacrifice on behalf of a developer, or whatever. He noted this a serious impact on the downtown and knows that he lives next to Moore Street and goes on this street every day on foot, car, or both and attests it is convenient to not go left on NC55 referring it to a root canal; to take an interconnectivity situation with less used roads that takes traffic off major roads and to dump that traffic onto the major roads at a time when they are already too congested runs counter to the most fundamental planning objectives. He thanked them for pursuing a win-win which is what they have always tried to do, instead of a clear win-loose situation here.

John Moore, New Hill acknowledges Commissioner Schulze recognition of the process for approving wastewater treatment sites; Mayor Weatherly's desire to be thorough and assurance the environmental agencies that will do the evaluation will do it and all part of the process, indeed they are full feeling the letter of the law by allowing these processes to go forward. He noted it a linear process and reminded the board one thing that has occurred is the site selection process took a big shift when Holly Springs decided not to utilize the septic treatment aspect of the facility and made it weeks before condemnation proceedings. He sees the process as evidenced by the agreement by the partners allowing partners to sell capacity back to Holly Springs, saying they don't need capacity, but why maintain the ability to sell them capacity. Prior to them pulling out, the sites selected were south of US1 and when they pull out, those sites selected and hundreds of thousands of dollars spent in environmental and other studies are discarded and still retain right to purchase capacity from the partners, asking is this right, asking if they want to force the hand, realizes at a price – give up option to sell capacity, but if want site selected in appropriate location, believes they should give up their right to sell capacity for use of treatment of septic waste that originates south of US 1. Study said if treating septic waste that originated south of US1 it made economic sense $27 million less to locate it south of US1. He asked to give up right to sell septic treatment capacity. He has asked Wake County Commissioner Jeffries to consider legislation to band at the county level the sell of such treatment and has not received a response and asked the Board of Commissioners for a response.

Shirley Beasley, addressed the action being considered on the Saunders property, didn't agree with the $23,000 and asking the tax payers to take care of to move the house on private property; tax payers have paid $45 for this property. She agreed if it went on public property for town use yes, but not on private property and thinks people should consider that $23,000 could go towards the arts center and not for this, but if using for the town use, yes, she would like to see it saved even though it's in terrible condition.

Bob Kelly lives outside of New Hill and noticed a trend in the western wake partners; he sent one personal letter to Mayor Weatherly and emails and copied the council and no response dating back to early July. Another trend when asking Cary, our partner in crime and under the open records law had asked for copies of all of the emails concerning the sewage treatment plant but rejected because there wasn't a specified time limit. Another request with time limit containing the month of June and there has been no response from Cary or Apex and asked is it because they are afraid of the answers and why they are not hearing anything and are the questions so tough they can't answer them; is Cary afraid to turn over the emails of what will be discovered. He wants information to prove his suspension on this trend is incorrect; he doesn't think so. Commissioner Schulze asked in his emails if he asked for a response, asking he send them again and he made it a point of responding if he were asked for information; maybe he missed it, but if he sent it again, he would respond. Kelly responded he may be the one that bounced back and his email may be incorrect and only one bounces. Commissioners Jones and Jensen also wanted them sent as well with Commissioner Jensen stating he truly tries to answer every one of his emails. Request for public records was sent to the Town Attorney. Town Attorney Fordham responded there was a letter of response sent to the person that requested them, all the emails have not been provided but in process of gathering them, but did get a response to the request from Apex.

John Allen appreciates further research and willingness to look at those options regarding crossings and he asked to make an effort to reach out to those affected by the possible closings with public hearings so they know it's going to happen giving signage and ads in the paper giving the significance of this and the impact on the neighborhood and the downtown.

Mayor Weatherly closed public forum.

NEW BUSINESS

Bruce Radford, Town Manager
New Business # 1 – Saunders Property
Consideration of an action to appropriate $23,000 for the purpose of moving the Martha Saunders house in order to construct the new municipal parking lot on Saunders Street.

Manager Radford stated the Town had purchased the Fred and Martha Saunders property on Saunders Street in June to build a municipal parking lot for 111 spaces. Concerns have been raised about the historic properties of that property and whether it is the Laura Duncan birthplace and Mrs. Anne Grebing has sent a historic synopsis that calls it such. To make the deadlines for construction they are running up against this project and need to start quickly before paving season ends. He received a letter from Mrs. Grebing and understands expense to move the house would be borne by the Town of Apex, and believed that was her offer in order to save the house. Mrs. Grebing was not necessarily her intent as much as it was her understanding. $23,000 is in a bid to load and move the house and $5,000 to remove the back portion and $6,000 for footings on property Mrs. Grebing owns on Templeton Street. House will not move out to Salem and north on Salem and down to Templeton as it's too wide at the block wall there. Stipulations are attached and it's the board's opinion regarding $23,000 to preserve the house and if their feelings are strong enough to do this, taking into consideration that it's on private property. Attorney Fordham and he had spoken about it and may comment; one stipulation is the Town Attorney be satisfied with proper transfer of the property and this property would be declared surplus by the nature of the desire to tear it down and haul to the landfill with a cost of $10,000 including removal of asbestos. He presented this for consideration and will take their direction.

Kent Jackson Director of Construction Management stated code enforcement division placquered this house as an unsafe building under the minimum housing ordinance; this order is current and stands and in the event the house is moved within the corporate limits to another lot and the lot is zoned for residential use, that order will still stand and whoever inherits this structure would be required to comply with the order to repair or demolish the structure. Owners are typically given 90 days. Commissioner Jensen thought notice was given to keep folks away from the house, in his understanding with the Manager and because of the coin issue; the house has set there in a similar condition and the house unsafe. Manager Radford mentioned receipt of a CO by April 1 and compliant with all applicable codes and want the house to not set in a decade condition elsewhere.

Mayor Weatherly asked the legal situation to start the move and it falls apart, what is the legal ownership issue. Attorney Fordham stated it would depend on the agreement between the town and the party that will take it; if the town had a provision in the agreement that the title transferred at the moment the movers began activities and the risk of any damage transferred to the person that was going to own it, then the risk would be on the person who was taking the house, if the agreement said otherwise, it would be on the town. Ex. If the house fell apart and needed to be cleaned up, you've incurred the expense of the movers and you would have the expense of it taken away at that point and who would bear the expense would be determined by the agreement. If there is no agreement then it would be borne by the town, and would want an agreement that spelled it out instead of leaving it open to figure it out after the fact. Rosetta Radtke present information about the insurance. Attorney Fordham continued the insurance company could take the risk, so it's on a party and any party can insure risk if the insurance company is willing to write it. Mayor Weatherly asked if the insurance would be covered with the estimate. Attorney Fordham didn't know the insurance would be covered it in that detail; the house is covered for the amount of the value stated, so it's not necessarily talking about that the clean-up would be covered; insurance issues would be complex and he would want to see exactly what their policy said.

Mayor Weatherly added the first point in taking action is to consider it becomes the property of the purchaser in its present location prior to the sale, because it may fall apart when moved, and if that's in the agreement, and there's a reluctance on the party to have the fallen apart structure removed from town property, then they have to resort to whatever action to make that happen. Attorney Fordham advised they could insure that risk too, or some kind of bind to be put into place; you need to consider which way you want the risk to flow. Mayor Weatherly asked who would incur the cost of the insurance, asking if it would be on top of $23,000 and guessed they would be expected to bear that expense; whatever the agreement says. Attorney Fordham advised no one could force them to do it, only if they agreed too and subject to negotiation between the parties. Mayor Weatherly was looking at the manager if that was anticipated in the cost of the $23,000. Manager Radford responded the bond was not anticipated in the idea of the original $23,000. His idea of giving the property to the mover prior to it actually moving was something he thought was valuable to the town; it can't be bonded again, but thinks the bond cost should be the cost of the person who is going to receive the house.

Commissioner Jensen asked to explain the path the house would take and the property location. Manager Radford stated it would go directly behind the auto service store and cultural performing arts building. Commissioner Jensen asked if thought was given to exchange properties and place the parking lot on the Grebing property and not have to move this house which would put parking behind the structure where we would like it to be. Manager Radford stated no because there is a road between the town's and her property. Commissioner Jensen asked if this stopped putting a parking lot behind it; if there is a problem and costly to move, maybe should do exchange in property and putting parking where it's best used. Manager Radford noted this was a legal issue and how to disburse the property. Commissioner Jensen didn't know if Mrs. Grebing had this thought in mind but gets rid of the moving problem and puts the parking where it should be. Commissioner Jones thought it was good suggestion.

Commissioner Jensen asked if Capital Area Preservation was involved since it's historic. Manager Radford saying Radtke had spoken with them. Rosetta Radtke, Design Planner for the Town advised Gary Roth is present with Capital Area Preservation, and things they certainly could do and stand ready to assist.

Gary Roth, Capital Area Preservation is ready and willing to help in anyway and has talked to Mrs. Grebing that's importance and that's assurance the building would move from its current state to a state of repair everyone could be proud of: A) possibility of placing a historic easement on it and requires continual maintenance of the building and she is agreeable to that and B) another option to facilitate this and about concerns for rehabilitation is that they could and willing to work with either her or the town to place a rehabilitation agreement on the property that would give her an out of 24 months to get that building into shape and functional use, etc. They are willing to work with any or both and in some way would comfort or make this easier as transaction to work with them and they in turn work with Mrs. Grebing, are willing to do that too. He thinks it's an important building and folks as Mrs. Grebing they seek out who are willing to step up to take the risk and responsibility for restoring the building and everything being talked about is great and the idea that came forward is a new idea and might work, but they are willing to work in any way to facilitate this and important this happen.

Commissioner Jensen asked if this were historic property, do they have the right to do what they want, or are there requirements to keep it a number of years before... and does that apply to the town. Radtke added if you demolish a historic structure, then you have to wait 48 months before putting in a site plan and includes parking lot. She noted the house not technically on that list for reasons that it would have ordinarily been a contributing structure to the national register district, but because of rules how the district can be and was drawn is not on the list; its not technically there and yet most people would agree there's a lot of not just Duncan history, but town history together in this house. Small town character history and technically not on the list would not be bound but still thinks a nice gesture to go above and beyond.

David Rowland, Director of Planning, hopes the board would see their way clear to move the house, and thinks it's important for the downtown and consistent with the comp plan and UDO and the small town character plan and the Wake County growth management strategy; thinking preservation makes good economic sense with tourists that want to come downtown walk, and shop and spend money in the downtown and thinks preservation is good. He thinks preservation helps distinguish the community otherwise you see towns where demolition is run rampant and you have a patch of vacant lots in the downtown that takes away from the character of the town.

He knows the board has heard over and over about the charm and the history and the character of the area and thinks we should do all we can to preserve that and still retain that sense of community and urges the board and recommend the board find a way to do this.

Judith Miles in the audience asked the home is moved to private property asked if the public would have no right to the home. Gary Roth responded if Mrs. Grebing signs a preservation easement, one of the contingencies is that the home in some way is made available to the public, maybe an annual or biannual tour, also it should open and available to researchers and scholars and others who are researching the history of Apex. He noted its private property and arrangements would have to be made with her but the concept of an easement is to provide that kind of openness.

Commissioner Schulze shared the same concern and trusts Mrs. Grebing would do the right thing, and wants to assure if moved to private property and paid for that it be open to the public.

Buddy Holland in the ordinance stated this house has been there for many years, originally on Main Street, and is the 3rd move and far as history and saving the house, they couldn't get enough interest to save the old Norris Home and the town got the fire department to burn it and lost history; as far as this house is history, but people didn't know her. It should be torn down or burned down.

A gentlemen in the ordinance stated he was in favor of saving the house asking if this house was offered in public statement by the town saying we own it and anyone come forward and speak to it. Manager Radford responded it was not, as a result of the town purchasing it; Mrs. Grebing came forward and said she would like to have it based on the fact that it was our intent at that time to demolish it.

Anne Grebing stated there was a lot of controversy and sure it's because she's the one who came forward. She's sorry about that, but the reason she came forward because some ten years ago when she was involved with the historic society she became interested in the cottage, and only a few who know what it is – the cottage is the Martha Saunders house and goes back to 1870 and built in her front yard and remained there until 1905 when moved between Apex Mule and Supply and new what became the 1912 town hall. When Jackson proposed to build the tobacco warehouse next to Apex Mule and Supply, Mr. David Saunders came forward and said he would buy that and move it on his brothers property and the way it happened to be the Saunders house. It also involves a Harris family who were the editors of the North State News because Mrs. Harris married Mr. Saunders at one point, and this was four generations of people. She asked why it was significant in her front yard; because Laura Duncan's mother was the only daughter of Patrick Dowd who originally had 1500 acres of land that went from the Auto Park out to NC55. When Apex was founded, he was the largest landowner and part of it wasn't in town, because the town was a mile square. This daughter in Patrick Dowd's will was given property near the village – there wasn't even an Apex, it was called log pond – there wasn't even a town when the house was built, only a village around the log pond which was from the depot down to almost the Saunders house; she referred to the cat tail pond behind Wachovia and was a part of log pond and also the springs that were down there. Laura Duncan was raised in this house, the cottage, so there is tie between Laura Duncan Road, Laura Village, Laura Plaza, and soon to be a Duncan Commons – there's history there that involves not just the Duncans, but the Thompsons, and the Lassiters and the Saunders. Because there was much discussion about preservation of the house after Mrs. Saunders was taken to the nursing home, she discussed with past town folks and the historic society before some of the people who are members now were members then, about what could be done to save the cottage. One of the plans was should the town have purchased the car lot for the Duncan Gardens which was proposed, maybe the house could be brought back to its original site and used as a welcome center or museum, etc. that would give it back to the community. That fell through and the house will be demolished and no one came forward saying lets save it and she had the lot, its going to take a 30 x 40 piece of lot to place the part of the house that can be salvaged. She didn't want anyone to envision saving the carport. She wants to save the original part of the cottage that can be saved. When she first started talking about it, yes it would cost the town something to demolish it, so maybe rather than tearing it down, they would consider moving it and didn't say her lot; if anyone else in the room could come up with another lot, they are welcome to it.

She came forward wanting to save it, and will offer this. She was told to send a letter of intent to the manager and did so. She has no plans for saving, or using the saved building; it's zoned B2 and there are a lot of things they can do. She told them in the history of the cottage and happy to provide this information to anyone who wants it. It contains the history from Shepherd's vineyard to today. She also said she would entertain any suggestions as to what can be done from anyone; it could be a museum, gathering place, or welcome center – she doesn't want it for herself; its not going to save her life one way or another; she does this because she is a preservationist and doing it because no one else came forward and said they wanted to save it. She thinks part of that is because no one knew the history. Holland was partly right, but not all right and wanted them to consider that moving the house – she doesn't know the total cost – has been told the movers said they have moved things worse and will not fall apart. She hasn't talked to them herself and doesn't know, but if they wanted to be involved in preservation she has a place they may put it and can promise that if the historic society or the town comes to her and brings what they consider to be something good for all of us, then do it. She informed Mrs. Miles it would not be kept as private; you could use for the society – she doesn't know what they would want to do there, as she doesn't know what shape it would take because there has to be some work done but she will not hoard this as the Grebings. As far as she is concerned, they are furnishing the lot and it belongs to the citizens of the town. That's all she had to say except she would like to request they join in this preservation endeavor, but if someone else comes forward and can do as good a job or better they have her blessing.

Commissioner Schulze asked if she had plans to bring the house up to satisfactory level of repair once moved; normally taking 90 days. Grebing responded it's absolutely ridiculous to think, as stated in her letter to the manger, she needs leave way time and told it has to be moved by October 1, asking if she could move it in three weeks, get it graded and foundation poured, she doesn't think so, with Commissioner Schulze agreeing. She continued that once moved, yes, it has to meet code, but interesting in that the town has owned it since June and it's in condemned condition and in five months wants her to have it. Commissioner Schulze stated the town's intent was to tear it down. Grebing added it was their decision to make and she's making an offer and whatever they do will have to live with. Commissioner Schulze continued time frame aside, asked her intention once moved to repair the house so it can be occupied, and she responded not as a residence, no. Commissioner Schulze asked so it would pass a CO, with Grebing responding sure. Commissioner Schulze wanted to assure that if they paid to move the house, it wouldn't remain in a dilapidated state, with Grebing asked if he were kidding; asking if she would do that in her own neighborhood. Commissioner Schulze stated he was trying to make it clear.

Mayor Weatherly asked if there was any interest on the board to allow the Town Attorney to negotiate a sales agreement to protect the town from any eventualities they had talked about and that would satisfy Grebing and have this come back to them. Commissioner Jones felt they should pursue it and that he had concerns about basically setting precedent of paying someone to take surplus property off the town's hands, so he wants to take it into consideration, knowing it has historic value and keeping that in mind but need to think about it. Commissioner Jensen added we are not paying her to do this we are paying expense to move it. Commissioner Jones stated this is something we haven't done and he wants to get the Attorney and others to weigh in on this.

Commissioner Jones moved to Commissioner Jensen's idea about a swap asking if Grebing would be open to talk about it and she responded she has no idea and the first she heard about it is today, with Commissioner Jones adding it seems to have merit, with Grebing responding she could not tell him whether she would consider it or not. Commissioner Jones asked if she would talk to them about it. Someone in the audience stated it would be another block from the retail area, and Commissioner Jones stated that's a consideration and do not know how many spaces we would loose to keep the house and would need to consider it.

Commissioner Jensen added the lot would move to the parks building – the cultural resources and a trade off there. He's also concerned about the October 1 date and thinks it's impossible to meet and thinks this is a self imposed deadline they are looking at like the wastewater facility and he doesn't think that makes any sense. Grebing responded if they expect them to have it moved by October 1, that can't be done. Commissioner Jensen stated he was talking about negotiating and he would expect they should put that requirement off for a good period of time; it's just not possible.

Mayor Weatherly allowed heather O'Sullivan, 311 Olive Street, stating she didn't know about personal thoughts or feelings that are rampant and can hear the muttering, but she doesn't really care; reality is the easy way is to roll our eyes and say it's a dump and not worth it. That sets a precedent too and what it falls down to. She feels passionately about historic preservation; to be honest homes are like people we don't take them out back and shoot them, when they get old decrepit and cost too much and should do this with houses either. She thinks and understands and respects the concern for it being private property, thinking with time and effort something could be worked out with CAP and easements, and somehow it works out for the town where they aren't giving anything to any body. Bottom line is to preserve the house and yes, there might be a net cost of $13,000 up front, but maybe a way to offset that down the line; we spend more money than that putting in sidewalks for neighborhoods to accommodate developers and lots of other things and thinks it's a small price to pay to send the message we are not just all about growth and tax dollars, that cultural resources do matter and small town character does matter. We have tried hard and put lots of effort into making sure churches and businesses can't demolish historic properties to put in parking lots and for the town to turn around and do it that sets precedent too. To say we should burn this one down because more important houses were burned down in the past thinks it's a crummy argument; just because those before us made a mistake doesn't mean we have to follow suit and it shouldn't be about personal feelings or opinions but about what our legacy is, each and everyone of us.

Grebing added in answer to Commissioner Schulze question, if they go with Capital Area Preservation and they have an easement, they should feel easy. Commissioner Schulze responded he trusted he would, he was trying to get it clear. Grebing responded there will be no questions there. Commissioner Schulze responded he expected that to be the case; he has full faith in her.

Mayor Weatherly asked how much time there is to pursue negotiations on this before missing the mark. Manager Radford responded it was difficult for him to say, but thinks they need to move quickly, with Mayor Weatherly asking the next board meeting and with the Manager responding yes sir. Mayor Weatherly asked Attorney Fordham if he could have an agreement for them to consider or one that could protect the town's interest that would be something Mrs. Grebing could live with. Attorney Fordham responded he could explore that in as much guidance as they could give as to the type of Agreement they would want; he's heard a lot of things and thinks he could incorporate most of them and sure the gentlemen from CAP has forms that could be used fairly quickly to accomplish some of the easement purposes.

Grebing stated she was told that the mover said he would put the part of the house being salvaged on rails and could be moved off the area for the parking lot; things set on rails for days and could be done; she personally knows people who own adjacent property and she is sure they could park the house there; they need to get it off and she understands that. Then the town could go ahead and do whatever with the parking lot. Mayor Weatherly stated that would be only after a deal is consummated, with Grebing agreeing, with the Mayor continuing they would double the cost if they have to demolish it anyway because there is no agreement.

Mayor Weatherly asked in two weeks for the next board meeting. Attorney Fordham responded it's enough time if the two parties have the same idea where we are going to end up. Mayor Weatherly didn't think the issue to be addressed is that extensive and thinks the Attorney's talking point paper was pretty explicit except for the thing he's not sure of and that is it needs to specify who's responsibility it is to move the debris if it falls apart in the move. Attorney Fordham advised this was the manager's paper; but sure with the help of forms from those who had thought about the easement possibilities and thinks with Roth's assistance could move through it fairly quickly. Mayor Weatherly added at least come back to them in two weeks if they have a deal they could consider and if not tell them what the outstanding issues are and maybe they could help him with that. All the Commissioners were in agreement. Grebing agreed he had said it is and Mayor Weatherly stated she was party to the agreement and didn't know if all of them are in favor of preserving the house. Grebing hadn't seen this before and would have to depend on the town staff and Roth and he has done this more times than he cares to remember. Mayor Weatherly stated he could be an objective advisor on this to assure all issues are addressed to the satisfaction and to preserve public access and protecting the public's interest in any eventually this move is successful.

End of New Business # 1

Mayor Keith H. Weatherly
New Business # 2 - Parks, Recreation & Cultural Resources Advisory Commission
Possible motion to approve 3-year appointments to the Parks, Recreation & Cultural Resources Advisory Commission and to make 1-year appointments to the positions of Chair and Vice Chair positions.

Mayor Weatherly noted after consultation and recommendation from Commissioner Jones, Liaison to the Parks Recreation Advisory Commission, submits the following recommendations.

Reappoint David Duncan and Greg Coley for a three year term to expire May, 2008 and the appointment of Jim Barry, for a three year term to expire May 2008 and serving as the senior citizen representative. Also recommends Chair Angela Reincke for 1 year to expire May 2006 and Vice Chair Greg Coley for 1 year to expire May 2006.

Commissioner Jones noted both Duncan and Coley were faithful members with Dorothy Andrews having served two terms doesn't want to be reappointed with Jim Barry being recommended as the senior citizen representative and very involved with various kids leagues, and softball and won numerous medals and lived here eight years in Charleston Village. He participated in the Wake County Senior Olympics in addition to activities in the keenagers and anxious to serve.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the recommendations as stated. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There are no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into Closed Session regarding an easement for the Peakway and Ten-Ten Road signal and to discuss a counter offer from the property owner or consider possible condemnation, and possible condemnation and discuss with the Attorney on the Butler property and legal advice on Chanticlair Drive. **Action:** Motion by Commissioner Jones and second by Commissioner Jensen to move into closed session at 10:05 p.m. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Schulze and second by Commissioner Jones to move back into regular session at 10:21 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the board, there was a motion by Commissioner Gossage and a second by Commissioner Jones to adjourn at 10:22 p.m.

The above minutes were submitted by the Town Clerk and approved on the 20th day of September 2005.

Georgia A. Cranfield, MMC
Town Clerk

Keith H. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 20, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd.)

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
(1) Vacant Seat

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones and Schulze were present. Invocation was given by Commissioner Jones. Cube Scout Pack #224 led the pledge of Allegiance. Mayor Weatherly extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Jensen asked Item 5 Seagroves site/subdivision plan be considered separately to discuss preservation of buildings on the property and full knowledge of Capital Area Preservation / Developer agreement.
Action: Motion by Commissioner Jensen and second by Commissioner Jones to consider this item under Old Business # 2. Motion carried. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to approve the consent agenda as amended. Motion carried.

1. Minutes of September 6, 2005 Board of Commissioners Meeting.
2. Minutes of September 6, 2005 Board of Commissioners Closed Session Meeting (recorded separately).
3. Findings of Fact and Conclusions of Law and Ordinance for rezoning #05CU12, Kent Cummings, petitioner, 0.41 acres located on E. Williams Street between Bobbitt Road and Straywhite Avenue changing the zoning classification of the lands from R-30 (Wake County Designation) to HDMF-CU (High Density Multi-Family Conditional Use) District.
4. Findings of Fact and Conclusions of Law and Ordinance for rezoning #05CU13, Orville & Linda Dixon, petitioner, .36 acres located at 214 W. Chatham Street changing the zoning classification of the lands from O&I (Office & Institutional) District to MORR-CU (Mixed Office Retail Residential Conditional Use) District.
5. **Master subdivision and site plan Seagroves Farm, PUD, MacGregor Development Co. petitioner, 65.76 acres located at 1617 Center Street (moved *to Old Business Item # 2).***
6. Resolution adapting Federal NIMS Incident Management System as recognized program for management of all events, whether natural or man-made, with Town of Apex.
7. NC Municipal Report of Fire Conditions and authorization for Fire Chief to sign Conflict of Interest Statement noting compliance of policy.
8. Acceptance of Deed of Easement from John F. McNealy to Town: signal SR1010/Center Street.
9. Roadway Rehabilitation Project Contract Award REA Contracting, LLC, $327,648.40.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Mayor Weatherly asked to include under closed session: receive legal advice from town attorney regarding property and consider acquisition of property on N. Salem Street. **Action:** Motion by Commissioner Schulze and second by Commissioner Jensen to add these items under closed session. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

David Rowland, Director of Public Works
Public Hearing # 1 - 2025 Land Use Plan
Public hearing and possible motion regarding changing the 2025 Land Use Plan along Jessie Drive.

David Rowland Director of Planning oriented the board to the Jessie Drive area and proposed future extension; board approved 2025 Land Use Plan change from residential to Industrial/Office and Institutional for a segment along the south side of Jessie Drive and as a result of this action, directed staff to take a more comprehensive look at Jessie Drive area and bring proposed options to consider for future. Staff looked at keeping like land uses across from each other, and brings the following:

Option 1) Extend industrial/office and institutional over to Ten-Ten; staff did not go this far as the existing land use in this area is residential. Board approved change in LUP and added office and institutional. Area is now residential and in the county.

Option 2) Include industrial/office and institutional designation on both sides of Jessie Drive.

Option 3) Include industrial/office and institutional designation on both sides of Jessie Drive with a mixed use (office and institutional, high density residential, commercial) "gateway" to Jessie Drive and Ten-Ten Road. Gateway at NC55 would contain commercial and high density with medium density along the frontage. Both ends of Jessie Drive would be anchored and in between would be office and institutional and light industrial.

Planning Board met September 12 and unanimously recommended approval of Option 3 that would give office, institutional and industrial on both sides of Jessie Drive with a gateway of mixture of commercial, office and residential at one end and gateway at the NC55 end. Staff recommends Option 3 and being a guide for future development; Weston Parkway in Cary was given as an example of a vision for this area.

Commissioner Schulze with Weston Parkway sees a higher end office space, two to five story buildings and considers Pinnacle Park more industrial than office and institutional. Commissioner Schulze wanted to encourage multi-level office space and not just one story; afraid if they have industrial here, will get more of the one story office space and never get the Weston Parkway feel. Rowland responded industrial permits office use and encourages office and institutional; further recommended in the future as done with conditional rezones, example: Investment Blvd. have asked for and gotten the developer to put architectural criteria on rezones, and feels this can be done along Jessie Drive as it plays out. Rowland wanted to hear comments for future development of the vision the board has for the area. Commissioner Schulze wanted to see it grow that way and thinking zone it all office and institutional. Rowland's reasoning is to preserve a balance of industrial land and wants to create jobs for folks to live and work in Apex. Commissioner Schulze asked the portion of land occupied; Rowland showed lands in the county and those with residential units with most of the land being vacant, and emphasized the zoning is not being changed; if area is redeveloped, the vision is office or light industrial.

Mayor Weatherly opened the public hearing at 7:15 p.m. and with no one speaking, closed the public hearing and referred the matter to the board, calling for a motion.

Commissioner Gossage expressed concern for loss of light industrial with limited amounts and with Option 3 sees office and institutional, and concern is the opposite seeing encroachment on light industrial and hates to loose it and liking the idea of the mixed use node at the entrance, but if eating into light industrial it should be replaced somewhere else in town; worries him to see that office and institutional.

Commissioner Schulze shared same concerns; wants people to be able to work in Apex and thinks there is enough Pinnacle Park offices, and if we encourage and bump it up for higher office and higher grade companies instead of small companies, not that he doesn't appreciate them, wants to encourage larger companies to move into Apex.

Commissioner Jones agrees and questioned in Pinnacle Park there are offices in an industrial zone, with Rowland responding offices are allowed in light industrial. Commissioner Jones continued when you drive into Pinnacle Park you see office uses in the industrial area and in that respect thinks it's a good idea to keep options open in the land use plan; agrees there needs to be some concentrated higher end office uses, and would give opportunity to address both and flexibility if something came through.

Commissioner Gossage asked if he would be in favor of having office and institutional above Jessie Drive as well as below it, with Commissioner Jones responding he would be in favor of Option 3 like it is. Commissioner Schulze was in favor of Option 3, but trying to head off this turning into another Pinnacle Park and not what he is looking for.

Commissioner Jensen agrees with protection of the manufacturing aspect but at the same time offices provide jobs and agrees if you lay a foot print down on a piece of property and put in permeable surfaces, from a logical standpoint its better to go up and certainly the looks of the buildings in Cary are quite nice and the purpose in mind, not minding flexibility, and thinking they should give the people on the property flexibility and certainly expand some industrial south and gave up some north of it as a mix. He thinks maybe a couple of lots could be taken out of the office and institutional/industrial but at same time would loose continuity.

Commissioner Gossage added this is land use planning, but preserving some light industrial, with Commissioner Schulze agreeing but emphasized that Planning staff do what they could to get the bigger office buildings with Commissioner Jones agreeing. Commissioner Jensen added they also need to do something along that line and in talking with Planning, have to find ways to get properties together and almost set up turnkey options for these larger companies to come in.

Action: Motion by Commissioner Gossage and second by Commissioner by Commissioner Schulze to approve Option 3. Motion carried unanimously.

End of public hearing # 1

Mayor Weatherly/Commissioner Gossage
Public Hearing # 2 - Consideration of Change in Name of Governing Board
Public hearing and possible motion regarding Resolution of Intent to consider changing the name of the Governing Board of the Town of Apex from "Board of Commissioners" to "Council".

Mayor Weatherly asked if there were comments to be made regarding the change in the name of the governing board to council and with there being none, opened the public hearing at 7:20 p.m., and with no one addressing this item closed the public hearing. An ordinance will be brought to the Board for consideration on November 15, and would be effective upon its adoption.

Action: Motion by Commissioner Gossage and second by Commissioner Jones that having adopted the resolution of intent and having held a public hearing, an ordinance for adoption will be placed on the November 15 meeting agenda. Motion carried unanimously.

End of public hearing # 2

David Rowland, Director of Planning
Public Hearing # 3 - Annexation # 380
Public hearing and possible motion to adopt an Ordinance approving Annexation Petition # 380, Andrew L. Clark, owners/petitioners, petitioning to annex 3.678 acres into the Town's corporate limits; property is located on the south side of Investment Boulevard.

David Rowland Director of Planning oriented the board regarding voluntary annexation of the property and needing water and sewer. Mayor Weatherly opened the public hearing at 7:21 p.m. and with no one speaking to this annexation, closed the hearing and referred the matter to the board.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve annexation # 380 by adoption of an ordinance to extend the corporate limits of the town by the 3.678 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

John Brown, Director of Parks Recreation and Cultural Resources
Old Business # 1 - Performing and Cultural Arts Center
Discussion and possible motion regarding private fundraising for proposed Performing and Cultural Arts Center; presentation by Steve Schuster, Clearscapes Inc.

John Brown, Director of Parks Recreation and Cultural Resources stated David Winslow, Winslow and Associates had presented his findings regarding potential for a fundraising up to $1 million from the private sector to supplement funding already in place for the restoration/renovation of the Town's original town hall into a cultural and performing arts center.

Steve Schuster presented and explained the design issues associated with proceeding forward with the project noting additional parking will be provided for all downtown; current efforts would allow the town to complete the project within the foot print of the original building (Phase I); additional funds would include for an addition to be built to the back of the project on 2nd floor (Phase 2); plans allow on lower level meeting, classrooms and support of the visual arts center; detail design emphasizes completing the addition as part of the construction is better long term. Putting restrooms in existing building has to be done now, and if done all at once could shift them into the new addition and be more efficient and on the lower level all meeting spaces are put up towards the front and works better long term and a more efficient plan on the upper level. If built all at once, gets a better long term plan, makes it more cost effective as far as construction costs and alleviates problems with time for phasing of the project and less disruption to a completed facility; makes facility more functional with more opportunities because of the added space. If the fundraising goal is not successful, town has committed to building it all at once and a decision to either maintain flexibility – design according to original plan with flexibility of doing the addition later or enough advantages to do it all at one time to proceed on that basis; at the point and need to decide which way to go; either plan works, but some risk involved if fund raiser efforts are not successful, town would be responsible for making up whatever difference exists since the design/construction plan etc. will be for the complete facility done all at once then the Board decides to undertake the private fundraising effort.

Commissioner Jones asked the difference in the cost estimates in building the restrooms in a new addition than the older, with Schuster responding he had not done cost both ways. Current economy is overheated and sees a savings when building all at once and would keep contingencies under control because construction costs are in a sensitive time; building all at once would be cost effective over a long term regardless. Commissioner Schulze asked price difference of doing Phase I vs. all at once. Schuster responded the current funds of today will build within the existing foot print.

Mayor Weatherly stated by undertaking a fundraising campaign, private money would fund the addition to make the scope of the project more useful. Commissioner Gossage asked the work schedule and Mayor Weatherly asking the time frame of the fund raising campaign and to know if the town had the additional money. Schuster stated Winslow is scheduled to be completed to move forward all at one time, construction next summer into the fall. Mayor Weatherly stated as far as the fund raising campaign completed, it wouldn't delay this and time of initial construction phase would be as soon as Parks and Recreation staff can get into the new facilities and then construction could start the next day and the goal. Schuster stated the addition is priced at three-quarters of a million dollars and the campaign is about $1 million and some additional soft costs like furnishings.

Commissioner Jones noted the risk being run is to go ahead with the design of the entire package and at some point before starting and authorizing begin of construction would have to make the decision with Schuster interjecting to post pone until... with Commissioner Jones continuing the capital campaign is going or have them change back to the original phasing; risk taken is the design of the combined phases, with Schuster agreeing and some inefficiency if they went back after the drawings were done and did it in two steps. Total cost committed to their fees is $149,000 for design and construction administration.

Mayor Weatherly expressed excitement about the renovation of old town hall and preservation of the historical integrity of that landmark in Apex, and bringing something to Apex it doesn't have, a performing arts center where there could be local art exhibits as well as performances, wedding receptions, the whole deal which would be complimented by the new parking, restaurants and dining downtown. He continued with risk involved and the fund raising not being a slam dunk, and with the consultant noting a risk, would be unprecedented he thinks as far as a public/private partnership in Apex asking people to contribute to a public project, but believes the potential benefits warrant the risk involved and thinks citizens will quickly warm to the project and doesn't think there is any question this would be an easy sale to invoke the vision for what they want. He continued everyone of them had talked about downtown as the jewel of Apex and how they want to take every opportunity to enhance what we have in the historic downtown and the opportunities they have to draw folks downtown; this opportunity will only come once and he believes if they don't maximize the project from the get-go and make it all it can be to start with – this public/private partnership, may miss this opportunity and want come back later and say this will do us, and won't pick up the momentum once the initial project is finished, thinking now is our opportunity to commit to something that will really be a legacy for the town and the people and further energy downtown and we want have another opportunity to replicate that and fully supports this and will do what he can during the fund raising stage, but hopes they can commit to taking this risk because he thinks the benefits certainly warrant them doing so.

Action: Commissioner Jensen was in agreement the risk was not that much and if they are going to do it, do it right all at once, so you don't have to go back and stated this in the form of a motion. Second to the motion by Commissioner Jones.

Commissioner Schulze asked if there were only a half million dollars raised and we are short... with Mayor Weatherly interjecting they are not going to be short, not talk about what ifs, and humorously said he would write the check. Schuster stated this was the sixth project for communities like Apex and had been successful in every one, however doesn't mean there's not a risk. Mayor Weatherly wanted the record to show with the same humor that he would write a check. Commissioner Jones felt if other communities had done it, Apex can, with Mayor Weatherly agreeing.

Mayor Weatherly confirmed with the Manager the total funds committed to the project: $550,000 from the county allocated back to the Town from the food tax, $144,000 from Congress, and from the Town's capital reserves $350,000; this in already there to do the initial stage and were talking about additional funds to do the rest.

Motion carried unanimously.

End of Old Business # 1

Commissioner Jensen asked this item be considered individually to discuss preservation
Old Business # 2 (Seagroves Farm Subdivision/site plan moved from Consent Agenda)
Commissioner Jensen began with two concerns: Page 2 of the staff report states outbuildings will be donated to Capital Area Preservation, Inc.; seems to be a lagging operation in being donated and nothing to date put in writing and should do so before proceeding ahead, and time gone by where there was opportunity to get this in writing; CAP does not own the property and can't fix it up with developer requiring they fix it up before they get the property and with all of this not working; he wants to see a contract to guarantee these buildings will be donated. He had thought this had already been done and knows it's now all verbal and in his opinion is not a contract; he believes in putting it in writing. June Cowles, Planner, responded it's verbal with a condition of the PUD Plan; lacking was a time mechanism and when the condition was added to the subdivision/site plan the time mechanism would be prior to the final plat – the agreement would happen and signed and donation would happen before this point.

Commissioner Jensen's didn't want the developer to say, "he offered this to CAP and all they had to do was fix it up and they didn't so he's going to take it back, and then by the way Town of Apex can have but doesn't want it.."; it goes back to the developer and if there's not a timeline in writing, this statement means nothing to him.

Cowles responded the applicant agrees and it states CAP, Town, or another preservation group. The question that came up before the Planning Board about the statement of it going back to the developer – developer agreed to strike this from the condition. Commissioner Jensen said if it were set up where CAP can't accept the deal, no other preservation group could accept it because of the way it's structured, its all for not; there needs to be something in writing that says this will be donated to CAP without all the strings that's messing it up.

Mayor Weatherly asked Gary Roth CAP about the standard agreement, noting maintenance constraints not having a property to go into disrepair would certainly hurt the project built behind it. Roth explained they are talking about a gift to CAP that takes place 10 months or so out and questions what happens in the mean time and a problem. CAP proposed to Mr. Whitehead a land donation agreement and prepared to accept the property now and move ahead with restoration or put it into the hands of a private party that would be required to move ahead with restoration; concern is Whitehead does not want the buildings to stay in disrepair as he's working behind them. CAP can't do anything about disrepair since they don't own the buildings and there is no agreement in writing; lots can happen in this period of time being talked about before the actual donation is made to CAP. The negative side is the buildings could be moved and some demolished; changes could occur to the property before the time of donation where CAP is no longer in position to accept the property because it is no longer a preservation project and thinks they are looking to get this done and it's not going to happen. He stated if CAP acquired the property today, they would begin with the renovation, but there's nothing they can do until it is donated to them. Further concerns were with vandalism which might make it impossible when the time comes to accept the property and what everyone wants will not be achieved.

Mayor Weatherly asked what assurance he would give if the developer wanted to move ahead with the dedication of the property. Roth stated if they don't restore it themselves, but put it up for sale, it would be sold with a preservation easement that requires the purchaser to live up to certain standards and would also sale it with a rehabilitation agreement which would require the purchaser to rehabilitate the property and none of it could happen since they can't sell something they don't own, until the transfer is made. Mayor Weatherly asked if they have ever accepted a dedication with the condition either those things said or met within a reasonable time frame either to a person that will preserve it or would do renovations themselves, and if not it reverts to another ownership. Roth responded they would be happy to accept that and thinks it would meet the concerns. Mayor Weatherly continued he would be assured that either CAP would do it or someone will do it, or it would become open space. Roth agreed and ready to do that and is what the hang up is; as things stand now they have to wait 10 months out before they can do this.

Commissioner Jensen added during 10 months the problem with the developer is it's not being improved. Mayor Weatherly stated the developer had wanted that time to hold the property before donating it, with Rowland adding it's a tax issue, with Mayor Weatherly continuing it has to be held a certain length of time before you get a tax credit. Commissioner Jones asked in what way could they get the assurance that what is in the agreement and that has been approved so far is actually what will happen?

Mayor Weatherly asked what can be done to condition the approval of the site plan to ensure a good faith effort.....asking if there's anything Roth had seen in the negotiations with McGregor Development if there's any lack of good faith for this to be done. Roth responded there's no lack of good faith he's observed, but certainly there are indications there's a difference of opinion about what should happen to those buildings and could jeopardize their ability to accept them at the end of the ten months. Things have come up – demolishing some of the buildings, potentially moving the farm house from its present location in relationship to the road to the corner of the property; if these occur they would no longer be able to accept the property because these would be radical changes and make it impossible. It's critical to them, not themselves because they are non-profit group and can't use the tax credits, but if they did the work would intend to pass those tax credits on to the next party or would make those tax credits a possibility for a potential purchaser and if all of this movement occurs, the likelihood of the tax credits coming into play is almost nil.

These are not definite but discussion topics and there's no issue of lack of good faith. If they were thinking its ok and they will acquire the property and do a good job and they get what they want, there are no certitude to that, it continues to be a possibility but nothing that says it will happen.

Mayor Weatherly experienced with Pearson Farms and the Maynard-Pearson House dedication was made by the developer in return for investment into the property so it would be maintained and restored for public use as a historic house and complement his project behind it; commitment and a lot of the investment was sweat equity and the historic society took that project and met the condition; condition stayed on the property and Apex Historic Society invested $40,000 into the property and it be maintained and was questioned when the agreement was entered into if it could or would be met and developer held out for the reversion of the property until it was met and glad it was and through the work of the historic society it was; it was not a certitude when the agreement was entered into.

Roth submitted in principal he's in agreement with this in that it is understandable the person donating it would like such assurances, but this is different than the Maynard Pearson house because they are not intending to make this a museum, and not intended as the historic society was to be the end user. They will in one way or another get the buildings into private sector as a functioning continuing building and not a museum which is a different situation. Mayor Weatherly stated it would be a private residence with Roth responding exactly or another use.

Mayor Weatherly asked Town Attorney Fordham what they could do to assure the concerns are met and allow the site plan to be approved. Attorney Fordham responded he had not commented on this particular project because his partner is a trustee and would prefer not to; he could speak generally about some things but may or may not be a good idea. Mayor Weatherly had not anticipated this would come up and needed Assistant Attorney Hohe.

Mayor Weatherly asked Director of Planning David Rowland to respond. Rowland responded he felt this was covered, in that the town would not approve any recordable plat until this was consummated and couldn't convey property and where a developer would make money, when conveyed to a builder. Mayor Weatherly asked if this was a general legal issue could be done with the conditional approval of the site plan/master subdivision plan. Rowland stated the town's ordinances do allow conditions when the board approves site plans or subdivision plans to be attached to that approval. Commissioner Jones clarified it was one of the conditions, with Rowland responding no, its approval the Planning Board is recommending in this instance because Cowles had indicated when the PUD Plan came through there was no time frame as to when this would happen; this is the opportunity to get a time frame as to when this would happen. Cowles had talked to the developer and Mr. Whitehead had agreed that they would not approve any plats to convey property until this is taken care of.

Mayor Weatherly asked if they had finally decided there would be a series of offers if CAP in its wisdom couldn't use the property, or couldn't utilize it then the Town would get a first offer asking if this is a part of this. Cowles responded as far as the condition regarding historic, it was first CAP, the Town or some preservation entity. Mayor Weatherly continued both parties have reasonable issues and if they can't be resolved then they need to find a way, a time frame necessary to establish, or the town would have to decide what to do; dedication could be to the town or could decide on an alternative proposition for preservation or use of the property. Rowland added it was proposed the third option would be to go back to the developer, but was taken out, so it's either to CAP, the town or another preservation organization.

Commissioner Jones wanted to clarify the relocation of the house changes to do the street improvements and looking at what is shown asked Cowles to explain. Cowles responded it's located right at the right of way and CAP staff and herself and Mr. Whitehead had met several months on site and looked at the buildings; the road is to be widened, street being busier and noisier, and wanting to move the house back which would enhance the property for a buyer. Roth showed a drawing of the house in its present location and one of it being moved back in the relationship to the new road; CAP is ok with this. He was suggesting demolishing some of those buildings and moving this building to the corner of the property facing the new development and would be a major move and would have no historic basis at all; critical to the whole effort.

Roth suggested to satisfy them if the condition included these building remain in their current location until the transfer, would give them assurance that what is transferred is essentially what they would have there now and they don't find themselves 10 months from now when occurring and when the building have been demolished or movements or changes have taken place, this would make it impossible to continue with it; this might be a way to make a modest change that would comfort everyone in this.

Commissioner Jensen asked if the house had to be moved to widen the road. Roth responded the road widening may occur in a way the building doesn't have to be moved and if the case, they want move it. If it occurs they will move it, but will maintain the historic relationship of house to road. Commissioner Jensen wanted it in "there" to satisfy them the building could be moved but only moved 30 foot back and no rotation. Roth responded it would be great. Manager Radford asked the approximate distance from the front porch to the road right of way. Response was less than a foot to the new dedicated right of way. Manager Radford asked what the distance was to the existing roadway or edge of pavement, response was approximately 30 feet.

Roth showed the current and projected appearances of the house, giving sense of post restoration and how it will fit with the neighborhood. Carport will be removed and house retained, with sidewalk installed. View of the current view of the farm buildings from the housing development and view of buildings after restoration in same position.

Mayor Weatherly asked Rowland if he were saying the conditions in place are sufficient to move forward, with Rowland responding yes, they could attach conditions to the approval of the subdivision/site plan.

Commissioner Jensen stated with what Rowland had said, he would attach the provision these buildings not be moved only if necessary to accommodate the road and not be moved more than 20 feet back with the same orientation; it needs to meet CAP's requirements.

Representative Dan _____, Priest Craven and Associates stated this is beyond what he had discussed and what he has heard. Representative David _____ Westfield Homes, 4112 Pleasant Valley Road, stated he had worked with McGregor Development and Mike Whitehead since the beginning of the project and had many discussions in regards to this area. A lot of this comes from a timing aspect on the subdivision plan also; the area cannot be dedicated to CAP because it can't be subdivided now and you get into a legal subdivision; that's part of this also and coupled with the fact they have already talked about the tax credits they are looking for on a holding period. He had not had conversation with CAP directly and has had conversations in the alignment of the house, how it affects the entrance and the esthetic value of the entire neighborhood. With Whitehead being out of town this week, he's not sure he can honestly commit, that yes they will only move it "x" number of feet back or in relationship... not thinking the dwelling structure itself – being a bit more concerned about the third party structures that are adjacent to it, especially how ... going to the second slide ... how the barns they want to keep affect the entrance and the overall feel of the entrance, thinking the proposed direct movement of the house rearward in the same fashion is probably something they can agree too. There was always talk of moving the other buildings either closer to the house itself or reconfiguring even maybe towards the back. This is the first time he has seen the slides; he thinks the home itself they could commit too; the other structures, he's not sure will work into this.

Mayor Weatherly asked if the acreage of dedication meets the current foot print of the home and the outbuildings. Westfield Homes representative responded yes they would be, with Mayor Weatherly continuing the dedication of land talked about would be sufficient to contain the building with the representative responding yes sir. Mayor Weatherly asked if he could commit to any of those conditions they were talking about on behalf of the developer or the owner. The representative responded they have closed on the land and Westfield Homes is the owner; he continued unilaterally he guessed they could, however, he didn't want to stand before them without talking to Mike Whitehead and necessarily tie something that.... with Mayor Weatherly asking if a two week delay would cause a problem to assure all these issues are drawn up. He was suggesting this, not certain the board wanted to do this, but with his uncertainty about the discussions and about the preservation of the property and the buildings. The representative continued he could commit to the home, but not to the rest of the buildings, but if the board elected to table it for two weeks then he could tie up loose ends, but thinks the condition they have tied themselves to is, that there not be any plats recorded prior to this and probably a very strong hold that the town has on them.

He continued Commissioner Jones had raised a good point that the road widening will affect the house; could probably get the road and sidewalk in but would be about one foot from the porch and not good for esthetic value and the house will have to be moved whether it's 10, 12, 15, or 25 feet - he doesn't know; the other barns and buildings are more of a concern because of the esthetic value of entering a neighborhood with a number of homes with a broad face of a barn sitting 15 feet off the entrance as you come in off Center Street to the roundabout.

Commissioner Jensen asked if there could be a vegetative buffer for screening, with the representative responding he was in total agreement with the condition as written, however thinks they had pointed out there's a further step and thinks what has been said reinforces his point, that there is a least discussion of movement of the other buildings outside the move back from the road and what gives him concern. He doesn't want the board to believe that in 10 months CAP will be there, because CAP will not be there if all this occurs; they can't and there's no point and no way that they can do it. He wanted to be honest so that a condition that would include this movement situation would, he thinks, resolve the problem.

Commissioner Jones asked if the out buildings had been assessed because he's not sure some of them could be moved to a new location. Roth responded yes, but as far as utility, there was a tenant there until recently who actually used the building and had a studio in the larger barn and thinks this is a real question and again knows the concern, and if looking at the pictures and sees the barns now, it's chilling, but compared to what is proposed to do, there's definitely strong possibilities for these buildings. Mayor Weatherly asked would they do the renovation, with Roth responding they would or sell it or require a potential buyer to do the renovation; one way or another will get the renovation to be guaranteed.

Mayor Weatherly asked Rowland the condition as staff understood it as far as the relationship between the approval of this property and the dedication of the historic, asking he give the exact nature of staff's understanding of the conditions in place now. Rowland responded that a plat would not be approved until there is an agreement conveying the property and that there would be no movement of the buildings on the site until that is consummated.

Commissioner Jensen stated he was adding the no movement of the buildings. Rowland thought that was what Roth was saying, with Mayor Weatherly interjecting the owner Westfield Homes, asking the representative if that was his understanding of what the agreement in place is now. He responded yes, with Commissioner Jensen interjecting that the buildings will not be moved, with the representative again asking, "that the buildings will not be moved." David Rowland again stated, "the buildings will not be moved until the agreement has been consummated between Capital Area Preservation and the developer, until that time." Commissioner Jones added, "and that they be moved with everybody's agreement." The representative stated he hesitated because of the construction of the roadway of Center Street and being that the house has to be shifted prior to construction of it. He turned and asked the other representative if the road could be widened without moving it.

Mayor Weatherly asked with the condition, "that there be no movement of the buildings until the dedication that is not required by improvements to the road." Commissioner Jensen wanted to add. "and within the approval of CAP in terms of the motion." Mayor Weatherly adding, "and agreed to by the parties." Commissioner Jones added conveyance doesn't have to take place, but agreement has to take place. Mayor Weatherly added they would negate movement that is required to do street improvements, with representative in the audience saying no, if it maintains the relationship to the new road that it had with the old road, absolutely not. Commissioner Jensen stated this had been agreed to publicly.

Mayor Weatherly asked if there were a motion.

Action: Motion by Commissioner Jensen for approval with the condition as so thoroughly described. Mayor Weatherly asked the Town Attorney if the record was complete enough specificity. Commissioner Jensen asked if he could make a statement of some sort. Attorney Fordham stated he had rather not comment, with Mayor Weatherly then apologizing for asking his opinion on the motion, if it's sufficient to convey the meaning. Attorney Fordham stated it still comes to the heart of it.

Commissioner Jones began to state to the best of his ability, and asking the clerk to read back what had been stated. The Clerk read ... the condition was not to approve the plat until an agreement has been made to convey the property and no movement of the buildings will be made on site until consummation of the agreement between CAP and the developer. Cowles added, "... to accommodate the road." Commissioner Jones added to his motion, "... except to move the house to accommodate the road as has been agreed to by CAP.", with Mayor Weatherly agreeing exactly. Representative in the audience also said, if they didn't mind, and they keep putting in, and he knows he's shooting himself in the foot here, but they keep saying CAP, and this agreement may not happen with CAP and maybe Apex or another town, with Cowles interjecting, that she put in her condition a historic preservation donation agreement not naming any entity.

Commissioner Gossage stated he would be ok with the moving of the buildings as long as CAP or another historic preservation group said this is ok and the distance of whatever. Mayor Weatherly stated it could be moved after the dedication; it's not going to be an issue. CAP wanted to be sure the buildings weren't moved around to mess up the historic significance of this property to start with. Everyone understood that except what's necessary to do the road improvements, with gentlemen in audience saying, "correct."

Heather O'Sullivan Canney, 311 Olive Street, made points of clarification; she's Apex area representative for CAP and a real estate broker. She respects the position of the developer and there is some esthetics that has to be maintained and can appreciate that, with concern there is some developer requirements before the property can convey but he's making a condition that improvements be made and the buildings be made to look a certain way and sure they could understand the liability in making improvements to property you don't own yet. She thinks the clarification exists if you are making a condition of that conveyance, then a condition that can't be met can't really go anywhere. She asked if the condition is such and thinks the Planning Board has tried to make the condition set but if CAP is put into a position where they can't take it, and the town doesn't want to take it, and so far no other historic society or preservation group has wanted it, then what happens to it and thinks this is the concern that the ball will be set in motion where there will be no one there to catch it and thinks that's what everyone is trying to tie up and doesn't know that the condition necessarily does that.

Commissioner Jones asked clarification as well in that they are not requiring they improve those buildings, with O'Sullivan Canney responding, no, but was what the developer was requiring in order to give to CAP. Rowland stated it's his understanding that if everything fails it comes to the town, with Commissioner Jones stating that's been his understanding too, that if CAP, or some other historic preservation entity doesn't end up with it, that it becomes the Town of Apex's responsibility, and then they have to make another decision. Commissioner Jensen asked if the town decided not to take it, and that's his concern with O'Sullivan Canney agreeing. Commissioner Jones had always understood they take it and then, it's what do we do with it. Mayor Weatherly stated they were only suppose to clarify his motion and had gotten far-field and didn't understand, but now to clarify his motion.

Mayor Weatherly asked the clerk to read what was added. Town Clerk read that added was ....the exception for movement of the house to accommodate the road improvements as agreed to by CAP. Commissioner Jones asked that it read, "....be agreed to by CAP or other historic preservation agency." Commissioner Jensen added, "...with the approval of the Apex Planning Department." Commissioner Jones agreed. Mayor Weatherly asked for a second to the motion as agreed to, with Commissioner Gossage making a second to the motion. With no further discussion Mayor Weatherly called for a vote on the motion. The motion carried 3 to 1 with Commissioner Jensen voting no, stating not because of the motion but because of the other aspects of this development that he couldn't vote yes for in respect to loss of the park. He wanted to add one more thing, with Mayor Weatherly stating the site plan is now agreed too.

Commissioner Jensen added one other aspect to this is that the town would be accepting property that has a number of out buildings on it, sheds and things like that and his concern is that they try to preserve them as much as possible also, because it works well with CAP and what they are trying to do; originally it was discussed if this was held together could be a destination point for school groups, or people that want to see what a working farm looked like before this was carpeted in houses. He was hoping to give some direction to the parks department, that they would like to see that come before the Board of Commissioners before anything is demolished on our own parks property and try to preserve those as much as possible and find folks to help do this.

Some of the buildings are not so big, it could be a boy scout troop project to fix those up and work with other groups. Objective he would like to see the parks department come before the board before demolishing to discuss it with them.

John Brown stated when they looked at this as part of the park dedication, thinking there are two buildings that eventually town will accept as park dedication. He understands those buildings are in bad shape and in bad disrepair and not worth saving; his position and recommendation was before the town accepts the property and accept buildings in disrepair and may present a liability issue for the town, if they are in disrepair then they should be demolished before accepting and if the board wants it brought back to them to look at could do that; liability needs to be addressed like the dam with the pond – only thing said was before the town accepted the pond there be repairs made to the dam as a result of the study done and in Cowles report; this was thinking based on knowledge of time.

Mayor Weatherly stated with the meager dollars that the recreation department has to use and prioritize obviously doesn't think it a wise use to commit to cost to renovate that would be higher than ultimate value of the project once it's done to the parks plan and the activities, and if that's the case he doesn't know they would want to commit to do that but could look at it and access what's there, and consider the options and he was saying the usual thing was before accepting dedication to have the buildings in such disrepair be removed before accepting dedication. Brown responded they have never to his knowledge accepted a piece of problems that had a building on it, but would say his recommendation would be before accepting it, or yes we will take it, there needs to be some consideration given to the shape of those buildings that doesn't present a liability issue and certainly as part of this restoration study or whatever, you can look at the buildings, but he doesn't want to see something on the property that will be a liability for the town. Mayor Weatherly continued that Commissioner Jensen was just saying if he could brief them on the plans before an ultimate decision is made that would be irrevocable basically the building being gone – just bring them up to speed and do that before "D Day". Commissioner Jensen asked him to work with folks that were knowledgeable like CAP for someone to try to maximize our opportunity to preserve that. Mayor Weatherly continued just a briefing. Brown responded it would be no problem.

End of Old Business # 2 moved from Consent Agenda Seagroves property

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Herman Jaffee addressed the future of Trackside and the downtown, asking if they have to close a downtown railroad crossing to build a Peakway crossing on the proposed development, asking if they build on bridge that will be used for commuter rail line, would they still have to close downtown crossings. Reasons: closings cost money and possible lose of land which is only an acre or so, with several reasons to build a bridge – Peakway crossing and a safety factor that of saving lives over the life of the bridge; with fire department liking it for quick response at that end of town. Land under the bridge could be used for storage and not lost. He understands no one wants to close rail crossings downtown and the cost of a bridge is $5 million asking if they can afford it with no one comfortable with the cost, except the two developers who are considering this land and why not tell them to pay for the bridge over the commuter line and over the years will certainly benefit tremendously by doing this – cost is reasonable when considering land sells for over $1 million an acre near by. How about vote on the cost of the bridge such as a bond issue to pay over years; he doesn't favor this but is up to the board to make reasonable demands on developer going in to this area and asking him to put up a few million dollars is not out of hand today.

Gerald Gunter, New Hill stated elections are coming in a few weeks to re-elect or choose new board members thinking voters would want to know how their leaders stand on issues to make decisions. One issue being the Western Wake Sewage Plant proposed for New Hill. Many Apex friends have indicated they also agree site selection process was grossly unfair. Thinks it's important for elected officials to have the votes and positions become a matter of public record; failure to state a position is reflection of how they may react to future important issues. September 7 he sent each of them an email asking them to state reasons for not supporting Commissioner Jensen's resolution to continue the site selection process. Because of lack of responses from some of them he used the report card grade system to inform the public of the status of their responses. His report didn't judge content only if there was a reply. Jensen and Jones responded, Commissioner Schulze committed to respond, Commissioner Gossage and Mayor Weatherly hadn't responded. He will come back in a couple of weeks for an update and have a response from the others.

End of public forum

NEW BUSINESS

Town Manager Radford and Tim Donnelly, Director of Public Works
New Business # 1 – Utilities Infrastructure Reimbursement Agreement
Consideration of a request by Developers Diversified Realty/1st Carolina Properties to re-negotiate the Utilities Infrastructure Reimbursement Agreement approved by the Board on August 2, 2005.

Manager Radford stated Developers Diversified Realty has requested to renegotiate a developer agreement approved by the Board regarding utilities related to Beaver Creek Crossings Phases III & IV.

Connell Radcliff, 1st Carolina Properties, and Chris Erb, Developers Diversified Realty Corporation outlined their request per their attached letter. Connell Radcliff stated in May 2004 the Board approved the PD Plan for Beaver Creek Crossings, and provided their utilities infrastructure north and south of Beaver Creek Crossings. PD Plan had their commitment to put in infrastructure at the post development level of sewage wastewater treatment would be better or equal to the pre development level. He continued part of the process required upgrade of lift stations on the north side and the south side and agreed to in the PUD agreement with the Town. Based upon the May 4 Agreement they moved forward on development and used the cost numbers it would entail to have that type infrastructure of their development. September in site plan process were made aware of the desire of the town to re-evaluate the wastewater treatment facility by adding a wastewater treatment facility towards 751 or west of there. Being good corporate citizens they were happy to try to accommodate some sort of change if it help to benefit the Town of Apex. He ask they bare in mind they are primarily building a mixed use development with most of the uses being retail and not significant sewer uses; households use much more than retail. They met with planning and in the process initially talked about providing upsizing of some pipes on either side, and brought up they would look at boring under US64 to connect the north and the south side so there would be a contiguous system. They were opened minded and took a look at it and in turn the town came back and said lets figure out a way to do this so they can give them credits for what they would have done in terms of utility credits they were due. In turn for this, they would be able to get their system there and the difference would be outlined the difference in upgrade of that system. They were ok with the process and went out and priced it, a little over $600,000; the credits coming back to them is $412,000; not that big of a difference and was willing to move forward with this, trying to accommodate the town and realizing they have a lot of infrastructure they are putting in. They moved forward accordingly and was a condition of their site plan, again different from what they initially anticipated. In this period of time, the town drafted a utility agreement with them which has not been executed outlining predicated on those costs brought to them, the different commitment levels and the percentages allocated on what actual uses – four segments broken out and the percentage allocations that were actual to the town and actually serving a development. He has lists of those for them which breaks out the costs. They took this out to bid and had a hard time finding bidders but came up with a bid process that came back with numbers that were twice as high as initially agreed too – from $600,000 to $1 million three. They are in the position where the costs have gotten higher and are still willing to pay up to what their credits are which is $412,000 and with the new numbers their percentages..... with Chris Erb stating $545,000; the town if not for the cap on the costs initially agreed too their share of the cost due to the over-sizing is about $754,000. He thinks they are here to ask the board to step up and pay what they consider the fair share of the over-sizing the town had asked them to put in as part of their sewer project.

Mayor Weatherly turned to staff for comments. Tim Donnelly stated this has not happened before; having had a number of utility reimbursement agreements with most of them having caps on the liability and the first one anyone has wanted to renegotiate. He explained developers buy raw land, propose infrastructure at their minimum costs to maximize their costs, propose to dedicate it to the town and the town maintain it forever. Staff follows town's guidelines to give infrastructure of future value to the town and at the lowest cost to maintain. Developers rarely propose infrastructure at town standards and usually negotiate. Oversize and Offsite guidelines are provided for future value of sewer lines – developer proposes 8" and we propose 12" – mechanism in place is to reimburse them through acreage fees. Town tells developer what's needed and the developer handles the process and the reason town caps – some of the decisions may not be in the best interest of the town. In the original proposal developer proposed upgrade of Green Level Church Road pump station; no station on the south side to propose being upgraded but did propose upgrade on the north side. South side called for gravity sewer and proposed it be taken out of its Reedy Branch Basin and turn it into the Beaver Creek Basin which has no future value for the Town; Town looked at the initial request for sewer capacity which was 25,000 gpd and at finish of project was 200,000 gpd. Town looked future value and concluded they needed to keep sewer flowing in basins they are already in to eliminate pump stations as the future regional plant comes. Staff advised them of this in August 2004 and everything approved since then – staff told them they would have to build the new pumping station and bore and jack under US64 (one submittal from them in August 2004 shows the bore and jack) . Following progressions of conditions on site plans and conditions the board didn't accept, with staff recommendations to change – they never bought into this idea of what they needed to do. Things that can be done to make things cheaper are grading, putting in storm drainage, putting in fill and expect someone to come back in the eleventh hour to put in sewer and infrastructure – it's much more expensive and is what has happened in this case. Original estimate was less than $600,000 and town's share would have been $280,000 – 2.8 times greater. He called the contractor that's low bidder asking why it was so expensive; it's a perfect storm and construction prices are out the roof and he sympathizes with this; this should have been bid earlier and sequenced earlier. Having this other stuff in the way and in the short time frames for construction to meet their deadlines is what you will find – their deadlines drove what they did. Once the town said what they wanted for the future – were consistent from august 2004 - gravity sewer and bore and jack and town will give oversized. Agreement went to Developer in January 2005 with cap of $412,000 and conditions and percentages etc. came shortly after. Doesn't know why it took so long, to get design done and get it bid; thinks it cost them money, with costs up, and the reason you put a cap on decisions – their decisions could cost taxpayers money; his view was they didn't do it in the normal construction sequence of bidding the rock unclassified instead of classified; there could be good reasons to do it, but increased the pricing. Staff recommends leaving this at the cap and with what was approved on August 2 this year.

Commissioner Jensen asked even if this has gone up and goes up to the cap, it's another $100,000 + dollars with Donnelly responding that if their engineers original estimate, and they prepared the estimate, had come in and they had gone with the percentages of the agreement and the pump station costs what it was suppose to, the town's share was around $280,000 of around $600,000 or under half; a cushion of $100,000 was in place of what the town thought they would spend and consistent and always in the agreement.

Mayor Weatherly asked the developers if they wanted to respond as far as cost escalation.

Erb said it may be August or September, October time frame when they submitted to planning for site plan approval when the idea of over sizing came up. Their PD Plan was approved in May 2004 and is how they had initially budgeted for their entire project to what they considered reasonable allowances for sewer to service their development. Radcliff didn't know there was a condition attached that had anything to do with the outfall or for future needs. PUD plans if he's not mistaken was approved in accordance with what they were doing.

Donnelly offered to read what had been approved by the board June 15, 2004 and when the rezoning PUD – CU, Section 10.1 PD Plan and proposed by the developer – " ... we have searched the capacity and existing infrastructure, and will coordinate our efforts with the town's public works department to insure their improvements are consistent with the town's requirements and consistent with the allocations available within the town. The entire Beaver Creek Crossing development will require approximately 90,000 gpd (this is up from the original 25,000 gpd in the submittal) of sanitary sewer capacity based on DENR daily design wastewater flow requirements. In discussion with the Town's public works department, it appears sewer usage for both sites is near 80% of capacity, so they would provide for upgrades if necessary in order to meet their needs and town's

department of public works standards such that the post development usage does not exceed 80% of capacity. Conceptual sewer plans in PD show some proposed gravity sewer lines; Phase 3 shows gravity to Beaver Creek with no gravity sewer along Reedy Branch; gravity sewer plans for Phase 4 show gravity sewer against the grade of Reedy Branch flowing up stream to the town's pumping station at Green Level Church Road." What was actually approved definitely does show it going to Green Level Church Road but also has lower sewer numbers than they actually ended up requesting and also says they will work with the town. He continued this was the approval and had stated such since August and all future documents after that did reference what the town required for future value to the town.

Erb said they weren't here to debate when it happened, it happened, it's gone and where they are today; they are working in good faith with the town, agreeing to oversize the sewer system that supplies capacity to Beaver Creek Crossings as well as future development of the Town of Apex and are asking the town step up to the negotiated and agreed to percentages that the town has agreed too and pay what they consider the town's share of the project.

Mayor Weatherly stated percentages are not in question, it's the cap with Erb saying that's what they are saying – but for the cap and if the cap weren't there the town's percentages would yield a total cost of about $754,000. Mayor Weatherly stated the cap was predicated on their having about $150,000 room there to miss these escalated costs that they would still be in good faith and kick in the $150,000 they thought the project should realistically take when committing to this agreement. Erb stated they had done the same thing and budgeted a bit of cushion for themselves as well.

Mayor Weatherly stated that a concern he had as Donnelly had said this is unprecedented as far as he has been involved that they have entered into a good faith agreement and because things have changed and they want to reopen it – he doesn't know where this would put them as a precedent for future negotiations or future agreements that they would enter into an agreement with precedent already having been set that circumstances change or developers change their methods of putting together a project as Donnelly had described, then he thinks they would be sending the signal they would open those future agreements up too, and since they have never had the need to do this, he's not sure they have just reason to do it in this case and open to their side of this, but it does set a precedent for them and that a developer with less integrity, and not suggesting that, but those that come next are the ones he's speaking too and could low-ball an agreement and come back and say you've done it before and they clearly want to do this, and he's not sure where it would put them.

Erb didn't want he or anyone else to think they did this, and had estimated this and requested looking at the upsizing and what it was going to cost; they didn't bid it that way, with Mayor Weatherly stating Donnelly had estimated it too, with Radcliff stating as the gentlemen before them was talking about construction costs going up. Erb asked Donnelly when he made the first estimate, with Donnelly responding he did not prepare the estimate, it was prepared by their engineers, with Erb asking when he had received the estimate, with Donnelly responding it was time frame of December/January with Erb asking when the re-estimate was made which was early spring and noting with these time frames there was an increase in price between the initial estimate and going out to market to see what is actually happening and putting a new estimate to the numbers. He continued the numbers from December to May/June had already increased substantially and from the time for the second estimate and sent out to bid, got an even higher estimate. Mayor Weatherly added costs are going up, asking if he could speak to the issues that Donnelly had raised that the decisions made by the development company and the folks working for them, the decisions made in the construction phasing of it – escalating costs, asking if they take responsibility for any of those escalations. Erb stated yes, and is why he was willing to step up and pay for their portion of the increase in costs and not asking the town to come in and pay for their ills, only asking the town pay for what is the town's responsibility; the more money they are asking the town to pay – they as developers are also going to be paying by virtue the percentages. Mayor Weatherly responded, we should assume the same percentages of those decisions that resulted in an escalated costs; that's basically the issue. Radcliff stated if they look at the schedule they have in front of them, thinks Donnelly was involved in those percentages with Donnelly stating those percentages were based on their engineers estimates of the difference between the minimum they could have built if they had been willing to accept it, which is on record of not being willing to accept it, and then what they needed them to build; it's an over-sizing and the minimum they could have been would have been an 8" pipe and they needed a 12" and based on their engineers estimates.

DDR/1st Carolina's Engineer spoke for the client stating when they first became involved and the PD Plan was approved, they were under the assumption that the flow would gravity to the north to Green Level Church Pump Station and then gravity to the south to the Beaver Creek Outfall, and later had discussions with the Town with Dan LaMontagne and Steve Miller and what has been said and they have been talking over-sizing but was brought to their attention and their understanding based on the Town's future sewer master plan that the Green Level Church Pump Station is going to be taken off line, so in reality what they are doing is creating the flows for all of Walden Creek Subdivision; talking about some future over-sizing in that drainage basin that will happen and occur potentially up Green Level Church Road, but what we're talking about here is essentially they are paying the costs to gravity 5, 7 or 10 years from now, all of Walden Creek Subdivision under the US64 to the new regional pump station and the Reedy Creek Branch. He wants the board to understand it was brought back to them that... oh by the way, this doesn't and is not going to meet our future sewer master plan because that pump station is now going to be brought off line, so what the town is proposing in the PD Plan is not acceptable, you must now gravity south across US64 and you must take those - provided we are going to off-set the cost of over-sizing to take the Walden Creek and the agreed upon acreage that is going that way too. He wants to put on the table that they did have the assumption they were going to be over-sizing and were going to upsize the pump station, we were not going to whether it was 25,000 or 90,000 or where they were going to upsize an impeller or put a new pump in there all together, that was going to be originally what was proposed and what they were intending to design. At a later date they had a meeting that this was not going to work and that they were not going to be allowed to go that way because that's coming off line, you are going to have to build a new pump station and again understanding that pump station that is proposed now is also temporary and will be pumping across Beaver Creek such that they are pumping those flows to the Beaver Creek Outfall now but such that when the future regional pumping station is built, all of that flow will gravity which is consistent with what a sewer master plan would be doing. He thinks his client is bringing before them now is that this came in at a later date but it's been a while, obviously a hind-site and Donnelly is correct in that if they had bid this one year ago they probably wouldn't be standing there, but he thinks they have been on board all along to say... this is an important project to them and to the town, not only from a sewer aspect but from an economic standpoint as well; they will get into the Developers Agreement and will work through it and then they are at the end of the ballgame, this is where they stand. He wanted to point out that it is consistent to try to get them back in the Town of Apex sewer master plan, but at the expense and some other flows that were not just future off-site development that is not there yet, it essentially will be taking the houses from Walden Creek and putting them into this gravity down and pumping across temporarily.

Commissioner Jensen asked if there was initially 25,000 gpd from this development has gone up to 200,000 gpd. Donnelly responded in the original draft and PD Plan, that is correct, and he guesses that was a low estimate for just what was on the north side of US64 and it evolved to 90,000 gpd and keep evolving but where it started and now up to 200,000 for both the north and south sides. Donnelly continued it's interesting how this would have gone had town not asked them to do what was consistent with future planning; they would have written a check for $412,000 and put in everything they had proposed to do the way they wanted to do it which is least cost for them. If you add this up, they certainly would have had to do something and that would have cost some money and will find it gets big fast and they end up writing the check for $412,000 anyway, that's the acreage fees. Donnelly continued if they were wrestling with this they may want to recognize that fact too; had the town allowed them to do what they wanted to do, it would have been less cost for them, no doubt, but would have written a check for the $412,000 and doesn't think they really acknowledged this anywhere. Then Town would have had to come back later and go through their sites and build gravity sewers next to retaining walls which would have cost the tax payers even more than these numbers because all the stuff is in the way and buildings occupied.

Commissioner Schulze can appreciate the situation they are in, but to him comes down to the cap and thinks the reason they put on a cap is to protect the Town's interest because if they could do it over, and it would be this amount of money may have said that they didn't want to do it, but now their hands are being forced and the reason he sees the purpose of the cap.

Erb thinks this is the same way they feel; they are being forced to agree to this type scenario, otherwise, he thinks it's been insinuated they are not ... with Mayor Weatherly interjecting they were not asking for a change, they are not forcing, with Erb interjecting he thinks going back to the beginning of this whole situation they wouldn't have... the planning staff would not have agreed to their sewer plan. He stated they didn't agree to their sewer plan and why they are here; they said, "we don't want you guys to do it this way and they wanted them to do it this way."

Then they said, "wait a minute, why do we need to do it this way, we should only be responsible for their individual impact."

Commissioner Jensen added their engineer had given the estimate and the town was going by their own engineer's estimate which things have changed. He had done property in California and noted the power line he had to install that he got no money back on unless someone hooked on to it; this goes on all the time.

Commissioner Gossage added they were hearing some hesitation and thoughtfulness here because they are hearing some sympathy for their position because they had seen their costs on construction go up as well, but he was looking at an Agreement and a cap and looking at a precedent that he would not want to set.

Mayor Weatherly asked if there were anything further; he wasn't sure they needed to ask for a motion on this, because no action needs a motion but certainly the floor was open for one if any Commissioner wished to make one in any regard for modifying the agreement; there's no motion required to stand with the status quo, but if any of them wanted to modify the agreement in any way the floor is open for the motion to do so.

No motion was made, no action was taken.

End of New Business # 1

****Kent Jackson, Director of Construction Management***

New Business # 2 – Roadway Projects

Manager Radford led discussion of a request by Developers Diversified Realty/1st Carolina Properties to consider participation for Roadway projects associated with Beaver Creek Commons Phases III & IV, most specifically III, with a great deal of the roadwork on the south side of US64. He asked Connell Radcliff and Chris Erb to explain the letter of request received on September 8, 2005.

Chris Erb stated they had not come to the Town looking for solution, but something the Town came to DDR/1st Carolina and asked for help. As a result of a NCDOT meeting and some difficulties they were having with them, and after NCDOT had left the room, the Manager in brainstorming came up with a scenario that they considered; they basically counted his proposal which is what is in front of the board at this time. The basic idea of the proposal is because the Town wants ... and backing up, NCDOT has said I-540 will probably not going to start construction until 2012 and with that also comes the construction of the square loops which obviously will help out the Kelly Road and US64 corridor in terms of traffic flow and safety, more importantly. With the I-540 delay comes the delay of the construction of the square loops. Coupled with that is the construction of the bridge over I-540 for Beaver Creek Commons Drive; an extension of Beaver Creek Commons Drive from their property over to Kelly Road where at some point has to cross over I-540 for NCDOT. NCDOT has said whatever road is there in the future, they would bridge over and they would bare the cost of that and they will be stepping up and paying for all the right of way and the actual road construction itself to get the road in place where NCDOT can come in and bridge over I-540 when they get to it. He thinks Manager Radford at the meeting saw an opportunity to speed everything up rather than wait around for NCDOT to get this project rolling. He proposed using the Town's credit to go out and get a loan from a bank at some market interest rate, assuming town could get a better loan than they could assuming municipality has better credit then they do; then his idea lump in the bridge NCDOT was going to build for Beaver Creek Commons Drive and they lump in the square loop project and the actual interchange that the bridge NCDOT is going to have to build over US64 for Kelly Road as well as some road widening that will occur as well.

Connell Radcliff wanted to make it clear to the Board that this has nothing to do with what they had committed to do for about $4 million dollars of all the infrastructure; this is totally different and wanted to make sure they understood; this was the town's square loops Kelly Road, everything; it's not the bridge over US64, they are still doing that, the extension from Beaver Creek, that they have agreed too; this is totally different and he doesn't want them to think they had come in to them and was trying to come up with some sort of equal balance on how to do this, if they are interested in doing this.

Erb continued the Manager proposed the Town go out and get a loan and the Town pay the principal of the loan and that DDR/1st Carolina pay the interest on that loan so it's splitting up the burden of that loan between the two entities. Manager Radford stopped him to make note that he had suggested the Town carry the principal on the loan and was not accurate; what they had talked about was that it would be an interest bearing loan all along throughout the period of time until NCDOT began to repay the Town back for principal and interest. Erb stated he had misunderstood, but never the less DDR/1st Carolina would essentially pay the interest on the loan until as Manager Radford had said NCDOT pays or funds the I-540 project ... with Radcliff interjecting, or pays back as they are doing with Cary on NC55, same type agreement. Erb continued he thinks the thought is NCDOT will pay them back when they have the funding for I-540 unless they come into some money somewhere. At this point the interest would be paid back to DDR/1st Carolina.

Manager Radford explained that Radcliff and he had talked about this as amended on page 1 and when talking about the last bullet for DDR to carry the interest and the Town would pay back DDR/1st Carolina and was the area in which he was going to gain benefit for having assumed responsibility for the project and the benefit the town would derive for having paid the interest that was none refundable to DDR would be payment basically for the town to accelerate the project on the town's nickel and the town's credit and administering the project. He wanted to take exception to this as well.

Commissioner Jones clarified when he was saying I he meant the Town of Apex, with Manager Radford clarifying the suggestion he had made to them that they as the Town of Apex had not agreed too.

Erb continued that the only difference they had suggested was and to a certain extent may be a bit stall since he had clarification from the Manager; it was their idea the Town would be paying their share on the loan, they would be paying their share on the loan; basically by virtue of the fact that they think the square loops would cost about $5 million and think a bridge over I-540 would cost roughly $2.5 million and have about a $7.5 million loan giving interest of about $300,000 which for them in their project is a pretty big nut to swallow, will basically come out of their net operating income; he doesn't get into numbers but has talked with the Manager of what the percentage of that net operation income $300,000 represents which for them is a significant number, basically taking away from their cash flow for an indefinite amount of time; to them, they want some definite-ness to the whole situation, so at the end of 2012 regardless of NCDOT being able to fund the project or not, they would be paid back the interest that they have paid to date. He thinks the other facet of this whole deal, going back to principal vs. interest, is that they would be basically responsible for the pro-rata share of that interest which is what they call the bridge work over I-540. Radcliff reminded the board that US64 they are doing on their own. Erb stated they are dealing with three bridges – US64 which they are responsible for and separate and apart from what they are talking about now, the bridge over I-540 that's on Beaver Creek Commons Drive and the bridge over US64 Kelly Road. Radcliff added that with NCDOT, the board is probably familiar with all they have gone through with them, and thinks the Manager's suggestion was great and they are fine if they do it on a pro-rata basis because a lot of these, he could use sewer as an example, but the square loops at Kelly Road, etc., their requirements are to build to Kelly Road and they don't want to build a road that goes with an empty.... that's what they want them to do, basically wants a road at grade where the bridge will be where I-540 would be, to come to Kelly Road. He wanted them to understand they would have Beaver Creek Common Drive going over to Kelly Road, with no I-540 there until 2012; Erb stated it would be essentially a 30' berm up in the air.

Mayor Weatherly asked the Manager about the stipulation that they, the counter offer they made that they would stop... that the town would have to reimburse at 2012, he thinks the timing, and wouldn't trust that NCDOT would come up with any timing, period; it may occur in his lifetime, but he will believe it when he sees the ribbon being cut. He doesn't know how to respond to this when there is such a squirrelly atmosphere; they had just referred to NCDOT themselves. He noted Legislature on top of that at any given day, just so Hwy 12 is operating across the Outer Banks is what they are most concerned with, and if this were Hwy 12 he would say do it.

Commissioner Jones asked if we have assurance for either of these scenarios that NCDOT will pay them back with interest; it was part of the developers plan and part of what he is hearing now. Manager Radford responded if they were able to strike a deal that DDR/1st Carolina Properties would agree too, NCDOT has told them to look at the statute that governs the repayment of road projects that hit the TIP and that they would be willing to enter

into an agreement with them that paid for it in advance, very much like the NC55 project from which Cary loaned NCDOT money to widen NC55 through their city limits earlier than the section... with someone interjecting this bridge is not on the TIP, with Manager Radford continuing that it would be on a funded statewide project; it has the same force and affect. He stated this is how they got down this road, by NCDOT telling them this, with Radcliff adding they suggested this to them, John Nance NCDOT suggested it, and they were asking when will this get done.

Manager Radford stated the goal all along was to insure, primarily because NCDOT has not wanted there to be a fully signalized light at US64 and Kelly Road enabling people to come from the west and go back to the west from this area. The square loops solved this problem, so when I-540 went away the square loops went away and when he had started asking again about the light and they told him very clearly they want to leave in the left overs that are there and make you go east before you make a U-turn to come back and go west; they are steadfast in their belief that it should remain that way. He continued this is how they cut into this and tried to accelerate what they know as a more affective traffic pattern in order to be able to serve the community better and at the same time serve Beaver Creek Commons better and how they got here. The two things that he can't live with that is in this proposed agreement are 1) the town take the responsibility for the road improvements themselves without being able to recoup all of the interest because this is a huge project, and 2) he like the Mayor shares the concern of his inability to believe that NCDOT will do anything by the year 2012. If there is no time limit on it, then he .... with Mayor Weatherly interjecting stated there's so much risk involved in that he's not sure that they can.... with Radcliff interjecting he doesn't know much about the Cary deal, but Cary loaned them the money, and asked if they are paying Cary back now, or do they do it when the project is complete. Mayor Weatherly stated it's being constructed under NCDOT money now, with Manager Radford stating yes and from the moment it's in the TIP and the contracts are let. Radcliff asked if this could not be the same situation for them, did they not talk about doing the same thing instead of doing this and have Apex do it, have Apex go about getting the money themselves and give it to NCDOT and have them construct the square loops, like they are doing on NC55 asking is this an option. Manager Radford stated the efforts being taken on NC55 is what they intended to do to begin with and is part of the project that is both inside Cary and outside Cary up toward Durham and part of the Durham County connector, a different deal.

Mayor Weatherly stated he was confused about this, that NC55 project down to Fuquay Varina and to the Durham line has been on the TIP for years well before he moved to Apex and has gradually worked its way up and finally the CAMPO in the last few years since he's been on there moved it up to one of the top five projects in all of Wake County; completion of the widening of NC55 is sitting at No. 3; it would have been 1 or 2 after US64 was done, but the synchronization of the light is there; that's why he's confused that it sat there and waited its time in the quo and got there and was funded based on its status in TIP. This bridge he's not sure the mechanism that it would reach to get funding at any given time other than when the project engineers ... I-540 would spring this issue as far as funding, that's the mechanism. He doesn't know to say that NC55 is any relation to this except it would occur. Mayor Weatherly stated there had never been a project moved back like I-540 and in the cue there for a long time and finally got to the point where they thought they were making progress.

Radcliff added they had never anticipated they would have to build the road 30' up because all of a sudden that's what they want to do with the bridge, to be built at grade to Kelly Road; he wants them to know and understand the only difference of opinion they have here is how to pay for that; if the town decides not to do this, that's fine, they want to pay for care for that period of time and the road Beaver Creek Commons to Kelly Road is going to be 30' high where the bridge will be at I-540 and what NCDOT wants them to do; no bridge there, they will come in when they do the bridge and tear out the road section and put the bridge, and when I-540 comes there, the road that's 30' that section will come out and then they will put a bridge there and that's their intentions.

Commissioner Jensen didn't understand why they need to have 30' until they get here, with Erb responding because they do not want to pay the cost there. Radcliff stated Morrisville and Cary have similar agreements where I-540 crosses their roads and have to do the same thing; this is what John Nance told them in their meeting with NCDOT. Commissioner Jensen felt he was misunderstanding, and asked that NCDOT wants them before I-540 gets there to build this big berm as if I-540 was there and cars could go through berms, pave it, make a road out of it and then they will come and take the dirt out and put a bridge there. Erb stated they had said and asked them and proposed they come in, knowing I-540 will be a waste project; they proposed that they would still do the work, come in later and do the work, just give them the fell, the waste material they are not

using and use that to build up Kelly Road and they would come in and do this when they are ready to bridge over I-540 and they said no. Commissioner Jensen asked if they want the berm up so they could basically lay the bridge on the berm and then dig the berm out, with Erb responding this is correct, they are trying to be cost effective, with Commissioner Jensen stating, they want them to put the berm in for them. Radcliff responded yes, and built to their grades 2012 or whenever for I-540 that's the grade. Manager Radford told them if they put this 30' in the air that the grade will change by a foot and one half or two feet and the road bed they build will be throw away; it will change. Commissioner Jensen knew it would be a throw away he thinks if they put a bridge there; the road will be a throw away. Manager Radford stated it only has to change in grade by 3" for them to throw it away and they will not be able to hit it that well. Commissioner Jensen asked if they wanted them to build the road, asking if there will be concrete underneath this road and all they have to do is dig the berm out. Radcliff stated its all temporary, with Commissioner Jensen adding so the road goes away; they would have to pull the road out. Radcliff asked why would they have to do it in the first place and had asked that.

Mayor Weatherly asked Manager Radford what parts was material to the first conceptualization of this arrangement, asking if they had changed their counter proposal. Manager Radford referred to the last bullet on the first page, at which time the town of Apex will pay back DDR/1st Carolina the interest they have carried for the loan. He anticipated that would be a recommendation that staff would make that says the Town would keep that amount of interest and that the benefit that DDR/1st Carolina would derive from having done that would be the increase usability or feasibility of the roadway project during the interim time before I-540 was built. The other concern which he can tell is not on the first page, that they have a drop dead date of 2012.

Radcliff stated they could not carry the interest on this, no way, wanting to work with the Town as much as they could and thinks they have shown this in all that has been done, but appreciate that they just can't do it; it's too big of a hit for them to carry - $300,000 a year and a significant portion of cash flow and the project fails; no other word for it. Manager Radford responded from his perspective he understands this and he had intimated to him some of the numbers involved, not all of them, but understands that and wants to make sure he clarified where he had come from originally. He continued what they get for lack of doing this is a stop light at US64 that will enable to stop traffic on east bound US64 only that will allow traffic to come out of Kelly Road without having to stop and if they want to go west on US64 would make a U-turn from Kelly Road taking a right and make a U-turn before you get to Home Depot and come back and go west; just like done today, because of the left over there, and the US64 westbound traffic that exists now will never stop; that light will be green all the time and will not turn yellow or red to let people out of Kelly Road from the north – take a right the light will always be red on the north side of Kelly Road to make a right on red; that will be the pattern and thinks that's livable but way less than ideal; but this is what NCDOT tells us they will do now.

Mayor Weatherly asked he give them what he thinks the prevailing interest rates would be, asking for discussion to resolve this, is there a movement to let interest for an undefined. Erb responded they had lost their sewer money, with Mayor Weatherly continuing there will not be a drop dead date and speaking for him self would imagine that is presumed there would be no end date. Radcliff responded he had felt all along this was a partnership and trying to help, with Mayor Weatherly asking if they could come back and talk about this and the Manager look at this thinking postpone this for two weeks. Erb responded they would like the Town to come back with a proposal for them and give him something he could take back to his superiors to discuss with them. The Mayor responded this was fair, with Manager Radford stating he'd work on it this week.

Commissioner Jones asked what financial exposure the Town would have short term and long term. Mayor Weatherly added if he could come up with a prevailing interest rate and the Town could borrow money and then put the $7.5 million to that and what the principal and interest would be on that and for what term – with Manager Radford adding indefinite; Erb asked how this could be structured with a loan, with Manager Radford saying he was talking about – so there wouldn't be a drop dead date. Mayor Weatherly was looking at a 20 year note, with Commissioner Jones adding assuming they couldn't negotiate a date with NCDOT. Mayor Weatherly asked what the bank would do – a 30 year and if NCDOT comes in and in seven years, then pay it off with NCDOT money, what would we do, with Manager Radford responding a 30 year pay out like a fifteen. Randy Clayton with CCB is working on this for him and is prepared to give him something quick and has all the information.

Mayor Weatherly was unsure how this would be structured, needing to know the magnitude of the numbers, but would leave the door open, obviously there is interest in doing this and having the project done sooner rather than later with the square loops and clearly the community has an interest in this project and sorry they couldn't look differently on the other item, but the Public Works Director looks out after the interest.

End of New Business # 2

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session to receive an update on the status of the Penny lawsuit against the Town and others, to establish the town's negotiating position on the purchase of real estate from Progress Energy and consideration of purchase of property located at 225 N. Salem Street.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session at 9:30 p.m. for the reasons stated. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jones to move back into regular session at 10:04 p.m. Motion carried.

ADJOURNMENT

There being no other business to come before the Board, there was a motion by Commissioner Jones and a second by Commissioner Schulze to adjourn at 10:05 p.m. Motion carried.

The above minutes were approved on the 4th day of October 2005.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 4, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall,
73 Hunter Street, Apex Town Campus
Board Room of the Commissioners (2nd. Floor)

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
(1) Vacant Seat

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. Commissioners Jensen, Gossage, Jones and Schulze were present. One seat remaining vacant. Mayor Weatherly gave the Invocation, led the Pledge of Allegiance, and extended a welcome to those present.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Schulze asked for additional information regarding Consent Item # 6, Award of bid for town vehicles. Manager Radford stated the award was under State contract pricing, with the lowest bidder having been awarded the bid. Local vendors were offered opportunity to bid, however, there was no response thus staff recommends award of bid as stated.

Commissioner Jones asked for additional information on Consent item # 5 for purchase of Ladder Truck prior to voting. **Action:** There was a motion by Commissioner Jones and a second by Commissioner Jensen to move item # 5 under new business for more information and discussion. Motion carried.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to approve the consent agenda with Item # 5 having been moved to New Business. Motion carried.

1. Minutes of September 20, 2005 Board of Commissioners Meeting.
2. Minutes of September 20, 2005 Board of Commissioners Closed Session (recorded separately).
3. Minutes of September 29, 2005 Personnel Committee Meeting.
4. Findings of Fact, Conclusions of law and Ordinance regarding Rezoning #05CU10, Diversified Communities, petitioners, and changing the property being located at 1006 and 1012 Olive Chapel Road from Residential Agricultural District to Planned Unit Development District Conditional Use District.
5. Award bid to C.W. Williams Company in the amount of $744,886.00 for purchase of a 95' Ladder Truck and sole bidder with bid opening held on September 16, 2005. ***Moved to New Business***
6. Award bid to Vic Bailey Ford, Spartanburg, South Carolina for purchase of 4 Ford Explorers, 1 Ford Expedition, 6 Ford F350, and 1 Ford F150 and being the sole respondent for bids and awarded under State contract.
7. Recommendation from Personnel Committee regarding policy revisions and reclassification.
8. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as amended with Consent Item # 5 to be discussed under New Business. He asked if there were further amendments to the agenda. Attorney Fordham asked to add items under Closed Session as follows: 1) discussion of the Penny Lawsuit 2) discussion of Chanticlair Drive 3) to receive legal advice from Assistant Town Attorney Laurie Hohe regarding potential litigation.
Action: Motion by Commissioner Schulze and second by Commissioner Jones to add closed session as requested. Motion carried.

PUBLIC HEARINGS

There were no scheduled Public Hearings.

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Mayor Weatherly opened public forum at 7:10 p.m.

Herman Jaffee asked the Board for more proactive legislation to promote Town rules to reduce costs of treating wastewater collected by requiring all new developments and businesses to put in warm season grass such as centipede in all new lawns and redone lawns. Benefits: uses less fertilizer, less water, less mowing, and less costs to owners and less costs to the Town to treat wastewater at treatment plant and future plant. Homeowners associations have rules for fences, house additions, paint color, etc., asking for code rule for lawns.

Marshall Barnes voiced opposition to the potential railroad crossings in the downtown, asking the board to exhaust all possible alternatives to protect the downtown, and to close any crossings would be a detriment to the downtown. Manager Radford advised no action (vote) would be taken any time soon; he is looking at other crossings alternatives which involves other towns and anticipates other towns would go through the same process to close crossings; there is no schedule for completion of the Peakway. Mayor Weatherly noted value in completing the Peakway and with the infill development there is need of an additional crossing to the north and not taking only one side of the equation. Town planning to close a crossing was not what was happening, but having been confronted by CSX and absent of any other option, with a $9 million fly over not being an option, again noted the value in completing the Peakway. Barnes hears from others also there is value in completing the Peakway and knows the Board is proactive, and understood there was pressure from CSX, however reminded them of a number one priority of protecting the small town character of Apex and the downtown, and asked they continue to find alternative to closing crossings in the downtown. Mayor Weatherly added the Peakway could not be finished without two crossings being closed and further noted suggestions had been presented by the representative of NCDOT Rail who previously attended a meeting and addressed these issues. Public hearing regarding potential closures is scheduled for the October 18, 2005 before the Board of Commissioners.

Public forum ended at 7:16 p.m.

NEW BUSINESS

Consent Agenda Item # 5 was discussed under New Business Item # 1 having been requested by Commissioner Jones
Fire Chief Mark Haraway explained the process regarding purchase of a 95' ladder truck was allocated funding being a part of the approved budget. Fire Department piggy-backed with another municipality in a joint effort to generate common specifications to address both of the Town's needs, with Wake Forest being the lead agency and having sent the specs out for bid. Bids received were over budget, so Apex created new specs using previous specs of two years ago. Town's purchasing agent sent the specs out to three previous vendors and received only one bid. The truck is being custom built for projected needs of the town and will be equipped with all necessary articles; no further equipment will be needed for the truck. With all applicable bid laws having been adhered to, staff recommends award of bid to the sole bidder.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve award of bid for the 95' Ladder Truck to C.W. Williams Company in the amount of $744,886. Motion carried.

End of New Business # 1

Mayor Weatherly
New Business Item # 2 – Reappointments to the Apex Appearance Commission
Mayor Weatherly recommended reappointments of members to the Apex Appearance Commission for three year terms that would expire October 15, 2008. Members accepting reappointments are: Janice Feldman, Kim Damico, and Sera Lewis.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the reappointments as recommended. Motion carried.

End of New Business

Mayor Weatherly was advised there was a report of drought conditions to be given by Tim Donnelly, Director of Public Works. **Action:** A motion was made by Commissioner Jones and second by Commissioner Gossage to amend the agenda to include the report. Motion carried.

Tim Donnelly Director of Public Works reported the Upper Cape Fear currently is in a moderate drought with water supply reserve at 85%, with projected supply for the upcoming month being secure. Releases from the lake have been reduced by about 10% to ensure supply. Town is under moderate mandatory water conservation measures and enforcing compliance through notices of violation with fines being assessed at $50.00. Should the drought continue the NC Division of Water Resources will implement control measures as outlined in the "B. Everett Jordan Lake Drought Management Plan: Figure 1 of the attached report notes the Drought Alert Curve and lake elevation levels. Water intake functions well until the lake reaches an elevation of 205 feet or so. The lake has dropped by 1" a day, however generally gains in the month of October.

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session for: 1) discussion of the Penny Lawsuit , 2) discussion of Chanticlair Drive, and 3) to receive advice from Assistant Town Attorney Laurie Hohe regarding potential litigation. Town Attorney Fordham asked to add an item to receive legal advice from him regarding railroads. Mayor Weatherly called for a motion to move into closed session at 7:30 p.m. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session for the items as noted. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move out of Closed Session at 8:15 p.m. and moved back into Regular Session. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and a second by Commissioner Schulze to adjourn at 8:16 p.m. Motion carried.

The above minutes were approved on the 18th day of October 2005.

Georgia A. Evangelisti
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 18, 2005 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
(1) Vacant Seat

Web site:
www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order Tuesday, October 18, 2005 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, and Schulze were present with one Commissioner's seat remaining vacant. Invocation was given by Commissioner Jones. Mayor Weatherly extended a welcome to those in attendance and led the Pledge of Allegiance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. **Action:** Motion by Commissioner Jensen and second by Commissioner Jones to approve the consent agenda. Motion carried.

1. Minutes of October 4, 2005 Board of Commissioners Meeting.
2. Minutes of October 18, 2005 Board of Commissioners Closed Session (recorded separately).
3. Annexation Petition # 381, David S. Durham, Coley D. Beckwith Heirs, Jeffrey Earl Beckwith, Glenn A. Beckwith, Debra K. Litsey & Allison Glenn, Debra Anderson, and Barbara D. Beckwith, owners/petitioners, petitioning to annex 191.89 acres into the Town's corporate limits; Beckwith Properties located on the west side of Green Level Church Road and extending to the south side of Green Level West Road; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 15, 2005.
4. Annexation Petition # 382, William T. Wilson, Jr., owner/petitioner, petitioning to annex .367 acres including public right of way into the Town's corporate limits; property is located on the east side of Tingen Road (SR 1153) and south of James Street; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 15, 2005.
5. Authorize staff to submit a grant request to Parks and Recreation Trust fund for up to $250,000 to aid in construction of proposed Performing and Cultural Arts Center and authorize Mayor to sign the associated Facts and Assurance Application.
6. Motion to approve fundraising campaign contract with Winslow & Associates and to authorize the Town Manager to execute the contract on behalf of the Town.
7. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford asked to pull New Business Item # 2 concerning donation of 1984 Fire vehicle to Town of Waveland, Missouri. Mayor Weatherly advised there was no reason to take legal advice during closed session. The Agenda was set as modified.

Commissioner Jensen challenged the Board to participate in the November 19th Turkey Trot Run.

PUBLIC HEARINGS

Manager Bruce Radford

Public Hearing # 1 – Railroad Crossings

Public hearing to determine public opinion and consider advisability of closing rail crossings in order to further completion of the Apex Peakway and to facilitate economic development in and around the Central Business District.

Mayor Weatherly stated the following: The Board does not support any closings of streets to get additional railroad crossings, except this could be the only option for completing Apex Peakway and facilitating development it would attract, that no body wants to close streets in Apex particularly the ones being talked about, and only because of CSX non-negotiable demands for additional at-grade crossings with the Peakway requiring two, and in order to get that one at-grade crossing, the town is required to close two current crossings because of mandates from the state and federal government as he understands it. For safety reasons, CSX is unbendable in their attitude in that they are not going to approve any additional crossings in any community, and particularly the one being talked about, without advantage to the railroad, that means three to one. Proposal would be to throw in private crossings but this hearing is not whether one favors closing streets in Apex, because nobody favors closing streets in Apex; he hopes everyone understands the issue before them would be fruitless to come up and say we don't want to close streets in Apex, no one does, but wants to be productive to elaborate on the benefit they believe completion of the Peakway and completion of infill development that would attract or probably not make possible if we don't get the crossing; the discussion is just not in favor of closing streets but what we think about benefits the town could only get if it turns out to be the case; if we could only get through agreeing with the demands of the railroad.

Manager Radford reported on the idea generated from the Board to consider purchasing crossings in other locations across the state along CSX railroad line. He had written CSX regarding the plan to purchase crossings elsewhere, and a response has been received from CSX denying Apex ability to purchase crossings in other places; quote from CSX letter: "our idea was unorthodox and different." Manager Radford continued he wanted everyone to know thus far, they have done what they can do in this regard and will continue to try to work with CSX to make that particular arrangement reality based on the decisions forthcoming in the next months. Correspondence and chain of events taken place are attached.

Mayor Weatherly opened the public hearing:

Bonnie Fischer, Edwards and Jones, representing Downtown Business Association (DBA), voiced strong opposition to closing any crossings and urged the Board not to close any crossings or divert traffic from downtown that would impact downtown connectivity with the surrounding communities and businesses. Items of concern: reducing traffic to businesses downtown since Center and Chatham are direct routes off US1 to the historic district from greater Raleigh and SR1010 and being vital to the downtown; facts and reasons address small town character, diversion of traffic from downtown onto the Peakway, Trackside development not being dependent on Peakway - other access routes; citizens desire to complete Peakway but never made it priority over maintaining small town character; concept to complete Peakway not being linked to requirement of railroad crossings being closed to the downtown. Mayor Weatherly restated the DBA position, "closing the streets would be more beneficial than ever completing the Peakway," with Fischer stating, "not closing the streets," with Mayor Weatherly continuing, "keeping them open opposed to - if that would be the eventuality."

Randy Clayton, President, Apex Chamber of Commerce, referenced Kimley Horn data and proposed closing of three downtown crossings; noted study collective data was missing regarding potential economic impact to downtown and the impact that completion of Peakway would bring to downtown; noted it vital to continue current growth and activity in downtown; stated Apex Chamber cannot support closings of downtown railroad crossings and encourages town to pursue other solutions in regard to adding a rail crossing at the Peakway and North Salem Street.

Joe Howard, 213 Center Street, spoke for himself, Helen Hinton and Wayne Thomas stating they could close all three streets because of the traffic especially on Center Street and calling it unbearable and dangerous because traffic does not slow down, and having asked for a stop light, bumps, and police help with nothing that can be done is frustrated; noted Seagroves development will add more traffic; noted folks could go to NC55 and comeback into town; thinks Peakway is great if they can divert the traffic to it; wants to see police slowing traffic down on Center Street; asked Board to come up with solutions and close all three crossings, not just close two crossings that would divert all traffic over to Center Street; and asked they think about the people.

Laura Grimes, 210 Salem Street, was not for or against closings; addressed proposal for alternative closings; noted CSX closures of crossings in Rocky Mount at $250,000 each for nine of their crossings in their downtown; thinks $50,000 offer from Town of Apex is short and should rethink it; noted it disingenuous on CSX part in their response to Town's request since it was being done in Rocky Mount. Asked if Peakway is valuable to the future growth and traffic; closings will impair downtown and supports those speaking against this proposal; considers Apex a wealthy town and sees town's with fewer resources maybe closing crossings; Apex is desirable with folks flocking here; urges Board to find a win-win situation and perhaps pass cost down to developers - $250,000 was shy of a flyover on US64; noted growth in homes with people buying here due to downtown and sees the fullness in downtown and knows the Board doesn't want to hurt it; addressed the number of times she had been before the Board for downtown and respects them for all they have done for downtown.

Bill Carey, 107 S. Hughes Street, enjoys downtown and wants to see the crossings if closed remain pedestrian friendly, asking the type materials for fencing or permanent barriers that would be used; unsure of the impact on businesses, and unsure if this would facilitate growth or hinder it. Manager Radford responded the request was that in the event any crossings are closed they remain pedestrian crossings; and noted different types of barriers that could be used.

Don Grimes, 210 Salem Street, knew Board was looking for solution and echoed his wife's sentiments in that if CSX thinks a single crossing is worth $250,000 in Rocky Mount, he would think it would be a reasonable expectation, in talking about being fine stewards of the town and the amount of money in our purse, thinks to preserve downtown crossings is worth what CSX had to pay for those crossings if it makes it a more viable option. As an Attorney, he gets upset over CSX demands and believes it time and has heard Cary is in a similar situation and would like to consider and perhaps pursue a legal challenge to this dictatorial approach of CSX towards these situations; he sees no reason why they should not research this before succumbing to demands of CSX. He would like to see CSX rails pulled up and get out of town and could move the switches, junk yard, out of his residential neighborhood; the crossings have been here 100 plus years and resents being told we have to close crossings to have two more justifiable crossings up the street; he thinks we should stand up and be resentful of CSX approach and not be fearful whether they like us or not.

Jeff Gray, 333 Fayetteville Street, Raleigh, Attorney in land use matters and development, has watched Apex grow for ten years and has been involved with private entities that have built large segments of the Peakway, noting it the key component of the development plan for Apex; was sympathetic to downtown and its merchants, however disagrees for two reasons: Downtown is a destination stop and folks do not stop to buy every day goods – it's the old fashion downtown and feels plans for greater density in the downtown will make it better. Idea of Trackside is one of the best he's seen for a small town, with few towns being fortunate enough to have a large tract of land so close to a commercial downtown; he can assure if studied would find that putting greater density downtown within walking distance of downtown, and building the Peakway, and building Trackside, and promoting commercial development downtown would more than compensate for closing of one or more railroad crossings downtown. He continued no one wants Center Street nor Chatham Street closed, and it comes down to Moore Street, thinking to loose one street plus three private crossings north for proposed path of Peakway is enough to accomplish what they want. Thinks part of the problem is cut through traffic on Center Street going to other places and not necessarily stopping downtown; Peakway would alleviate this problem for those in the historic residential homes on those streets; traffic coming downtown off the Peakway would be more convenient for those that intend to come downtown to spend money. Stated there are many opportunities in Apex and all hinge on the Peakway. He expressed disappointment the manager's idea did not work because he's purchased land on behalf of clients and noted with impervious surface issues would buy land for a park elsewhere; he has bought wetlands before and the idea sounded good to purchase crossings elsewhere and trade them, and noted it's being done all the time. Not suggesting an expensive study, but suggests from the long term view the approach Apex has taken to make this community an old fashion community that everyone wants and for it to happen, projects such as Trackside and Peakway has to happen. He understood trying to acquire enough closings to do the northern and southern parts of Peakway; it has been developed in pieces and was purchased in segments as needed with development. He can assure from what he has seen in small towns, the southern route will come too and there will be a solution by the time the southern portion of the Peakway is built. He asked the Board strongly consider closing one of the downtown streets and thinks the preference would be Moore Street, and noted three private crossings within the project north should be sufficient to get the rail crossing needed for the Peakway. He added from the Kevin Costner movie, … "if you build it they will come;" if the Peakway is built the increase in density will come and more than make up to the merchants in the downtown the loss of one street crossing; folks will walk, drive, and not be caught up in traffic and will make the difference they are looking for. He appealed to the Board to move forward and proceed with the Peakway as planned.

John Messler, Apex Historic Society, stated in keeping the small town character that makes people come to downtown, and being a historic attraction, and noting restored buildings, and for protection of the merchants in downtown; the Society agrees with the merchants that cutting traffic arteries into the downtown will impact those businesses and loss of them, with boarded up store fronts, and things no one will want to call Apex. He asked the number of crossings for the Peakway. Mayor Weatherly responded the proposal is for closure of two of the three crossings in the downtown - either from Chatham Street, Center Street, Moore Street, plus three private crossings in exchange for two crossings north of town.

Wendy Kimaclarion, 205 S. Mason Street, likes her neighborhood, and notes the downtown a vital part of their lives, frequently visiting shops, restaurants and attending the street festivals; does not want to change the character of the downtown shops for another strip mall with Starbucks and nail salons; uniqueness of downtown is important to her and the neighbors.

Lise Zublena, 317 N. Salem Street, doesn't want the downtown changed; tried to envision the Peakway and doesn't see how closing and changing the downtown for a possible rail crossing for possible development will make the town any better; if the Peakway is built they will come and there will be more traffic on the Peakway, and asked if they want to have development there to find another way and not change downtown; if they have to do a flyover save for it because it's not going to happen next week.

Mitchell Pitman, 410 Olive Street, spoke in favor of development of the Peakway and making it easier to get to his girlfriend's house; he addressed public safety and a recent fire at his home and would be a detriment to close crossings in the downtown because it would take longer for safety vehicles to get there, and thinks with the elderly would take longer with a little amount of time making a big difference; he doesn't think potential growth is more important than those who had lived here all their lives.

Joe Zublena, 317 N. Salem Street, asked questions about the Peakway: if the area requires two closings, what happens to the west side and would have to cross the tracks again. Mayor Weatherly responded it would be an at-grade crossing at that point and thinks is what the plans call for. Zublena asked in looking at traffic flow patterns the main areas are west and south sides with traffic coming through town, and wants to see that side have a pass through and not sure the east side would ease the traffic; noted I-540 would be a major diverter and questions if the Peakway is too late to alleviate the type traffic it was designed for ten years ago.

John Allen, 202 S. Hughes Street, opposes closing any crossings and asked what was meant by "pedestrian crossing being preserved" and frustrated with road blocks. Mayor Weatherly responded to the Manager's knowledge there would be pedestrian access. Manager Radford added Thompson Street closure remains a pedestrian crossing with an agreement with CSX. Allen had no problem with Trackside or Peakway that it can complement what they have very well; thinks fact of closing crossings is a recent development to the public; momentum is there to build the Peakway and Trackside. Mayor Weatherly responded correspondence dates back twelve years with 2003 most recent correspondence to CSX about at-grade crossings and having always been an issue to complete the Peakway. Insurance rates will rise due to emergency situations and a detriment if this happens; disagrees with Attorney Grey's comments, "putting in the Peakway and closing crossings will not negatively impact downtown"; to him it will have a detrimental impact on the neighborhood and businesses. He noted it a tradeoff vs. a win-win and urges the Board to find a win-win.

Ralph Grebing, N. Salem Street, voiced opposition to closing any rail road crossings; addressed results of the small town character study and desire for additional green space for parks and recreation in the downtown area; believes development being considered is moving away from additional green space which he thinks would add to downtown area; believes closing crossings will make it a less of a destination point to shop and live in the downtown; thinks the Peakway is a great idea, but for him the Cary Parkway gets him to better destinations.

Herman Jaffee addressed the Peakway where it crosses the rail road tracks, with one to build a bridge over for safety, and one to close to Salem and not being able to put a bridge there unless we bridge Salem Street as well. He noted it practical to put one bridge over commuter track going to Cary and build one regular crossing and may have to bite the bullet as far as closing one crossing at Williams Street; suggests cost associated with the bridge or $4 million be included in the developers plans and if they refuse, put it to vote through a referendum whether to build or not and be done with them.

Heather O'Sullivan Canney, 311 Olive Street, stated lots of folks that live here don't come downtown because they haven't thought about it; reducing connectivity is nieve – out of site, out of mind character; if Peakway is finished will give opportunity to go around to downtown - we don't have to make it harder to get downtown because of the Peakway which is a big concern – it's hard enough to find parking and don't make it where it's not worth the effort and a big concern; noted downtown is a destination with folks driving here because of downtown; it's a destination that drives development and counterintuitive to sacrifice what's driving development to feed the development because of growth; realizes Trackside will bring revenue and taxes more than the downtown does but what can't be measured is the cost of revenue because we loose the character that brings folks here in the first place – whatever the number, it's too high of a price to pay. She addressed the comprehensive plan with residents placing preservation of the small town character as the number one priority; Peakway and development was not top priority; believes in finding a solution and proposes that if we end up in a position where we have no choice that we close Hunter Street from the Town Hall entrance to Salem Street and turn the area into a downtown park which would ad needed green space, an asset to downtown, make the town campus a greater asset and provide a nice transition between high density and Trackside and the historic downtown. She continued with completion of Peakway traffic from Olive Chapel and Laura Duncan and Lake Pine would cross the Peakway and would have the option of taking the Peakway and could still access Salem Street without difficulty without being forced into the neighborhood; her vote is make it something of an asset an not settle for lesser of two evils.

Nancy Brown, Center Street, called attention to traffic on Center Street and suggests town demand CSX repair those railroad tracks at least at Center Street, due to noise and uneven; suggests building a bridge over the tracks; she doesn't care if they close Center Street and knows we need access to downtown.

Jay Bibb, N. Salem Street stated one rail crossing may lead to a road crossing his property that hasn't been built and is important to him; he noticed small town character doesn't mean traffic jams and cars; if close downtown crossings and add pedestrian areas with parking on either side, the downtown is now walkable so people coming from the east can park on the east side of the tracks and walk across the tracks and be in the downtown and the same on the west side with more available parking, less traffic and wouldn't have cut through traffic. In his opinion it enhances the business area and something he's looking for in being close to downtown is being able to walk to it; he thinks the biggest thing done to increase business is get sidewalks down N. Salem Street; not only connecting him but the Haddon Hall neighborhood to be walkable/friendly to downtown and not drive to downtown; make traffic find places on the side of the tracks and make downtown walkable and friendly; if we close crossings and need it for development of the Peakway crossings work with what we have and make the best of the situation.

Nancy Spencer, E. Chatham Street, asked what happens on NC55 if they close the streets; Peakway is a circle with NC55 going through the center and as much as they like to think folks will go around, people will take the straight lines, with no solution for the bridge and widening. Peakway with two lanes bothers her with backups and median strips and not sure how it works and would like to see more study. Mayor Weatherly advised ultimately the Peakway would be built four-lanes and building what we can afford as we go.

Mayor Weatherly closed the public hearing at 8:05 p.m. Mayor Weatherly stated no action was taken, the public hearing was to take comments under advisement as they proceed to look at the difficult issue as far as how to proceed with this continuing issue in light of the November bond referendum which was dedicated to the Peakway completion ($ 9 million); what he had heard from the public was consistent with his emails and correspondence. Peakway has been planned for thirty+ years and is an issue that will be around a good while longer before reaching a reasonable solution, and if they anticipate they need to brainstorm how to resolve the issues and concerns, they will hear more of this, but no decision will be made behind closed doors, but with public participation and involvement and doesn't know when it would be; to guess when a decision might come – they are just about to the end of their options list, but will continue look at all options and reach and reach a resolution that meets the concerns and traffic needs of Apex.

End of public hearing #1

Rosetta Radtke, Design Planner
Public Hearing # 2 – Master Subdivision/Site Plan L'Hermitage at Beaver Creek
(Applicant requested Public Hearing be continued; Planning Board continued Public Hearing to November 14, 2005) (Staff requests Public Hearing before Board of Commissioners be continued to November 15, 2005)
Public hearing and possible motion regarding a residential master subdivision plan and site plan for L'Hermitage, located at 1006 and 1012 Olive Chapel Road.

Mayor Weatherly advised the petitioner requests continuation of hearing to November 15, 2005.

Action: There was a motion by Commissioner Jones and a second by Commissioner Schulze to continue this hearing to November 15, 2005 meeting. Motion carried.

End of public hearing # 2

(Please refer to the October 10, 2005 Planning Board Agenda for a full color copy of the Small Town Character Area Plan which is attached at the end of the meeting documents).

Rosetta Radtke, Design Planner
Public Hearing # 3 – Small Town Character Area Plan
(Planning Board recommended unanimous approval for the Plan at its October 10, 2005 meeting).
Public hearing and possible motion regarding the Small Town Character Area Plan.

Rosetta Radtke gave a report of events taken place regarding the Small Town Character Area Plan which focuses on preservation of the downtown business and downtown residential area. Clearscapes Architectural firm helped develop the plan for the area inside the Apex Peakway. Committee members were introduced. Planning Board at their October 10 meeting unanimously recommended approval of the plan with one condition on limiting the area somewhat in the downtown. Purpose of the plan is to provide standards for future infill development within the defined area recognizing future growth and redevelopment that will occur in the area and providing standards to ensure this evolution maintains the character and scale of the existing structures and development. Steve Schuster presented the attached plan. Consultants used survey results from 408 survey responses (18%) which were mailed to 2,234 property owners to develop the plan; Workshop was held on May 11, with results posted and given to attendees. Open House was held September 14, 2005 with a draft of the plan presented by Steve Schuster of Clearscapes. The plan is for the review and will return in ordinance form for adoption as part of the UDO.

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

Lisa Glover, 115 N. Tunstall Street, served on the committee and in favor of the plan and urged the board to support the plan and ordinance changes; noting one area being developed with two large of a density for the area across from her home; she encourages infill growth and reduction in density, however, with respect to what's already there and the space available; houses too large for lots are not attractive and does not provide green space; this plan keeps the small town character of the neighborhood and provides for orderly growth and keeps out the type infill development in an orderly fashion.

Mayor Weatherly closed the hearing at 8:30 p.m. and noted ordinance would be considered at a later time.

End of public hearing # 2

June Cowles, Planner
(Planning Board continued this hearing to their November 14, 2005 meeting)
(Staff requests Public Hearing before Board of Commissioners be continued to December 20, 2005)
Public Hearing #4 – Amendments to the Apex Transportation Plan
Public hearing and possible motion regarding amendments to the Apex Transportation Plan.

Director of Planning David Rowland requested the hearing be continued to the December 20, 2005 meeting of the Board to allow Planning Board to continue their hearing to November 14, 2005. He advised a workshop will be held on January 5th at the Community Center from 7 to 9 p.m. to discuss the proposed transportation plan amendments.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to delay the hearing to December 20, 2005.

End of Public hearings

OLD BUSINESS

Tim Donnelly Director of Public Works
Old Business Item # 1 – Force Main Williams Creek Drainage Basin Pump Station
Tim Donnelly, Director of Public Works presented a recommendation to the Board for the Force Main Route for Williams Creek Drainage Basin Pump Station Design. The Board was briefed during a previous work session on the pros and cons of four options which are attached regarding the force main route for the proposed Williams Creek pump station along with proposed construction costs. The Board had requested time to consider the options before providing guidance and requested staff continue to work with the developer on the proposed "Peachtree" development. Sellers of the development have requested information in the form of developer agreements that would be required for sewer over-sizing in Option 2 Gravity across Peachtree Development. Unfortunately, no concrete arrangement has been achieved and complete financial arrangements and time tables are uncertain at best. Staff recommends Option 1 Force Main to Hwy 55 Interceptor as the most predictable, and timely solution. This option is slightly more expensive than some others due to possible easement costs, but this will be somewhat offset by acreage fees that will now be collected instead of applied to oversized gravity sewer. Benefits and challenges of all 4 options are attached; Option 3 Gravity Sewer to Salem Street by Developers and Option 4 Gravity Sewer to Salem Street partially by Developers.

After a lengthy question and answer session regarding scheduling, immediate need, and area the force main will being shown on the map (Trackside, Lake Pine, Apex Community Park and development on Laura Duncan at the park, area of Davis Drive and Salem Street.), it was noted that development is waiting and in attempt to build the regional wastewater treatment plant, which should be completed within one year, will make sewer available, and development fees will quadruple, rather than a later date.

Manager Radford commented on the proposed gravity sewer for Peachtree and proposal to open Black Stone into Haddon Hall to accommodate development of Peachtree, however the development went away and are now waiting with nothing happening, however, sees need for this to take place and enables town to direct sewer of developments to go where we want sewer to go, with the proposed developments occurring over the next four years.

Donnelly continued development is waiting for the Board's approval of the pump station and would then award the bid; site plans can be submitted and they can commit to build. Sewer easements, right of way more likely in the right of way with NCDOT permission and maintenance were discussed. Differences in option price were discussed, along with developers sharing costs, collection of acreage fees and credits, noting if they wait for developers to construct, they could wait a long time. Manager Radford commented due to the great deal of discussion among the Board, asked that the Board delay action to allow staff and the Town Attorney to consider other ideas and bring this back to the Board in two weeks. No action was taken.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Ron Parker, 1104 Griffith Way, asked the Board be more proactive during drought season; was not in favor of condemnation in New Hill for wastewater treatment plant; asked Board look into cost of moving the site and with Apex being a part of the process, asked them to say, "stop" and look, and not condemn the land.

Herman Jaffee addressed an article regarding electric power and the demand increases. He asked the board to address State Utility Commissioner Gruber regarding regulation issues and energy conservation measures.

J. C. Knowles announced Christmas on Salem Street will be Friday night November 26 rather than first Friday night in December; one big feature is sleigh rides and couldn't get it for December. The Merchants Association decided to host on Friday following Thanksgiving Day; asked their presence with the Mayor lighting the tree. Request to close Salem Street will be considered November 1. Jaycee's will host the Christmas Parade Saturday December 3, 2005 at 5:00 p.m.

Lisa Wickham, 1009 Chimney Hill Drive, Shepherds Vineyard addressed the changing flood issues that has spilled over along the creek banks; shared concerns with property development upstream that will impact her property and the creek; noted parcels of land that would go away, and concern for the accumulative affect with the creek paying the price and no way to rectify this; noted erosion along greenways and creek banks.

Dan O'Rawe, 1005 Chimney Hill Drive, addressed the greenway situation and spill over of the creek banks onto the properties; he had infill of soil on his property due to mosquitoes; noted this as a disaster waiting to happen with the creek; asked the Board to not forget residents downhill and were in need of their help.

Jim Wickham, 1009 Chimney Hill Drive noted problems with impervious surface run off and the challenges of hydraulics in watersheds, and noting three places along the greenway that will collapse, with potential threat to these properties; noted it not in the town's best interest to have property value issues in the community.

End of public forum 9:15 p.m.

NEW BUSINESS

Lee Smiley, Director of Finance

New Business Item # 1 – Financial Summary

Director of Finance Lee Smiley presented the review of 1st Quarter FY05-06 Financial Summary, noting all budget items were in line. Board accepted the report as presented.

End of New Business item # 1

New Business Item # 2 was pulled to allow the Town Attorney to address issues in conveying property to municipalities outside the state.

Mayor Weatherly ***(This item was pulled from the Agenda – no action was taken).***

New Business Item # 2 – Donation of or Conveyance of Property

Request for Town of Apex to approve donation of or otherwise convey property consisting of 1984 Ford/Quality Engine to Town of Waveland MS.

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly announced it was not necessary to hold closed session).

Possible motion to move into closed session to receive legal advice from Assistant Town Attorney regarding possible litigation.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and a second by Commissioner Jones to adjourn at 9:20 p.m. Motion carried.

The above minutes were approved on the 1st day of November 2005.

Georgia A Evangelist
Town Clerk

Keith H Weatherly Sr
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 1, 2005 Meeting
Mayor Keith H. Weatherly presiding

Meeting to be held at 7:00 p.m. in the Apex Town Hall,
73 Hunter Street, Apex Town Campus
Board Room of the Commissioners (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
(1) Vacant Seat

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m., Tuesday, November 1, 2005. Commissioners Jensen, Gossage, Jones, and Schulze were present. One seat remains vacant.

Invocation was given by Commissioner Schulze. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

RECOGNITIONS

Mayor Weatherly recognize retiring members Norm Conti and Jimmie Upchurch for dedicated service on the Apex Board of Adjustment, presenting a plaque to Mr. Conti for years of service from August 1998 – September 2005. Mr. Upchurch was unable to attend the meeting to receive his plaque for his years of service from May 1994 – October 2005.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to approve the consent agenda. Motion carried.

1. Minutes of October 18, 2005 Board of Commissioners Meeting.
2. Adoption of new Plan Document for Town's 457 Deferred Compensation Plan.
3. Order to close portions of Salem Street and Chamber of Commerce Parking lot Friday, November 25, 2005 for Apex Downtown Business Association to hold annual Christmas on Salem Street.
4. Order to close portions of Hunter Street, Salem Street, and Moore Street Saturday, December 3, 2005 for Jaycee annual Christmas Parade on Salem Street.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford reported a unanimous vote by the Raleigh City Council regarding the Interlocal Agreement with Wake County and the remaining municipalities in the county regarding placement of a landfill. Wake County Solid Waste Management Division and Holly Springs representatives will be present at the November 15, 2005 meeting of the Board regarding action for proposed landfill in Holly Springs. Reports will be distributed to the Board for their review prior to this meeting. With no amendments the meeting agenda was set.

PUBLIC HEARINGS

There were No Public Hearings scheduled.

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Herman Jaffee asked to add to the building code the requirement to use warm season grass in side and rear yards of new lawns to conserve water, noting builders in Cary are doing this. He reported on an ongoing program for electric conservation in the distribution of low energy light bulbs to customers in Lansing, Michigan.

Art Clem, Beckett Crossing, asked infrastructure be in place prior to the spring opening of the movie theaters, and other commercial businesses – bridge over US64 and Kelly Road extension; placing more pressure on developers noting there would be only one road into to this area and concern that with the infrastructure not being complete cut through traffic would come through Beckett Crossing and Carriage Downs; asked the board encourage developers for more speed bumps in both developments. Commissioner Jensen asked if a no-right turn option would help, with folks going out to Olive Chapel Road to prevent flow of traffic. Clem felt this would make residents unhappy, but encourages speed bumps. Clem does look forward to the opening of this new commercial area.

End of public comment 7:15 p.m.

NEW BUSINESS

Commissioner Jensen
New Business Item # 1 – Park Land Acquisition
Commissioner Jensen proposed $4 million be loaned or transferred from General Fund to the Parks and Recreation Fund for the purpose of purchasing property for future park land as opportunity arises and repaid from present bond funds or future bond funds. Explanation of the proposal was that property in Apex area is increasing in value at a rate faster than the interest rate on the invested General Fund monies. Noted it economically wise to utilize some of the General Fund monies for the purchase of real property affording a long term savings with Apex needing to have future park property under contract or purchased in order to properly plan for future parks.

Commissioner Jones felt it appropriate for some of the money to be used to buy open space, but doesn't know about $4 million; thinks the Board's annual planning retreat would be the appropriate time to discuss potential projects and what to do with the $4 million bond package. He was not ready to spend $4 million for parkland without knowing what other town needs and would like to hear from staff on other general fund needs.

Mayor Weatherly stated capital projects could be discussed at the Board's planning retreat and given a priority order for the upcoming year. Commissioner Jensen saw this as a problem in that negotiations may be well underway prior to the retreat and noting a large piece of property under consideration, and that budget was short for this and money should be made available if needed, not saying spend the money. He reminded the Board of promise for a substantial park for Walden Creek in that area and this would allow money for this park. He noted the bond issue shows 80% of folks in support of parks and supporting parks would raise property value while adding quality of life and giving value back to the home owners.

Commissioner Schulze felt they should look at the Master plan and if there was an opportunity to satisfy a piece of that where it would save money if bought now vs. later and would be in favor and how it would compare to how much money would be saved for an emergency center; idea is good but has to couch it with other priorities and other needs, and wants to hear from staff.

Commissioner Jensen responded in looking at how fast property values are continuing to grow and if we had to borrow money of how much are we making on money sitting there - less than 5% - property values have grown faster, and sitting on money and looking at price of property going up vs. amount of interest we are getting on the money, it makes sense to say, we will make this available if things come up where we should purchase property for a future park; has to work with the parks and recreation plan. He thinks folks could say that the board is behind what they are trying to do; you can't plan until you are certain you have a piece of property in hand; he's not saying take this money immediately and say it's available if something comes up - we have almost $10 million now and he can guarantee if we get a reasonable park at Walden Creek, they will have to supplement what they have in the parks and recreation bond and are looking at it now and lucky to look at it; these properties are falling away into development and when property is gone, it's gone. He stated the board should be proactive for maybe not $4 million but $3 million.

Commissioner Jones noted the money is there and available whether it's transferred to the general fund to the recreation fund the money will stay there until it's actually spent for something and is there and available and if John brought a proposal for $1 to $3 million and it made sense to do that, thinks they could make that decision whether or not they transferred funds from general fund or not; it's there and available. He thinks if they transferred $3 or $4 million it would have an affect on negotiation of the price of the land; if folks know how much money you have available, it does have impact on negotiations. Commissioner Jensen understood this. Commissioner Jones stated a bond was put forth – a lot of money $13 million and citizens didn't have a hard time with it – 86% and if they said $18 it may have been 85% but would have been approved, but in fact told them that they were going to spend $2 million on land acquisition and to suddenly say spend another $4 million without public input – although he's sure they would agree, thinks they need to spend more time getting impact and knowing consequences of spending that money and not having it available for other things that might affect property taxes down the road.

Commissioner Gossage commented that he thinks staff would come to them if there is a piece of land and felt it was within the area looking at, he doesn't feel they would not come to them because they had not specifically earmarked funds for it.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to address this issue at the board's annual planning retreat. Motion carried.

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Town Attorney Hank Fordham requested a motion to move into Closed Session to discuss the Annual Performance Review of the Assistant Town Attorney. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session as requested. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jones to move out of closed session back into regular session at 7:40 p.m. Motion carried.

With the Board having moved back into Open Session, there was a motion by Commissioner Gossage and a second by Commissioner Jones to authorize a 5% raise for the Assistant Town Attorney. Motion carried unanimously.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and a second by Commissioner Jones to adjourn at 7:45 p.m. Motion carried.

The above minutes were approved on the 15th day of November 2005.

Georgia A. Evangelista, MMC
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 15, 2005
Mayor Keith H. Weatherly presiding

Meeting was held at 7:00 p.m. in the Apex Town Hall,
73 Hunter Street, Apex Town Campus
Board Room of the Commissioners (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Bill Jensen
Gene Schulze
(1) Vacant Seat

Mayor Weatherly called the regular meeting of the Board of Commissioners to order. Commissioners Jensen, Gossage, Jones and Schulze were present. One seat remains vacant from the resignation of former Commissioner Doug Meckes, however with the November 8, 2005 Election, Bill Sutton will fill this seat. Incumbents Jones and Schulze were re-elected. All three elected will be seated December 6, 2005 for a four-year term.

Mayor Weatherly led the Invocation and extended a welcome to those attending the meeting.
Pledge of Allegiance was led by Scout Troop # 205.

PROCLAMATION

Mayor Weatherly endorsed the 2005 Scout Luminaria Project presenting a proclamation to Scout Troop # 205 and participating troops throughout the greater Apex Community.

PRESENTATION

Manager Radford introduced an Interlocal Agreement for participation with Wake municipalities to support in-county solid waste solution for 25 years. Committees of Managers and staff of each community recommend the partnership. Six municipalities have agreed to participate in the Interlocal Agreement; other municipalities will meet within the next few days for consideration. Mr. Reynolds of Wake County Solid Waste reviewed key elements of the recommendation report for long term municipal solid waste disposal covering the purpose, objectives, goals, strategies, methodology, final decision making and basis for the Agreement (executive summary, presentation and report are attached and contains a copy of the Interlocal Agreement. Reynolds asked the Board to agree to partner with other municipalities in the Interlocal Agreement for promise to send waste to this landfill. Reynolds answered questions regarding revenue sharing calculations, identity of haulers private and commercial (separate rates than municipalities), distribution of revenue with the partners after expenses, tipping fees, and cost discount for City of Raleigh and vote. Apex would receive reduction in tipping fees ($20 Ton).

Action: Motion by Commissioner Jensen and second by Commissioner Jones to support the partnership by participating in the Interlocal Agreement. Commissioner Jensen and Jones agreed with reduction of fees. Manager Radford noted the significant break with Raleigh's participation saving Apex $8 in tipping fees. Attorney Fordham has reviewed the agreement and sees no problem. Motion carried unanimously. Apex will be the seventh municipality of the twelve in Wake County to partner in this Interlocal Agreement.

End of presentation

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the consent agenda. Motion carried unanimously. Documentation for each item is attached with staff reports being incorporated as a part of the minutes. Planning items under the consent agenda received unanimous approval by the Planning Board and recommended to the Board of Commissioners for approval.

1. Minutes of November 1, 2005 Board of Commissioners Meeting.
2. Minutes of November 1, 2005 Board of Commissioners Closed Session (separate cover).
3. Annexation Petition # 383 – Kelly &Tina Labunski, property owners/petitioner, petitioning to annex 4.64 acres into the Town's corporate limits; property is located on the western end and north of Lynch Street;
   1) Resolution directing Clerk to Investigate petition; 2) Certificate of Sufficiency of Petition by Clerk;
   2) Resolution setting date of public hearing for December 20, 2005.
4. Capital Project Ordinance Amendment to Recreation Project Fund.
5. Resolution authorizing Finance Director and Purchasing Manager to declare surplus property valued at less than $30,000.
6. Site plan – St. Andrews Church Columbarium at 3008 Old Raleigh Road ***(June Cowles)***
7. Site plan – Empire Place Office at 410 and 420 Upchurch Street ***(Rosetta Radtke)***
8. Site Plan – Clark property at 1040 and 1050 Investment Boulevard ***(June Cowles)***
9. Site plan - Kelly Road Daycare at the intersection of Kelly Road and Olive Chapel Road ***(Rosetta Radtke).***
10. Piggyback on order for Bucket Digger/Derrick Truck for Electric Utilities Division.
11. Budget Amendment to the General Capital Project Ordinance for the 3 rd. Floor Upfit Project.
12. Resolution to enter into Property Disposition Services Agreement between Town of Apex and Property Bureau.com.Inc. for the auctioning and disposition of property stored at Apex Police Department for which State mandated retention date has expired.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. He asked the agenda be amended to include appointments to the Apex Appearance Commission, and also added closed session for the following: 1) receive legal advice from the Town Attorney regarding potential litigation for railroad crossings, and 20 receive legal advice concerning annexations. **Action:** Motion by Commissioner Gossage and second by Commissioner Jensen to amend the agenda as requested. Motion carried unanimously. The agenda was set as amended.

PUBLIC HEARINGS

Rosetta Radtke, Design Planner

Public Hearing # 1 – Rezoning # 04CU17 Trackside North

Public hearing and possible motion regarding a 2025 Land Use Plan Amendment and Rezoning # 04CU17 for a project located on the Apex Peakway in the vicinity of N. Salem Street (commonly known as Trackside North).

Rosetta Radtke, Design Planner stated the Planning Board does not have a recommendation for this item, as the applicant has asked the discussion be continued to the Public hearing in January 2006. Motion by Commissioner Schulze and second by Commissioner Jensen to continue this public hearing to the January 17, 2006 Board of Commissioner's meeting. Motion carried unanimously.

Public hearing continued to January 17, 2006

Rosetta Radtke, Design Planner

Public Hearing # 2 – L'Hermitage Major Site Plan & Subdivision Plan

Public hearing and possible motion regarding residential master subdivision plan and site plan for a project on Olive Chapel Road known as L'Hermitage.

Rosetta Radtke, Design Planner presented the site plan and subdivision plan known as L'Hermitage, Olive Chapel Road. Planning Board recommended approval as submitted. Project description and layout are described in the staff report which is attached and incorporated as a part of the minutes. Commissioner Jensen asked if the storm drain was designed for a 25 year storm and if it were written as such. Sheet C9 states storm design is well above UDO requirement. Proposed sanitary sewer easement has been agreed to by the property owners, and will connect to their property and to the north. Plan complies with all UDO standards, PUD Plan, town ordinances, regulations, goals and policies of the 2025 Land Use Plan and agreed to in the rezone. Scale drawings were shown for building layout, front and rear elevations with mixed materials and shapes.

Commissioner Schulze asked the placement of the townhome mail boxes, having concern with on street parking? Mike Horn, Kimley Horn stated kiosk has been discussed, and will be worked with the postal service. Exhibit shows no on street parking, however, parking exhibit is shown during a heavy park type environment. Single family units will have mail boxes on street; townhomes will be based on the unit with on street delivery - example: one kiosk bank on the street for three units. Front and back elevations and materials for the clubhouse were shown as Manner House style, with the townhomes having a cottage feel. Commissioner Jensen asked if there would be a tot lot for kids within the subdivision (there will be l/4 acre as well as a grass tot lot; no basketball courts, but there will be tennis courts).

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

Russell Miles, Zeno Road, identified his property on the map which boarders this project. He agrees with the project, and stated his neighbors, Bolch and others had received promise of a wooden fence along their property and had been agreed to by the developer. He asked the wooden fence be continued across his property line as well.

Mike Horn, Kimley Horn, stated commitment is for construction of a 6 foot solid wood fence and agreed to along the eastern and northern sides of those properties because Bob Bolch had requested it due to debris from construction. The location of the Miles property further shows a street stub out in this direction and as far as actual amount of fence to be put in is negligible. They agreed to the request for the fence for the Bolch property, and then the next property owner felt it was a good idea and it was agreed too - he asked where it stops, does he fence all the way around it, putting fence between residential and residential. His response to the request for the fence for Mr. Miles was, " that he prefers not to do it ."

Commissioner Jensen suggested landscape, looking for a common ground for Miles and the developer; he doesn't like fences but felt proper plantings are good. Horn stated it will be landscaped as undisturbed existing vegetative buffer with supplemental plants. Commissioner Jones asked timing of Phase 3, as some of this lot in question will be affected by it, as well as other areas to the north. He doesn't see putting a fence to the north and east of Phase 3 until it happens. Horn stated this was agreed to at the last meeting and explained there was no time schedule for Phase 3.

Public hearing was closed.

Manager Radford referenced Sheet C.2 noting the Peakway east of this property and with a right turn lane onto the Peakway one would turn west onto Olive Chapel; there are three properties not involved in this project, and then this project property; there is a painted out area that exists on Olive Chapel Road; he asked Horn if he would be willing to make that a right turn lane beyond the first driveway up to the second driveway from east to west since it is shown as asphalt rather than painted out, specifically a right dedicated turn lane and end it at the second drive, due to the amount of stacking that occurs at this intersection of Olive Chapel and Cameron Park for people taking a left, and would he agree to make this a condition if this project happens.

Horn responded there is asphalt and stripped out; he explained with a right turn lane at an un-signalized intersection and both are volume of full movement (11 vehicles turning in the a.m. hours, with 44 vehicles in the p.m.) and do not need to stack vehicles at an un-signalized intersection. They want to slow them down and get them out of the flow of traffic which is what the taper does and turn right, and is designed for this, and do not need to store vehicles, but slow them down with the asphalt stripped out, not making this a through lane because he's seen people try to pass on a long lane on the right; this is the correct way, stripping out the asphalt.

Manager Radford asked the future affect of signalization on the intersection of the Peakway and Olive Chapel Road, what it will have on this condition; that we know we have let a contract for this section of the Peakway, how does it change that. Horn responded he didn't see it changing at all; at the Peakway the situation will improve and as they turn west onto Olive Chapel; they are providing turn lanes to get those people out of the flow of traffic and into the subdivision; and it will not hurt, only help.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the site plan and subdivision plan as presented. Motion carried.

End of Public hearing # 2

June Cowles, Planner

Public Hearing # 3 – Rezoning # 05CU16 Laura Duncan Road

Public hearing and possible motion regarding Rezoning #05CU16, Jerry Turner & Associates, petitioner, seeking to rezone from Residential Agriculture District to Planned Unit Development District containing 26.05 acres currently zoned Residential Agricultural and located on Laura Duncan Road.

All persons speaking during this hearing were administered an oath by the Town Clerk.

June Cowles, Planner presented the staff report for proposed rezone and PUD which is attached and incorporated as a part of the minutes. 2025 Land Use Plan calls for medium density residential and office and institutional; site has a single family home, out building and wooded area, with two streams on site; site slopes towards the two streams. Proposed site plan is for medium density residential development; Laura Duncan PUD plan has maximum density of 6.0 units per acre and consistent with the 2025 LUP; 156 units are planned on the 26.05 acres; proposed Laura Duncan PUD includes single-family and townhome units with recreational facility, with 25 percent RCA on site (6.51 acres). Four stormwater retention ponds are planned at development standards. Plan includes a 30 foot wide streetscape undisturbed buffer along Laura Duncan Road, and a 20 foot buffer along the southern property line, and a 40 foot buffer along CSX railroad. A 50 foot buffer is required along the railroad, and applicant is requesting a 10 foot buffer reduction. In addition, PUD Plan includes a 20 foot wide buffer to the north; however, property to the north is currently under a PUD Plan review and if proposed development is similar, then there will be no buffer required but would still have to provide 25% RCA elsewhere along stream or along another buffer. Project will utilize town utilities water/sewer with sanitary sewer facilities available 2007; PUD Plan includes language that applicant acknowledges the Town will not be held to any time table for the appropriate utilities and applicant assumes all risks. Proposed project shall meets all UDO requirements, which requires post development rate on on-site stormwater discharge from the entire site will not exceed predevelopment levels. Parks and Recreation Advisory Commission recommends payment of a fee-in-lieu with understanding development would set aside one-half acre (clarified with Parks and Recreation Director John Brown that it would not be less than one-quarter acre or more than one-half acre that would be graded flat, seeded to lawn quality and maintained by the home owners association). PUD Plan is consistent with Advisory Commission recommendation. PUD Plan has up to one-half acre with Planning Board stating approximate one-half acre and clarified (it would be not less than one-quarter acre and not more than one-half acre). Applicant has agreed to change this language. Commissioner Jensen stated, this means it would be one-quarter acre, with Cowles stating this will be across the street from the Community Park on Laura Duncan Road. Proposed development build out has potential to generate 619 entering and 619 existing trips during a typical weekday. Based on the capacity analyses, a traffic signal is warranted at Laura Duncan Road and Old Apex Road intersection. Town continues to coordinate with NCDOT regarding signal installation at intersection which includes CSX railroad crossing. NCDOT has funding allocated for a signal at this intersection.

Applicant has agreed to provide a share of funding toward the traffic signal not to exceed one-third of the required funds or $50,000, whichever is less. Plan is consistent with the UDO and Transportation Plan and is providing dedication of an additional right of way, curb and gutter, installing widened paving and sidewalk on Laura Duncan Road. Planning Board recommended unanimously approval of the rezoning with the one-half acre open space and was clarified.

Commissioner Jensen stated unless the applicant commits to one-half acre, it's gone down to one-quarter acre. Commissioner Schulze stated the reduction in buffer is pending on the adjacent property, and asked what if the approval didn't go through on the adjacent property and they reduced the buffer. Cowles responded they would still have the 20 foot buffer because of the land use now; if it doesn't continue with the PUD Plan that's being reviewed now they have a note there will be a buffer, but if the proposed development to the north is similar in use, then it will probably go away; but will be applied someplace else and would still have to look for the 6.51 acres. Commissioner Jones addressed the Bespak property in Cary that's under consideration for a similar type development, and if approved (it was noted it has been approved), asked what role if any will that play for improvements to Laura Duncan Road and Old Apex Road intersection; if the applicant agrees to pay one-third of the signalization cost, and Town pays a portion, asked, how does the developer of the Cary property play a role in that. Russell Dalton, Town's Traffic Engineer will address this later.

Mayor Weatherly opened the public hearing at 8:00 p.m.
Willie Hood, Jerry Turner & Associates, asked support of the rezoning as it met the Land Use Plan, the ordinance requirements, Transportation Plan, and recreation requirements and will be developed on slightly less than 6 acres, but during process would use this for the single family and townhome units, with pool, plus recreation commission suggestion.

Claude Bittle stated he has been the property owner since 1974 and sees the long term plan Apex has for the land a good plan and was not aware of any objections from the neighbors, asking the board's consideration for approval.

No one spoke in opposition.
Russell Dalton, Town's Transportation Engineer, stated they have coordinated with Cary on the Bespak site. Cary has a residential development across the road from these two; staff shares concern with this intersection. NCDOT 2002 spot safety project was for turn lanes on Old Apex Road, and signals at Old Apex Road and Laura Duncan Road; CSX Railroad was contacted and they found that communication cables were required at an additional $125,000, and the cost of the signal; this exceeded NCDOT's safety money and thus was tabled. Dalton contacted NCDOT and asked what it would take to move this project again for installing a signal; NCDOT pulled the plans and said they need more money, as it exceeded budget and was the reason for the amount of money staff had said was needed for this development. Dalton made Cary aware of this. NCDOT, Cary and Apex share concerns with the safety of this intersection. Consultant working on the traffic study for Cary has begun work on the PD Plan approval – a traffic study was not required, however for site plan approval it will be. He couldn't speculate on what Cary will require as far as traffic improvements, except widening on the roadway frontage and the multi-use path along the frontage of the development; may say Bespak development needs to fund the signal in it's entirety to match NCDOT funds or may try the parcel funding approach Apex has tried. Based on his understanding three developments are trying to be constructed near this intersection and there is an existing concern; he came up with the one-third funds being the maximum since this is the smaller of the three developments or $50,000; signal estimate $100,000 NCDOT has money and according to division, looks bad when the project sits there. He understands they can take advantage of the money left provided they come up with the funds to complete the entire project. ($100,000 NCDOT, $50,000 from each of the three developments).

Commissioner Gossage asked what happens to the crossing on Laura Duncan at the tracks; would it remain two lane or widened. Dalton stated the roadway cross section for Laura Duncan identified on both Cary and Apex's transportation plan is a four lane median divided roadway; however it's a two lane crossing across the tracks. He understands in talking with the department if they seek widening of the roadway across the tracks in conjunction with the signal, then it may delay or prevent the project from happening because the railroad typically doesn't like widening across their tracks because in their mind it encourages more traffic to cross their facility; he understands based on the town's traffic study completed for this development that the two lane crossing will be sufficient with the

traffic signal for that build out year. Cary will complete their traffic study and will assume our development traffic plus some other off site development traffic in addition to growth and have higher growth projections will also determine whether or not the two lane crossing is still sufficient.

Commissioner Jones asked if staff had considered the Bespak development in our calculations regarding traffic, but his assumption is that Cary will consider this one; with Dalton responding they will; he's been in direct contact with the consultant working with Cary and are considering this.

Commissioner Gossage's concern is that they "the board" are not looking at the big picture; they are asking Cary to and trusting they will, and basically seating them with this decision and saying ... from his experience, four lanes would be required there if they are going to proceed and in his estimate 600 or 700 new dwelling units are planned at that intersection; 300 on the Cary side, 165 is the smaller of the three and add on another couple hundred at the one above it, and he can tell you the intersections in those areas are already crowded; Cary Parkway and Old Apex being already in the mornings and that's on Cary's end of things; he's greatly concerned.

Commissioner Schulze asked if the traffic plan calls for this to be a four lane divided highway at some point. Dalton responded Laura Duncan Road is to be a four lane median divided roadway at some point in the future, so these developments would be widening across their property frontage to allow for the multi-lane facility. Commissioner Schulze added and the median, with Commissioner Gossage adding you bottleneck at the railroad, with Commissioner Jensen adding that it would bottleneck on down unless you get the widening all the way up, with Dalton responding it will, and in his opinion the most important thing is to get the signal; not necessarily for capacity of vehicles crossing the tracks, but because at certain times of the day vehicles in the turn lanes on Old Apex can block visibility for drivers crossing that facility from Laura Duncan so they feel getting the signal with the two lane crossing is the number one priority and then some point in the future can look to widening across the tracks if needed.

Commissioner Jensen assumed the poles for the signals will be set up so they could put in the four lane highway when need too. Dalton responded NCDOT has a signal plan on file and he assumes the plan has poles set for a two lane roadway and probably didn't set them back far enough; they will have to revise the signal plan since it was done three or four years ago and a lot has changed since that time. Staff has informed them they anticipate a four lane crossing at that location.

Commissioner Gossage would like to see a traffic study by Apex and the developers that considers the Cary development before moving ahead and gives the PUD for the north of this more time to progress. Commissioner Jensen agrees that this is a site plan issue.

Commissioner Jones and Commissioner Gossage agreed they were doing a lot of assuming. Mike Horn stated he too feels the same, but he prepared the study and had to look at what is approved there and Bespak site plan is not approved. He continued he nor the Board knows what will happen there and for that reason they do not guess; they are first one in and looking at what are approved projects, with Commissioner Gossage saying we don't turn a blind eye to it, with Horn agreeing, we look at growth rates asking if they count for additional homes, but they don't, and is why staff has done an excellent job in working with Cary staff, that when Cary does their study will assure this report is put in and will make that development look at the whole thing; the third piece will look at this and Bespak, taking it all into account and is how it's done and how every municipality he works in does it, and that's how NCDOT works; that's how it's done right or wrong.

Commissioner Jones is ok with the PUD plan, but wouldn't want to approve the site plan until they know what will go, even though they have a good idea of what's going adjacent to this and across the other side. Commissioner Gossage agrees. Commissioner Jensen added, and make sure the signals are designed for the road; Horn agreed with that.

Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Commissioner Gossage and second by Commission Jones to approve the rezoning #05CU14 on Laura Duncan Road.

Commissioner Jensen stated he would vote for this, however, the concern he has is the parks and recreation folks wanted to see one-half acre set aside and it's gone down to one-quarter to one-half acre and he's concerned it will come in possibly as one-quarter acre and if it does, he will look at it with a close eye. Commissioner Gossage added and before the vote so would he, because also along with the Bespak rezone and site plan in Cary, they are saying these developments are right across the street from the Apex Community Park, the Town's facility, but you will have several hundred dwelling units in Cary that are within walking distance from the Apex facility, so he's more hesitant to go with the fee in lieu or smaller areas in these developments because of that and will vote for this too, reluctantly. Commissioner Jones agreed. Motion carried unanimously.

End of public hearing # 3

Dianne Khin, Senior Planner

Public Hearing # 4 – Rezoning #05CU17 & Master Subdivision Plan for The Trace

Public hearing and possible motion regarding Rezoning #05CU17 and residential master subdivision plan for The Trace. Tracy and Margaret Dotson, petitioners, seeking to rezone 5.6 acres located at 1621 Salem Church Road from Residential Agricultural to Medium Density Residential Conditional Use.

All persons speaking during this hearing were administered an oath by the Town Clerk.

Khin oriented to the project location and gave a project description, noting adjacent zoning and land uses described in the staff report which is incorporated as a part of the minutes. Property is designated medium density residential on the 2025 Land Use Plan with Salem Church Road designated as a minor thoroughfare on the Apex Transportation Plan. Conditions proposed by the applicant are listed in the staff report on page 2. Subdivision plan calls for 20 single-family lots proposed to be located on a cul-de-sac connected to Salem Church Road, with right in/right out; configuration allows left turns off North Salem Street. Gross density is 3.5 units per acre. Landscape/buffer meets the UDO requirements for perimeter buffers, general landscape, and street plantings. RCA and buffers proposed is 61,032 square feet or over 25% the UDO requirement. Floodplain/Watershed: located within the secondary watershed protection area with stormwater requirements met with a stormwater retention pond and a bio-retention area at the rear of the site.

Staff notes, on the adjoining property to the west, there is an existing stream not shown on the stream buffer map, but shown on the Wake County soil survey, and believes stream could be downgraded but is in the Neuse River Basin and would have to be determined by DWQ State rather than local staff; DWQ staff has determined it to be non-buffered but waiting for written confirmation and recommends as a condition for approval they get this prior to construction plan approval.

Water, Sewer and electric service will be provided by the Town; pedestrian access: sidewalk along Salem Church Road along the cul-de-sac and along the stub street to the adjoining property to the west; the plan is consistent with the UDO, 2025 Land Use Plan and Thoroughfare Plan.

Staff recommends approval with two conditions: 1) property is located in the ETJ and recommends property be annexed prior to construction plan approval, and 2) written determination from DWQ be made on the stream for the adjoining property and if any buffer is required it be shown on the construction plans.

Planning Board recommends approval of the rezoning and subdivision plan. Vote was 5 to 2 with the two voting against it, being concerned about traffic issues.

Commissioner Schulze asked if someone was traveling west on Salem Church Road, could they get into the subdivision, with Khin responding no; they can't make a left on Salem Church Road. He asked if they would have to go onto North Salem Street and make a u-turn.

Dalton explained the traffic movement pattern at the intersection. From Cary one would turn right at the Y-shape intersection into the development; toward Cary, and could not make a left turn (arrows and island prevents left turns) you would have to turn down – it's not an easy u-shape – most would go over to Davis Drive; Davis Drive runs north and there are other opportunities to turn back into Cary. Coming from Salem Church Road and wanting to come into the subdivision, you can't do it. Most of the Salem Church Road development is residential or low density or undeveloped and no employment centers, or retail; those folks will go out on Davis Drive and not originating trips on Salem Church Road; for the few that are can turn back to Davis Drive and come down to the intersection with North Salem and travel back up North Salem and then turn left – competing with the direction of traffic coming from Cary, the east coming across that traffic into the development. Commissioner Jones stating they are also competing with those coming west and barring onto Salem Church Road, with Dalton agreeing, but stated it's not two lanes at that location and is essentially the same traffic stream that's breaking off; there is a refuge area if one car wants to make a turn and sees a car coming, can pause at this location. A suggestion is a possible stop bar at this location; not something he would require or that NCDOT may or may not require, but Horn had pointed out this is a functional concept with some fine details to be worked out later. Horn stated the main point is this plan has to be in day-one before any homes are built, so all homeowners will know what the access to this development is day-one before any are sold, this will be put in as the access and everyone that goes in to buy there will know this is the access. Dalton stated Horn had worked with the NCDOT District Engineer on this design and recommended early on; he drove the area and came up with a functional design which allowed the left turn out and probably would not have passed NCDOT; this is more restrictive than he would have recommended at this location.

Commissioner Schulze asked if someone was coming from North Salem Street to the west and wanted to make a left turn, they stop at the arrow and looks like only enough room for one car asking if there were two cars, would they block North Salem Street. Dalton responded when drivers are making this movement they compete with one stream of cars; there's 100 feet of distance across the triangular island and not a long distance to the split where drivers are coming from the direction of Cary. Horn added this is a Y-intersection today, and people are making a left turn today and have no refuge sitting in the middle of Old Apex and they have to move to turn back because of the Y, with Commissioners Schulze and Gossage thinking this would be a rare occasion, and thinking there will be a lot more people making this turn, with Horn adding for 20 homes and only people coming in that direction, a very small number. Commissioner Schulze stated the property next to it would be developed, with Horn adding they hope that, because per the plan, they have cross access to it, and can see there will be able to drive out and most likely this could be closed off or modified.

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

Steve Rice, Rice & Associates, stated the developer and people working on this project concur with all of the conditions suggested and required. They are providing 25% RCA open space, with buffers to the adjoining properties, stormwater retention and bio-retention that will not only treat stormwater to provide pre and post quantities, but also nutrient removal which is not required by the Town. All designs meet or exceed town standards and NCDOT standards; he asked concurrence with the Planning Board to approve this project.

Craig Lang who is working with the Applicant s Tracy and Margaret Dotson, asked consideration of this site plan and rezone. They have worked with both staff and consultants to evaluate concerns of the development and street layout, and talked with adjoining property owners, and noted the mail process works. He has not met with all of them directly, but Rice and Associates has spoken with some by phone. Horn had made reference to the connection point; they have to evaluate properties to ensure if developed representing homes for sale that the public is in favor of a restriction – meaning limited access in and out. There are other communities that are developed due to NCDOT requirements as far as distance between intersections that may limit ones ability to make a left turn out into traffic; this community has the same issue but at the Y of two roads that has been there for many years. He sees benefits to the design as proposed: he travels the road as others do and most times at this intersection he's more at a 45 degree angle instead of a true 90 degree angle. The layout proposed directs people to come to a 90 degree stop and look right and left before pulling out onto Old Apex and a benefit.

They have to improve the right of way at the frontage of the property; the line of site is limited because of the trees in the undeveloped land and by improving the right of way and pushing it back into the community and offering the sidewalk that ties into Martin Station, he thinks it also improves the line of site for anyone that comes up to this intersection. He notes there will be development with possible improvements to the intersection of Old Salem and Laura Duncan; he thinks the signalization and this improvement at Salem and Old Apex is going to better serve anyone that lives in that area or are going to cut through. He notes that its challenging on paper but they recognize not everyone will live in a community with a right-in and right-out; he feels comfortable there will be residents in the community of Apex that will like the area and it's proximity to the green space and would like to be Apex residents. He asked the Board's consideration.

Mayor Weatherly asked those opposed to come forward.

Scott Brookheart was administered an oath by the Town Clerk and stated the following: He is a resident in the Old Salem development on the opposite portion of the Lewter property, Cary. He's west of the property and brought attention to the blue line streams on the property and noted it doesn't just originate from the pond on site but it runs down the center of the entire Lewter property almost to Old Salem Street. It's meant to be protected by the 50' Neuse buffer rules as an intermittent stream. His concern is this plan with a stub street will encourage development to the west and eliminate a very nice wooded area with streams and wetlands in the low lands behind his property and the Lewter property. All residents of Old Salem along this edge did pay premiums for this wooded area and actually was somewhat insured that the area would most likely remain undeveloped because of the stream and tonight hears there may be an attempt to downgrade the stream for the purpose of allowing development is disconcerting to say the least considering most regulations by the Neuse buffer rules uphold the USGS quad combined with the soil survey maps define it and it takes a DWQ review to downgrade it, but encourages the Town of Apes to look at it and be as environmentally minded on this as possible. He realizes the land use does allow for this to be medium density residential and is not in question. He appreciates the fact they have put efforts into bio-retention and nitrogen requirements on this site. He also has concerns about traffic entry point; one thing not discussed when coming west off Old Apex to make a turn onto Old Salem, speed is 35 to 40 mph maybe even 50 mph in reality and the site distance is not exceptional there, it's there, but you can come up on this location extremely fast and if there are vehicles turning as Horn pointed out are turning but going west on Old Salem Street; at this point they are encouraged to turn and cut across and concerned with vehicles coming west and people trying to go across and slowing down to get into the development, there is potential for an increased likelihood of something happening; maybe not long term, there will be 20 residents there but potential for others to the west and more concern during construction phase, he doesn't believe the contractors are going to be following the entry in and out as nicely as the residents may be and does propose a threat even for a temporary period. He appreciates the time and encourages that if the western portion comes for review by this board that they take into consideration there are large amounts of old growth trees, a good piece of property and hates to see it completely wiped out by development at least take this into consideration. He appreciates the wisdom of the Board and the Planning Board.

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

Commissioner Schulze had serious concerns about the traffic issue and sees this as a big mistake; it's not one bad lane but people taking a right out of the development and having to find a place to u-turn to go west. Commissioner Jensen added it seems they are trying to develop one-half of the pie when the whole pie should be developed at the same time and then you could have access into the.... sounds cookie cutter to do this. Commissioner Schulze agreed; even without development the Y intersection is dangerous and any development compounds the issue. Commissioner Gossage agrees with this. Commissioner Schulze would like to see this development added with adjacent development and a master plan put together that doesn't have an entrance at the Y. Commissioner Jensen added they need to be developed together, with Commissioner Schulze agreeing.

Horn agrees with what they were saying and ideal to bring both pieces in and consolidate a driveway and he can't disagree at all, however, that's not what is in front of them; it's a 20 unit subdivision that will generate a small amount of traffic and with that, the question he looks at and that he took to NCDOT was, how do I get access. NCDOT are the stewards of their roads, and if they don't like it, they don't let it happen. When he sat down with them, he asked could something be derived here and we do have the Y intersection. NCDOT wants to improve the Y intersection and to do that, what they are doing is bringing people to a 90 degree and adding an island that will improve the situation and he thinks its betterment and wouldn't be in front of them if he didn't think so.

Commissioner Jones agrees the islands are an improvement, but his concern is the proximity to the entrance of the subdivision. Commissioner Gossage added it improves that part of the situation, but thinks in other ways, it makes it worse. Horn stated if he were asked to make this improvement and not have the intersection or make the improvement and have the intersection, he would take this one. Commissioner Schulze agreed he did the best he could, but he doesn't think it's enough. Horn continued that for him as a professional engineer in front of the Board, it's not just good enough - it doesn't cut it, not with himself nor NCDOT, with Commissioner Schulze adding and the Board of Commissioners. Horn responded they have a decision as well but he can only tell them what he as a professional engineer has worked on and what NCDOT has agreed upon. NCDOT is comfortable with this, and understand they have gone out there and the question of the line of site is going to be taken care of with widening and actually creates almost a right turn lane that will allow them to turn right in that will be out of the flow of movement. He's not trying to push this one way or the other, either way, he doesn't gain; his purpose is to bring forward what he feels is a safe plan analogy. There's a subdivision on Wade Avenue in Raleigh before Oberlin Road, a fairly new subdivision, and he was asked to work on this, but declined because he realized the only access allowed for them was right in/right out. It was built and he's observed it since the day it was in and he was wrong, it has worked very well; the subdivision is in a difficult location and Wade Avenue carries much more traffic than being talked about here and at a higher speed, but those people knew what they were getting into and it has worked.

Commissioner Jones asked the distance to the entrance of this subdivision and the length of the right turn lane headed west. Horn responded 100 feet. Commissioner Jones was concerned with the scenario Brookheart had brought up: going west on Old Apex and right onto Salem Church Road, which he does often, and usually 35 mph and then you stop because someone is turning right into this subdivision and for whatever reason have been delayed in doing so will be.... with Horn interjecting, they will have the extra asphalt for them; in addition a lot of thought went into this and continued they are putting the island in and making it bigger; this island here will seem that they are going to be funneling people more and give people the affect of slowing down and the affect of the design and what NCDOT worked on very heavily. He stated it is safe and they have designed it as such and can tell them and NCDOT is fine with it. Commissioner Gossage responded that from time to time this Board had disagreed with NCDOT. Horn continued this Board has their prerogative to do as they feel is best.

Commissioner Schulze commented on what was unclear and confusing to him and seem to be an invalid movement coming west on North Salem Street and trying to make a left into the neighborhood, someone living there may know. He didn't see enough storage – one car could fit but not more than one; he sees all kinds of problems and will get worse. He feels like it's a square peg tying to go in a round hole. Commissioner Gossage added you would be crossing two lanes and if you want to make a left, you have oncoming traffic that you are crossing again. Horn stated as he entered into this, he had felt the same way, and it was not until he was able to come up with this design with NCDOT coming up with a good portion of it and how this can work. He stated if NCDOT had felt it wouldn't work – they don't let just good enough go; he noted this difficult, however felt they had done their homework; they have gone to NCDOT and asked them, with NCDOT having spent time in the field as he had.

Commissioner Jensen asked with the triangular island sticking out and folks coming from the west, seemed if they were to get into the right hand lane... with Horn interjecting he had to explain this to the Planning Board that this is a conceptual plan, not a final signing and marking plan, more detail will go into it as a final plan.

Mayor Weatherly added the appearance of the left turn into the subdivision might not necessarily be as it looks, that you would have to make a curve... with Horn interjecting it may be in the final design a part of this will be cut back to give this; the final design will tell where the movements are and are not.

Mayor Weatherly called for a motion.
Action: Motion by Commissioner Schulze to deny the site plan # 05CU17 based on traffic concerns with Commissioner Gossage making a second on the motion. Motion carried unanimously to deny.

End of Public hearing # 4

June Cowles, Planner
Public Hearing # 5 – Rezoning # 05CU21 Salem Creek Townhomes PUD
Public hearing and possible motion regarding Rezoning #05CU21 Salem Creek, Crown Builders & Developers, Inc., petitioner, seeking a rezoning amendment from Planned Unit Development to Planned Unit Development District classification containing 7.93 acres located north of Salem Street between Sugarland Drive and Lynch Street.

All persons speaking during this hearing were administered an oath by the Town Clerk.

June Cowles, Planner, gave background information and a project description for a PUD, with applicant requesting a rezone amendment that includes additional uses and a reduction of a buffer. Salem Creek PUD Plan rezone and site plan was approved March 2005, and applicant had discovered during construction review phase, that the owner had dedicated 15 feet of right of way along South Salem Street to Town of Apex in 2001 for a town waterline. Request to reduce the buffer is included in the staff report which is attached and incorporated as a part of the minutes. Plan includes a 30 foot buffer along South Salem Street; applicant is requesting the buffer along South Salem Street be reduced to 15 foot wide landscape Type A. Buffer. Commissioner Jensen clarified the action previously taken. Applicant also requests additional uses for Phase 2; approved PUD Plan was for townhomes and daycare facility; they have concerns for the daycare facility for Phase 2 – you have to do parking and building with state requiring a certain amount of play area for the kids. Planning Board recommended approval 5 to 2 with amendments to revise the proposed PUD Plan for 63 units due to an error of 65 which was approved 63 units. They also want to include guest parking in the PUD Plan wanting consistency with the site plan. Further down the line, if the site plan develops, and another owner comes in, then those conditions would be in the PUD Plan. Planning Board recommended eliminating some uses because those are commercial and land uses, office and institutional, and high end medium density residential, removing grocery specialty, tailor shop, book store, and retail sales general being consistent with the office and institutional land use that restaurant would be at a percentage, and consistent with the UDO. News stand or gift shop would be a percentage of the building; personal service is a percentage and pharmacy is percentage and the same with barber and beauty shop. Applicant has agreed to all revisions. Planning Board approval was 5 to 2 with the two being concerned with off street parking and where it was, thinking they were bunched up and not evenly distributed. One wanted more mixed use and not all residential. According to the 2025 Land Use Plan, it's not required to be mixed use.

Commissioner Schulze asked as a part of the plan if elevations have to be submitted. Cowles responded they were submitted when site plan was approved. He saw condominiums are being added to the conditions; Cowles responded this would be in Phase 2 and would still have to go through site plan. Commissioner Jensen confirmed the number of townhomes in Phase 1 which is 59; approved at 63 for the PUD Plan, and that the site plan has 59.

Mayor Weatherly opened the public hearing at 9:00 p.m.

Alan Manase, BBM Associates, prepared a site plan for the approved PUD Plan for this property. They are asking to amend the conditions for this PUD, noting a parking issue that was resolved and now determines the right of way along frontage on Salem Street is shown incorrectly. He explained that 15 feet of right of way was dedicated to the Town in 2001 when the elevated storage tank was constructed and waterline run down Salem Street and dedicated free of charge by the client and now has come back to bite him; the plan approved prior to this did show a 30 foot buffer but based on a 60 feet right of way, so there is an additional 15 feet of right of way on their side to accommodate the waterline, also an overhead powerline. They ask to reduce the buffer from 30 feet to 15 feet and they will provide additional plantings that could not go over the overhead powerline; they will pull it back out of the powerline and enhance the plantings and will have the right of way issue resolved.

Manase continued in looking at the conditions for Phase 2 lot, that daycare was a short list and would like more options and proposed uses consistent with PUD zoning. Planning Board objected to a few thinking they didn't match up to the underlying land use plan so they agree to strike those uses Cowles had noted. He asked for the Board's consideration.

Commissioner Jones ask Manase to describe again that the 30 foot of buffer currently has an overhead line, with Manase responding the overhead line was there and the powerline comes outside of what is shown as right of way and now is within the 75 foot right of way, the 75 feet being 15 feet off center towards their side; 15 feet of 30 feet that was approved, they couldn't plant trees in it and ask to pull that back to 15 foot setback and enhance that with additional plantings. Commissioner Jones asked if that were an equivalent amount of plantings that would have been in the 30 feet. Manase stated the landscape architect feels they can plant the equivalent amount of plantings and have to maintain site triangles at the driveway at the entrance of course, other than that, they think the can.

Commissioner Jensen asked if the waterline goes under the street, with Manase responding the waterline is roughly at the ditchline of the road and will be widening and the new waterline will be under the new pavement; an 18 inch line was installed with the tower. He continued they were not the only ones that was confused, they had found the plat that dedicated the right of way, but then the plans for the waterline doesn't show the right of way correctly either; they show a 60 foot right of way and an additional construction easement.

Commissioner Jensen asked what happens to the backside of the buffer line, and which direction it moves, with Manase responding it moves from the highway and the same backline remains the same point. Commissioner Jensen stated he didn't like it at first, and still doesn't this round, but he can see where they ran into a problem; he verified there will be pavement over the waterline and widening, with Manase stating correct. Commissioner Jensen asked what type opaque buffer would be planted... southern magnolias. Manase couldn't recall, but believes Type A asking if he liked southern magnolias, with Commissioner Jensen humorously responding, "He was a southern magnolia guy".

Commissioner Jensen asked if the Planning Board went along with the list except for what was pulled out, with Manase responding yes. Commissioner Jensen found it interesting that printing and copying services was pulled out over tailor shops or a book store, not understanding that.

Commissioner Jensen noted originally it was a daycare, and now its condos and seems like PUD and not having percentages but probably should have in terms of planned unit development, asked what he planned on doing. Manase responded the site plan for Phase 1 is at CD stage and needed to clear this up to get construction drawings approved for the townhomes. Phase 2 lot would have these uses but would come through site plan and be before them again, opening it up to more of a mixed use within the same building. Commissioner Jensen added, or condominiums and townhomes are the problem. Manase stated it does. Commissioner Jensen with Commissioner Schulze agreeing, should strike townhomes and condos and leave the rest. Manase responded there is no requirement under the PUD to have mixed uses, it could all be the same and not the intent; obviously a daycare would still be great, however limits the value of the property to have only one use assigned to it. Commissioner Jensen was not concerned about that, only mixed use is not mixed use if you have all the same thing, but we allow it with Manase adding in the UDO.

Mayor Weatherly asked if any one wanted to speak in opposition; no one spoke in opposition.

Commissioner Jensen's concern was the condominiums and townhomes, with Commissioner Schulze agreeing and didn't feel he could approve it with condominiums and townhomes on the list. Commissioner Jones verified the list for Phase 2, with Commissioner Schulze responding right, initially it would be a daycare.

Mayor Weatherly closed the public hearing and referred the matter to the board.

Commissioner Jensen stated a tailor shop was not high intensity, and Commissioner Gossage added a bookstore didn't bother him, with Commissioner Schulze asking why this was. Commissioner Jones added retail sales general or specialty grocery didn't really bother him. Commissioner Gossage stated when looked at initially, and it was going to be daycare, it was fine but to come back and say more townhomes. Manase responded if it pleases the board, they would remove condominiums and townhomes from the list as well. All the board was pleased with this offer to remove condominiums and townhomes.

Commissioner Jensen stated tailor shop and book store didn't bother him, and he asked Cowles to explain the logic. Cowles explained the Planning Board was looking at the underlying 2025 Land Use of office and institutional along with medium and high density residential; they went to the UDO and looked at office and institutional and what was permitted and it doesn't permit a grocery specialty or tailor shop or bookstore; it makes it consistent with the UDO. Commissioner Gossage did want it to be consistent, with Commissioner Jensen could see pulling grocery and retail sales, but not tailor shop and bookstore; if it didn't bother the applicant, leave it. Commissioner Gossage added if the applicant wanted tailor shop and bookstore... with Commissioner Jensen and Commissioner Schulze responding it wouldn't bother them, with Commissioner Jones adding they were willing to give and take. Manase stated if they wanted to give back, they would take back.

Action: Motion by Commissioner Schulze to approve Rezoning Case #05CU21 amendment with the following changes in uses: exclusion of condominiums and townhomes, and now the addition of tailor shops and book stores with the rest of the list remaining as submitted. Commissioner Jones added, exclusion of those two items in Phase 2 and not the exclusion in the PUD, with Commissioner Schulze agreeing. Commissioner Gossage added, and that continues the exclusion of grocery specialty and retail sales, with Commissioner Schulze agreeing. Cowles added, and guest parking in the 63 units to make it consistent with the PUD Plan and recommended by the Planning Board. Commissioner Schulze was fine with this as well. Second to the motion by Commissioner Gossage. Motion carried unanimously as modified.

End of Public hearing # 4

June Cowles, Planner
Public Hearing # 6 – Hazard Mitigation Plan
Public hearing and possible motion regarding the Town of Apex Hazard Mitigation Plan Annual Report.

June Cowles, Planner stated the Hazard Mitigation requires an annual report which is attached to the minutes. The action plan for 2004 and 2005 – adoption of Land Use Plan provides adequate electrical utility service for trimming contracts. The town website public access information pertaining to evacuation routes, emergency contact numbers, and detailed weather reports, and items needed in kits and more information, that the public library maintains a copy of the Hazard Mitigation information for the public. All tasks are completed and in addition, Fire Department headed the hurricane preparedness event in July and included all departments and businesses participating. Fire Department plans another event in May 2006 and shown on the website. Hazard Mitigation members reconvened and if there are additions to the Plan, there is an update from Fire Chief Mark Haraway regarding the MIMS adopted by the Board of Commissioners and discussed having all town personnel to review a training video to educate emergency response process. Staff recommends Board approve the Hazard Mitigation Plan and report.

Mayor Weatherly opened the public hearing, and with no one addressing this item, closed the public hearing.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to continue approving the Town's Hazard Mitigation Plan. Motion carried unanimously.

End of Public hearing # 5

David Rowland, Director of Planning
Public Hearing # 7 – Annexation Petition # 381
Public hearing and possible motion regarding Annexation Petition #381 David S. Durham, Coley D. Beckwith Heirs, Jeffrey Earl Beckwith, Glenn A. Beckwith, Debra K. Litsey & Allison Glenn, Debra Anderson, and Barbara D. Beckwith, property owners/petitioners; petitioning to annex 191.89 acres into the Town's corporate limits; the Beckwith property is located on the west side of Green Level Church Road and extending to the south side of Green Level West Road.

David Rowland, Director of Planning presented Annexation Petition # 381 for consideration, orienting the board to the location of the property, noting this voluntary "satellite annexation". Current percentage of satellite annexation area is under the 10% rule. Town of Apex has notified Cary of this annexation petition due to the fact that it boarders Cary, and required under the utility Service and Annexation Agreement between the Town of Cary and Town of Apex, a 60 day time period must be given in relation to annexation to waive this requirement; Town of Cary has responded to the request for a waiver and will waive the 60 day notice requirement with regard to this annexation. Rowland continued staff had wanted the sitting board to approve this annexation if inclined to do so, since this board was a part of the Annexation Agreement. Mayor Weatherly added this property clearly lies on Apex's side, with Rowland responding yes, the line is Green Level West Road. Town Clerk noted the Letter of Waiver was received from the Town of Cary.

Mayor Weatherly opened the public hearing at 9:17 p.m.

Cara Lacey and represents the John R. McAdams Company on behalf of Toll Brothers asks the Board to consider approval of this annexation. They are in favor of the Beckwith Annexation of 191.89 acres.

With no one else speaking in opposition, the hearing was closed. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to adopt an ordinance approving Annexation # 381 to extend the corporate limits. Motion carried unanimously.

End of Public hearing # 7

David Rowland, Director of Planning
Public Hearing # 8 – Annexation Petition # 382
Public hearing and possible motion regarding Annexation Petition #382, William T. Wilson, Jr., property owner/petitioner; petitioning to annex .367 acres including public right of way into the Town's corporate limits; property is located on the east side of Tingen Road (SR 1153) and south of James Street.

David Rowland, Director of Planning oriented the board to the location of the property and being a voluntary annexation with the property owner needing water/sewer. Commissioner Jensen asked about the annexation which crosses a portion of Tingen Road, asking when development takes place, he has noticed the piece of land comes into play, that one has donated so much land to the Town ... not coming into play in an annexation, but asked how it's handled. Rowland responded lots of times legal descriptions go the center of the road and doesn't affect the annexation of the property in terms of getting water and sewer. Commissioner Jensen noted they are annexing a portion of Tingen Road, with Rowland responding its fine.

Mayor Weatherly opened the public hearing. With no one addressing this petition for annexation, he closed the hearing, and called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to adopt an ordinance approving Annexation # 382 for the .367 acres into the town's corporate limits. Motion carried unanimously.

End of public hearing # 8
End of public hearings

Mayor Weatherly called for a five minutes recess and reconvened the meeting to discuss Old Business items.

OLD BUSINESS

John Brown, Director of Parks Recreation and Cultural Resources

Old Business Item # 1 - Fund Raiser Cultural and Performing Arts Center

John Brown stated as a part of the approved $1,000,000 private fundraising effort for the expansion of the performing and Cultural Arts Center, the campaign manager has provided the attached list/menu of giving levels and naming possibilities. He asked the Board approve them prior to the donations being solicited. Mayor Weatherly understood this to be target dates, the half million, full naming rights, and main stage. He asked if we get an offer for less than $500... with Brown interjecting they are flexible. This gives the campaign manger something to start with as he goes to corporate and individuals. Commissioner Jones added there may be other items that are identified in the design. Brown responded there may be, with this being the know items that either are typical with this type facility or items they know for sure will be a part of the facility. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve as presented. Motion carried unanimously.

End of Old Business item # 1

Town Attorney Hank Fordham

Old Business Item # 2 – Board of Commissioners Name Change

Attorney Fordham present for adoption an Ordinance to Amend the Town Charter to change the name of the governing board of the Town of Apex from "Board of Commissioners" to "Town Council", and conforming all Town Ordinances. Minor change in effective date: January 1, 2006. Requirement for a published notice be made of change or adoption of this type ordinance and potential for a referendum petition to be submitted by any citizen of the Town of Apex within 30 days of the publication of the notice; prudent course is to not have it effective until the window passes. He had originally put it in as a 30 day window, however, should be 40 day window. Newly elected Commissioners would be sworn in as Commissioners and automatically everyone would be changed to Council on January 1, 2006. Mayor Weatherly as Commissioner Gossage if he had any comments since this was his item. Commissioner Gossage had no comments. Mayor Weatherly called for a motion for adoption.

Action: Motion by Commissioner Gossage to adopt the Ordinance effective January 1, 2006, with Commissioner Jones making the second. Motion carried unanimously.

End of Old Business item # 2

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.

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

No one spoke during public comment.

NEW BUSINESS

Dianne Khin, Senior Planner

New Business Item # 1 – Site Plan Hardees

Dianne Khin, Senior Planner presented the site plan for Hardees located at 1000 Beaver Creek Commons Drive, out parcel # 1 of Beaver Creek Commons Shopping Center a corner parcel. Staff report is attached and incorporated as a part of the minutes. Building will utilize approved building finishes and colors with Beaver Creek Commons Shopping Center. Plan meets buffer requirements; RCA provided for the site through the shopping center; floodplain/watershed measures were also provided through the shopping center; there will be 41 regular parking spaces and 2 handicapped spaces which meet the UDO requirements. Propose water, sewer and electric service will be provided through the Town. Street access is proposed as right-in and right-out and shared with Wachovia Bank. Given complexity of the intersection as it exists where the access point is proposed, Town Transportation Engineer Russell Dalton has requested a condition of approval as follows:

1. Final CO is conditioned on the improvements for the right-in/right-out being complete. Intersection design is to be reviewed/approved by Town Engineering staff prior to implementation. This condition must be reflected in a note on the construction plans.
2. All building mounted lighting must be full shielded, true cut-off type fixtures (downward lighting only).
3. Decorative gooseneck lamps must be limited to 9 lamps (current proposed 15).

Plan is consistent with UDO and 2025 Land Use Plan and Thoroughfare Plan. Planning Board recommends approval with the same 3 conditions.

Commissioner Schulze asked about the coble stone he had noted in a parking lot; Khin stated the drawing shows the stacking area for the drive through and is their construction drive – shows gravel and temporary.

Commissioner Jensen stated the drawings show a left out, with Khin responding it does and reason they are recommending the condition to redesign the entrance for right-in/right-out only which can be done at construction plan stage; as of now Hardees has agreed only to the two lighting conditions and not to the right-in/right-out. The right-in/right-out is the access to Hardees and Wachovia Bank. One can now come straight across from Zeno Road next to the Lowes, stop and go straight across and too dangerous an intersection for folks to make this movement. Traffic movement was discussed; first four out parcels will be connected and can get from one to another and turn left out of Chili's and Chick-fi-Lay restaurant. Commissioner Jones asked if Wachovia knew this. Khin responded the original plan had an island and doesn't prevent folks from turning left; it's a design people can turn left. Commissioner Jones stated the Wachovia site plan was approved with folks able to turn right, left or go straight when you leave Wachovia, and now we are saying you can only turn right.

Russell Dalton Town Transportation Engineer stated the original intent when they negotiated this intersection with NCDOT was that it's not a right-in/right-out but it also limits other movements; you are not suppose to be able to make a left turn out of that drive way, but many people do, and several of the staff have been out there during lunch hour and have seen some near misses from folks turning left out of there. It's not signed or stripped clearly and the existing island is small triangular concrete island. His main concern is not just site distance coming into the development rounding the corner but the fact that it's confusing for drivers; they don't know what it is and he didn't when he first saw it – the stripping on pavement isn't consistent with the original plan – they actually show it as if it were almost two lanes coming into this not quite a right-in/right-out, so they would like to clarify the intersection by establishing a right-in/right-out island; the only movement this limits that you are able to make today is the straight across movement coming from Zeno Road into the out parcels and currently not suppose to make a left turn out and currently not suppose to make a left turn off Beaver Creek Commons Drive to enter into this location but the way it was designed actually allows movements by default and again confusing and site distance is poor at this location.

Reason for straight across movement with one movement being limited with a right-in/right-out effectively and clarifying other movements is because the way the out parcels were designed; the frontage road way for the out parcels is so close to Beaver Creek Commons Drive you have cross movements so when you have traffic coming straight across from Zeno Road, what they currently do is turn in at Wachovia but when Hardees is there, it introduces another cross movement at this intersection and people try to shoot across five lanes of traffic on Beaver Creek Commons Drive and inter the small area and they have no recovery area to slow down if crossing the roadway in front of the out parcels. This was their concern.

Patricia Bryant, Arkansas, represents Hardees, Inc., and with CEI Engineering, and stated Hardees has not agreed upon the right-in/right-out at this time, and why it was not a consent item. They do agree with the lighting, however the right-in/right-out is still up in the air and still doing research. At this point she didn't know if it would make any difference. It was approved by the Planning Board and they don't want to do drawings that will say they will do this right-in/right-out so if it is approved by the Board she didn't know where they would go from here because they are not agreeing to this at the moment. Commissioner Jensen asked if she wanted to continue to the January meeting or approve it tonight and come back later. Mayor Weatherly stated if approved at this meeting, she could come back with their objection for site plan modification. Manager Radford stated if approved by the board at this meeting, Hardees basically has no choice but to come back with the right-in/right-out, with Bryant agreeing. Mayor Weatherly stated if they disagree, they come back for a site plan modification but if agreed too are ahead of the game by 30 days, with Bryant agreeing. Mayor Weatherly asked the Attorney his opinion. Attorney Fordham stated if they approve it tonight, this one is done and they would have to start the process over for an amendment. Bryant stated they didn't want to start over. Attorney Fordham added the amendment would be to an existing site plan and would have to go through the process and Bryant didn't want that. Mayor Weatherly asked if she wanted to delay; Bryant asked if they delay, they do not have to go back through site plan and she would come back to the board only. Khin felt a delay would be helpful. Bryant stated there is an argument over who will be paying for the right-in/right-out modification and not in the original documents the landlord signed, therefore, Hardees and landlord are battling it out; this is the issue at this point, however, understands this is an important transportation... safety issue. Mayor Weatherly stated the plan is right-in/right-out and for her to decide who is paying for it and the board should go ahead and approve the plan and they work it out. Bryant stated that is what was said at the Planning Board meeting.

Mayor Weatherly called for a motion. Commissioner Jones was still unclear what the petitioner was asking they do; he asked if she were asking for them to take action on this tonight regardless of the right-in/right-out issue. If approved with this condition, he understood her to say Hardees is saying you don't want it this way; is the issue who pays or whether it is right-in/right-out. Bryant responded it's who pays; Khin stated as a condition of their site plan, it's her understanding the developer will require them to pay for it because it was a condition of their site plan. Commissioner Jones added if it's accurate and the turning moves are taking place there are inconsistent with what was approved previously ... with Dalton interjecting DDR's point is the configuration of this intersection was... although the stripping is incorrect, could be corrected, the island and configuration of the movements allowed there were allowed by NCDOT but they don't understand it was allowed with the out parcels essentially being a black box; they didn't know how the circulating roadways would connect to this drive and there lies the problem.

Mayor Weatherly stated he doubted they would approve the site plan without there being a right-in/right-out, so do it now or two weeks from now, would it make a difference in the liability for the ... with Bryant responding no. Mayor Weatherly added she could way, with Bryant responding there was no point in waiting, the time is now. Mayor Weatherly stated they were ready to do something and called for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the site plan for Hardees with the three conditions as stated. Motion carried unanimously.

End of New Business item # 1

Mayor Weatherly

New Business Item # 2 – Appointments to the Apex Appearance Commission

Mayor Weatherly recommended two appointments to the Apex Appearance Commission. Both have been working with the Commission for several meetings, with Melanie Brethauer being enthusiastic about their qualifications and enthusiasm. Membership on the Commission is down and there may be a request for an amendment to the ordinance to reduce the membership from 12 members to 9 members which is a more workable number. Mayor Weatherly recommends: Stephen Lawrence Keith and Celen Pasalar for appointment. He doesn't know either of the two, with recommendation coming from Brethauer, Chair of the Commission. Both are Apex residents. Mayor Weatherly called for a motion to approve.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the appointments as recommended. Motion carried.

End of New Business Item # 2

End of New Business

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session to receive legal advice from the Town Attorney regarding potential litigation for railroad crossings and legal advice regarding annexation issues. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to move into closed session for the items noted. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to move back into regular session at 10:22 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jones and second by Commissioner Gossage to adjourn at 10:23 p.m. Motion carried.

The above minutes were approved on the 6th day of December 2005

Georgia A. Evangelisor
Town Clerk

Mayor

TOWN OF APEX

Board of Commissioner's Organizational Meeting

Minutes of 12/06/05

Mayor Keith H. Weatherly Presided Over the Meeting

Mayor

Keith H. Weatherly

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

Web site:
www.apexnc.org

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order on Tuesday, December 6, 2005, at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street located on the Apex Town Campus in the Board Room of the Commissioners.

Mayor Weatherly called for Pastor Phil Qualls, Apex Baptist Church to give the Invocation.

Presentation of Colors and Pledge of Allegiance was led by *Apex Boy Scout Troop # 205 sponsored by Olive Chapel Baptist Church.*

Mayor Weatherly extended a welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly, on behalf of the Town of Apex Board of Commissioners and the Apex Appearance Commission, presented the Appearance Commission's Quarterly Community Appearance Awards to the following:

Commercial Award: ***Peak City Grill, 126 N. Salem Street***
"For Successful rehabilitation of a downtown business"
Accepting the Award was Steve Adams, owner of the Peak City Grill

Residential Award: ***Rick and Monica Derrenbacher, 212 Center Street***
"For all around attractive property in the heart of town"
Accepting the award was Rick Derrenbacher

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to approve the consent agenda as printed. Motion carried unanimously.

1. Minutes of November 15, 2005 Board of Commissioner's Meeting.
2. Minutes of November 15, 2005 Closed Session of the Board of Commissioners.
3. Annexation Petition # 384, Robert's Family Trust/Hubert E. Roberts Family Farm LLC.; property owners/petitioners, petitioning to annex 66.64 acres located on Roberts Road (satellite annexation); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for February 21, 2006.
4. Annexation Petition # 385, Robert J. & Judy A. Lanahan, property owners/petitioners, petitioning to annex 1.00 acre known as Lot 20 Salem Woods, Phase 1, and located on 1003 Pinedale Road (satellite annexation); 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for January 3, 2006.
5. Settlement Agreement and Consent Judgment regarding litigation relating to condemnation of sewer easement Haddon Hall Ltd. Partnership.
6. Railroad Cost Agreement related to the closure of East Thompson Street to vehicular traffic in conjunction with Town Campus site in 1999.
7. Wake County Tax Report for Town of Apex.

End of Consent Agenda

OLD BUSINESS

Dianne Khin, Senior Planner

Old Business Item # 1 – # 05CU17 - Trace Rezone & Subdivision Plan

(Request has been received from Michael F. King, Kennedy Coving, on behalf of the petitioner, asking the Board of Commissioners to reconsider their decision of November 15, 2005 regarding the Trace Rezone and Subdivision Plan). (The Board of Commissioners at their November 15, 2005 meeting voted unanimously to deny the request based on traffic concerns).

Request for reconsideration regarding Rezoning Case #05CU17 and Residential Master Subdivision Plan for The Trace. Tracy and Margaret Dotson, petitioners, seeking to rezone 5.6 acres located at 1621 Salem Church Road from Residential Agricultural to Medium Density Residential Conditional Use.

Mayor Weatherly called on Manager Radford to brief the Board regarding the request for reconsideration. Manager Radford stated the developer of the Trace was disappointed at the decision of the Board at their November 15 meeting and their decision to deny the project due to traffic related concerns.

The period of time to come back to the Board for reconsideration must be the next meeting following the meeting of the Board's decision for denial. The applicant is requesting the Board move to reconsider the zoning case to allow them to work with adjoining landowner and staff in an effort to resolve the Board's concern regarding access to the subject property. Manager Radford recommended that should the board be inclined to honor this request it could be reconsidered on December 20 or January 3. Attorney Fordham advised the Board if they chose to reconsider their decision, they should set a date for public hearing and readvertise same.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to honor the applicants request for reconsideration of the decision to deny.

Mike King, Kennedy Covington, stated he would prefer the second meeting in January.

Attorney Fordham advised the Board when setting the public hearing direction should be given for the public hearing to be before the Board of Commissioners rather than having applicant to go through the entire process again.

Mayor Weatherly stated as he recalled the issue was with access and was comfortable with the rest of the project. Commissioner Jones noted the Planning Board in their meeting of November 14 had recommended approval with the conditions noted by staff.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to schedule the public hearing for reconsideration at the January 17, 2006 meeting of the Board of Commissioners to allow the petitioner to present the proposed plan and without the petitioner having to go through the entire process again. Motion carried unanimously.

End of Old Business

* * * * * * * * * * * *

Mayor Weatherly called for a recess at 7:15 p.m. in the Board of Commissioner's meeting agenda schedule to allow for the Ceremonial Proceedings of the Board of Commissioners and to allow for Ceremonial Photographs and taken by Town Staff.

TOWN OF APEX BOARD OF COMMISSIONERS

CEREMONIAL PROCEEDINGS

December 6, 2005 meeting of the Town of Apex Board of Commissioners

MAYOR KEITH H. WEATHERLY PRESIDING

RECOGNITION OF SPECIAL GUESTS

Former Commissioners Pete Lane and Don Grimes

CEREMONIAL OATH ADMINISTERED TO COMMISSIONERS

Family members joined the Elected Officials during the swearing in Ceremony and participated by holding their Bible

Commissioner Michael L. "Mike" Jones

Oath Administered by Celia Jones, Notary Public with Hannah Jones, granddaughter of Commissioner Jones holding the Bible.
Signing of Oath with Town Clerk Georgia A. Evangelist, MMC
Commissioner Jones took his seat as Commissioner for a four year term.

Commissioner Eugene J. "Gene" Schulze

Oath Administered by Georgia A. Evangelist, MMC with Karen Schulze, wife of Commissioner Schulze holding the Bible and with his three daughters participating.
Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC
Commissioner Schulze took his seat as Commissioner for a four year term.

Commissioner Elect William M. "Bill" Sutton

Oath Administered by Georgia A. Evangelist, MMC with Pat Sutton, wife of Commissioner Elect Sutton holding the Bible
Signing of Oath with Town Clerk, Georgia A. Evangelist, MMC
Commissioner Sutton took his seat as Commissioner for a four year term.

SELECTION OF MAYOR PRO TEMPORE

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to nominate Commissioner Mike Jones to serve as Mayor Pro tempore. Motion carried.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to close nominations and gave approval to the selection of Commissioner Jones to serve as Mayor Pro tempore. Motion carried.

APPOINTMENTS OF STANDING COMMITTEES AND LIAISONS

Mayor Weatherly made the appointments to the Committee and Liaison List per the attached:

END OF THE ORGANIZATIONAL MEETING

TOWN OF APEX BOARD OF COMMISSIONERS
APPOINTMENTS TO COMMITTEES AND LIAISONS

December 6, 2005 meeting of the Town of Apex Board of Commissioners

COMMITTEES:

FINANCE: Chair Commissioner Jones, Member Commissioner Sutton

PLANNING: Chair, Commissioner Schulze, Member Commissioner Jones

PERSONNEL: Chair, Commissioner Gossage, Member Commissioner Jensen

LIAISONS:

APEX CHAMBER OF COMMERCE: Commissioner Jones

APEX FIRE ADVISORY BOARD: Commissioner Schulze

APEX PARKS, RECREATION, AND CULTURAL RESOURCES
ADVISORY COMMISSION: Commissioner Jones

TRIANGLE J COUNCIL OF GOVERNMENTS: Commissioner Gossage

TRANSPORTATION ADVISORY COMMISSION
MEMBER Mayor Weatherly and ALTERNATE Commissioner Jones

REGULAR MEETING AGENDA

Mayor Weatherly called the Board of Commissioner's meeting back into session, with the newly elected Board having been seated, and presented the regular meeting agenda with no amendments being set as follows.

PUBLIC HEARINGS

There were no scheduled public hearings.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
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 # 1 – CSX Transportation Wire Line Crossing
(Town Attorney Hank Fordham requested a short closed session prior to taking action on this item).

Action: **Motion by Commissioner Gossage and second by Commissioner Jensen to move into closed session at 7:30 p.m. for legal advice from the Town Attorney regarding CSX Transportation. Minutes of Closed Session are recorded separately.**
Action: **Motion by Commissioner Schulze and second by Commissioner Jones to move back into regular session at 7:37 p.m. Motion carried.**

Possible motion to approve the execution of CSX Transportation Wire Line Crossing Permit #CSX-049526 and #CSX-049858 and adopt a Resolution to allow the Town Manager to execute same.

With the Board having returned to regular session the following action was taken:

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the CSX Wire line Crossing Permits by adopting a Resolution authoring the Town Manager to execute both agreements. Motion carried unanimously.

End of New Business # 1

CLOSED SESSION

Refer to New Business Item # 1: CSX Transportation Wire Line Crossing.

ADJOURNMENT

With no further action to be taken by the Board of Commissioners there was a motion by Commissioner Gossage and second by Commissioner Jones to adjourn at 7:40 p.m. Motion carried.

Reception honoring the Mayor and Commissioners was held in the Atrium following the Board of Commissioners regular meeting with entertainment by "The Danchi Violinists" Elizabeth, Christine, and Andrea Danchi and **Catering by: "Sweet Memories Bakery", Donna Ford, Owner**

The above minutes were approved on the 20th day of December 2005.

Georgia A Evangelist
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of the meeting of Tuesday, December 20, 2005

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

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

Mayor Weatherly called the meeting of the Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus, Board Room of the Commissioners (2nd. Floor) with Commissioners Jensen, Gossage, Jones, Schulze and Sutton present. Mayor Weatherly led the Invocation and the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Presentation # 01

Charles Zidar, Vice Chair of Wake County Historic Preservation Commission and Kevin Allen, Capital Area Preservation presented preservation awards / landmark designation plaques to historic properties in the Apex area:

1) Apex Union Depot 1914 - one of six in Wake County, center of the 20th century commercial boom – preserved in the Town's seal and committed to keeping it so.
2) Apex Town Hall 1912 -housed town offices, small jail, theater and meat market, future Performing and Cultural Arts Center.
3) Thompson-Utley Fletcher-Tunstall House 1872 -home to four of Apex most influential community figures, late 19 century house, Victorian detail and out buildings represent rare surviving core of an in-town farm.
4) Sellers Building 1908 - Michael and Sandra Troll, owners, represents 20 years of economic prosperity for the community, facade is accentuated with stone and granite lentils, 2nd story dentil string course and two restored store fronts and having been restored by the owners.
5) Maynard Pearson House 1872 -John Messler Apex Historic Society was present, eye house style of late 19 th. and 20th. century Wake County; home to two prominent area families – John Phineas Pearson, Member of N.C. State Legislature; completely rehabilitated and headquarters of the Apex Historic Society; ceremony was held and plaque presented to the Society.

Mayor Weatherly stated the historic downtown is considered a gem and heart and soul of the community and fortunate those before use had the forethought to keep it a railroad town; history is a very important part of the legacy of Apex.

Presentations continued

Presentation # 02

Gail Carter, Apex Festival Commission Chair person presented a $ 5,000 check to Angela Reincke, Citizens for Apex Parks (CAPS) related to the private fundraising efforts associated with the planned Performing and Cultural Arts Center. This is the first donation for the funds needed to expand the Arts Center, with Mayor Weatherly commenting the 1912 Town Hall has over a million dollars committed to renovation and refurbishing the building beyond the basic structure; others will be asked to participate in the fund raising project.

Presentation # 03

Randy Clayton, Chair of the Board of Directors of the Apex Chamber of Commerce presented their Economic Development Report which is attached.

End of presentations

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Attorney Fordham advised Item # 10: Acceptance of proposal and approval of Lease Agreement for trade in of two Xerox copiers and acceptance of two free printers, with authorization for Town Manager to execute same, asked the motion reflect an amendment to the contract to delete paragraph 24.C that relates to Tax Treatment of interest to be paid under the contract to be treated like bond interest. Lee Smiley Director of Finance had spoken with the Town's Bond Attorney and notes the complexity that adds to an otherwise simple contract is probably not worth the small savings that is obtained by having it treated as a government deductible interest situation. Price will be adjusted slightly and he further asked to give authorization for the Town Manager to allow execute the document with any reflection of change.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to approve the items on the consent agenda with the change recommended by the Town Attorney on Item #10 to delete paragraph 24.C and authorize the Town Manager to execute the document and to deal with the price variance issues. Motion carried unanimously.

1. Minutes of December 6, 2005 Board of Commissioners Meeting.
2. Minutes of December 6, 2005 Board of Commissioners Closed Session (separate cover).
3. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU16 Jerry Turner & Associates, petitioners, located on Laura Duncan Road.
4. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #05CU21, Crown Builders & Developers, petitioners, located on S. Salem Street between Lynch Street & Sugarland Drive.
5. Annual Certification of Firemen to the N.C. State Firemen's Association.
6. Adjust opening hours of Apex Community Park during the months of November through February.
7. Approve execution of CSX Transportation Wire Lines Crossing Agreement #CSX-049863 and adopt a resolution authorizing Town Manager to execute same (permit was not received for the meeting).
8. Encroachment Agreement with David W. King and Wendi S. King for real property, 2107 Frissell Ave.
9. Ordinance to regulate commercial trucks along Hughes Street.
10. Acceptance of proposal and approval of lease agreement for trade in of two Xerox copiers and acceptance of two free printers, with authorization for Town Manager to execute same.
11. Wake County Board of Commissioner's Tax Report approved in regular session December 5, 2005 for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set.
There were no amendments to the agenda and it was set by the Board as presented.

PUBLIC HEARINGS

June Cowles, Planner
Public Hearing # 1 – Apex Transportation Plan
(Recall: hearing was continued from October 18 meeting; staff request item be withdrawn until after Transportation Plan Public Workshop January 5, 2006). Public hearing was not held the regarding proposed amendments to the Apex Transportation Thoroughfare and Collector Plan. Mayor Weatherly stated this item is ***withdrawn*** at this time.

End of public hearing # 1

Rosetta Radtke, Design Planner
Public Hearing # 2 – Rezoning # 05RZ19
Public hearing and possible motion regarding rezoning case #05RZ19 to rezone 191.88 acres between Green Level West Road and Green Level Church Road.

Rosetta Radtke oriented the Board to the location of the recent satellite annexation of 191.88 acres and showing an aerial view of the property; request is to rezone to low density and with no more than three units per acre is surrounded by Wake County zoned R40W Residential and proposed to be rezoned to low density as indicated by the 2025 Land Use Plan. She read the low density uses allowed by the UDO. Planning Board unanimously recommended approval as submitted. Staff report is attached and incorporated as a part of the minutes.

Mayor Weatherly opened the public hearing at 7:20 p.m.
Speaking in favor:
Cara Lacey, John R. McAdams Co., and representing Toll Brothers spoke in favor of the rezoning of the Beckwith property recently annexed and compatible with surrounding properties composed of single family residences and vacant land, and requesting low density shown on the 2025 Land Use Plan; request was based on extensive research of the area and the UDO; conclusions were based on compatibility and consistency with the Land Use Plan and changing conditions in the area mention by staff, the adoption of the 2025 Land Use Plan that includes the property in the low density designated area, the adoption of the municipal agreement line with Cary and the recent deletion of the Urban Growth Boundary; feels low density appropriately responds to 2025 Land Use Plan, deletion of the Urban Growth Boundary and to the surrounding area and the intent of the comprehensive plan to develop the area with well planned residential uses.

Speaking in opposition:
Phil Brown, 1000 White Oak Creek Drive, stated his property boarders this property; he is not a complete dismissal of the proposal, however has reservations - along the back property and the corridor of the rezoning is the fragile White Oak Creek which borders federal and private properties. He has not seen a Toll Brother's proposal as to how the property would address Big Oak Creek Branch as well as White Oak Creek. He asked the Board until a formal plan is in place, cautions them to consider this and walk the area and noting tremendous wild life – deer and amphibious. He knows Toll Brothers from previous dealings and believes them to be a reputable company and responsible to do the right thing, however, would like to see a preliminary plan prior to approval of the rezone.

Justin Chung, 1005 White Oak Creek Drive, stated his property borders the Beckwith Farm, and does not oppose the rezoning, but also has reservations. His 1.5 acre pond is 10 feet deep and borders close to this property and has concern for kid's safety. He asked if Toll Brothers were to build and kids were to live in the neighborhood, his concerns are coming onto his property and potentially could have accidents and he requested there be additional buffers, fences, or natural barriers between the properties to mediate any future problems.

Mayor Weatherly closed the hearing at 7:32 p.m.

Commissioner Gossage stated he had brought up with the petitioner and staff some months ago, in regards to properties in this part of Apex and near the American Tobacco Trail, and there being an Equestrian Trail as well as pedestrian trail. As far as preserving the historic nature of Apex is to have an equestrian overlay district in some of the most western portions of Apex. Staff advised him to bring this up at the rezoning portion to have this on record and lets the petitioner know that he's very interested in the equestrian overlay district and seeing development in this area provide access to the American Tobacco Trail. He stated it doesn't do us any good to have the American Tobacco Trail if we don't allow access to it; we create greenways for pedestrian access and need to work with developers to create horse trails and allow equestrian access; this is about 1500 to 2000 feet away from the trail.

Mayor Weatherly asked if this requested the petitioner to condition the rezoning, with Commissioner Gossage responding if that's what needs to be done. Mayor Weatherly asked the Attorney how this would be accomplished. Attorney Fordham advised this was a general use rezoning. Rowland added this is a general rezoning, and thinks the questions at this point could be addressed at subdivision plan stage. Commissioner Jones was in agreement in theory with Commissioner Gossage, however not sure they could condition something they don't have – there is no equestrian overlay district and asked how they could make it a condition, asking if it's defined. Rowland responded there is an Equestrian plan in the western part of Town however not in this particular area; but thinks the applicant is hearing what's being said and would be glad to take it into account when they do the subdivision plan. Commissioner Gossage stated this was fine. Commissioner Sutton clarified concerns of Mr. Brown and Mr. Chung could also be addressed during subdivision planning stage, with Rowland responding that's correct. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve the rezoning as submitted. Motion carried unanimously.

End of Public hearing #2

Dianne Khin, Senior Planner
Public Hearing # 3 – Unified Development Ordinance
Public hearing regarding possible amendments to various sections of the Unified Development Ordinance.

Dianne Khin, Senior Planner presented proposed amendments to various sections of the UDO being proposed for consistency with change of state laws and effective 01/01/06. Staff report is attached and incorporated as a part of the minutes as well as the ordinance. Commissioner Jensen asked what is meant by, ... substantially all of the trees, asking how this is determined, asking if it were percentage or guidelines regarding Sec. 2.3.15(C)(1). Khin responded these are the exact words from General Statute; in speaking with Rich Ducker and Dave Owens, School of Government, Ducker had informed it may be revised in a future session of General Assembly because it is vague. Commissioner Jensen asked if we could define our own. Attorney Fordham advised yes, they have flexibility within the statutory definition to define substantially all. Commissioner Jensen added it's a guide for both sides and whether willful or not, he's sure everyone would say it's not willful. Khin's response was that she thought he was correct.

Public hearing # 3 continued

Mayor Weatherly added this is legislative authority that they have asked for over a number of years, to regulate harvesting of timber and is a good thing. He assumes this is ready made for litigation if they take action and is what the courts are for; the legislature gives ambiguous laws for the courts to interpret, asking Attorney Fordham if this is what would happen if they sited someone under these statutes. Attorney Fordham advised if they supplied some specificity to the definition that could avoid that; the term willful has a fairly well defined meaning in general law. Khin continued with the sections for amendment. Planning Board and staff recommended approval of the amendments. Attorney Fordham advised the amendments conform to state statute.

Mayor Weatherly opened the public hearing at 7:47 p.m. and with no one addressing the proposed amendments, closed the public hearing.

Commissioner Jones commented on the request for the written statement from the board and how they would meet the letter of that; typically when they turn something down or reject a requested zoning or site plan, they verbally give reasons for that and they go into the minutes asking if that would meet the requirements or do they have to come back to a subsequent meeting with a written statement. Khin responded they were told they could do this with the minutes, however, it takes a long time to have the decision finalized and that the better thing to do is to have drafted approve/deny versions and they would add conditions if there were any to be added and that they be signed off; same with Planning Board. Staff will have something ready at the meeting so it could be done at that time and would not have to wait for a subsequent meeting to have this done.

Commissioner Sutton commented on Sec. 2.2.15 regarding action by the Town Board, proposes after receipt of the recommendation from the Planning Board at the Town Board's discretion, after 30 days of consideration; it means there is a delay now... with Khin responding what that means is that when the item is referred to the Planning Board and they did not decide to take action and 30 days passed on a rezoning and the Town Board felt that they did not want to wait anymore, the Town Board would not need to wait for the Planning Board recommendation and could vote on the rezoning – it's at the Town Board's discretion. Mayor Weatherly stated this would speed up the Board's process if they wanted to by 30 days and thinks currently they allow the Planning Board to boot it one time to allow for their consideration two meetings and in most cases would defer to the Planning Board that they were unable to reach a considered opinion in that time; this gives the Board the authority to take over jurisdiction of a matter from the Planning Board if they boot it one time, with Khin responding that's right. With no further questions from the Board the Mayor opened the floor for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the amendments. Motion carried unanimously.

End of Public Hearing # 3

David Rowland, Director of Planning

Public Hearing # 4 – Annexation Petition # 383

Public hearing and possible motion regarding Annexation Petition # 383 – Kelly &Tina Labunski, property owners/petitioner, petitioning to annex 4.64 acres into the Town's corporate limits; property is located on the western end and north of Lynch Street. David Rowland, Director of Planning presented the annexation petition orienting to the site and noting the location of the adjacent Jaycee Park property; applicant desires water and sewer and has plans to build a home. Mayor Weatherly opened the public hearing at 7:52 p.m. and with no one speaking closed the public hearing asking for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to approve Annexation petition # 383 by adopting an ordinance to extend the corporate limits of the town. Motion carried unanimously.

End of public hearings

OLD BUSINESS

Commissioner Jensen

Old Business Item # 01 - Site Location Wastewater Reclamation Facility

Possible motion to consider a Resolution regarding site selection for the Wastewater Reclamation Facility.

Mayor Weatherly stated before consideration of this item, Town Attorney Fordham requests the Board move into closed session for the purpose of taking advice from him on this matter. **Action:** Motion by Commissioner Schulze and second by Commissioner Gossage to move into closed session as permitted under law at 7:52 p.m. Motion carried unanimously. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to move back into regular session at 8:02 p.m. Motion carried unanimously. Minutes of Closed Session are recorded separately.

Mayor Weatherly recognized Commissioner Jensen who introduced a Resolution in consideration of the sister community of New Hill, that will be impacted by the present proposed location of the sewer facility. He noted one alternate site, and also noted by Commissioner Jones in the past that would serve just as well in all likelihood and would not impact the New Hill folks to nearly that degree. He noted it was reviewed and his concern is the site selection criteria that this plant was selected under specifically didn't consider the ultimate use of the property as a criteria; it seemed to overweight the number of property owners that would own a potential piece of property that the facility could be built on because once the property is purchased, those folks are out of the picture; the folks next door have to live with the situation.

Action: Motion by Commissioner Jensen to adopt this Resolution as presented with Commissioner Sutton making a second to the motion.

Discussion followed: Commissioner Jones stated there had been discussion of one alternative site over the past months and he offered a substitute Resolution with the same basic intent, however re-worded slightly; one correction had been made changing the word sufficient to official in the 7th paragraph. It was not his intent to discuss the criteria that was used; it could be debated, the criteria that had been used in the process for the past two years, and adding tonight could add nauseam if we wanted to and for a long time too, but, he doesn't think that... what he's trying to accomplish is official consideration of an alternate site to the one that has already been selected.

Action: Motion by Commissioner Jones to substitute this Resolution for the one presented, with a second to the motion made by Commissioner Gossage. Mayor Weatherly stated the debate recurs on the amendment by Commissioner Jones.

Action: Motion by Commissioner Sutton to amend the amendment of Commissioner Jones, the last part of the last sentence which says..... or to proceed with Site C, which would allow that to be done. He would like to take out the ...or to and add ...and not proceed with Site C. He offered this as an amendment to Commissioner Jones amendment. To him it's a crux of the matter, either they like Site C or don't like Site C. Mayor Weatherly asked if this was a motion, and Commissioner Sutton responded, it was a motion to amend the amendment. Mayor Weatherly stated this was a second degree amendment that would offer the addition of the wording in the last clause. Mayor Weatherly asked if there were a second. Commissioner Jensen asked Commissioner Sutton if this was all he wished to amend on this since he had one shot at it, with his concern, and asking Town Attorney Fordham if this is correct. Town Attorney Fordham asked Commissioner Jensen to restate his question. Commissioner Jensen asked if they voted to amend the amendment, if that is the end of line; the end amending the amended resolution, so there is not a chain of amendments to this item.

Attorney Fordham began to advise the Board, with Mayor Weatherly addressing the question, advising there couldn't be more than a second degree amendment pending at any time, so once the second degree amendment is disposed with then the floor would be open to amend the amendment, but there can't be more than an amendment to the amendment. Commissioner Jensen clarified the amendment to the amendment being what Commissioner Sutton had stated, with Mayor Weatherly responding exactly, and that until that amendment is disposed of, no further amendments would be in order. Commissioner Jensen questioned Commissioner Sutton, asking him if he had anything else to add to that. Commissioner Sutton responded that was the only part of Commissioner Jones' proposal that he objected to, which is the part he mentioned with the other being ok by him.

Mayor Weatherly asked if there were a second to Commissioner Sutton's amendment, with Commissioner Jensen making a second to the amendment. Mayor Weatherly added the discussion is now on the second degree amendment to Commissioner Jones' amendment.

Action: Commissioner Gossage called for the question. Mayor Weatherly stated there needed to be a majority vote to call the question, with Commissioner Gossage adding, they would now vote on the amendment to the amendment. Mayor Weatherly stated Commissioner Jensen had made a second and were now on the discussion of the second degree amendment, and the question would be called if another member of the Board also joined with him to call the question, and the majority that would like to cut off debate. Commissioner Gossage stated he calls for the previous question. Commissioner Sutton asked if Commissioner Jones stated he would comment on Commissioner Suttons' amendment to the amendment.

Mayor Weatherly responded they were still in discussion until the majority ...with Commissioner Jensen interjecting, that he takes back his second on Commissioner Suttons so the call does not count. Mayor Weatherly then stated, the motion fails for a lack of a second, and the debate recurs on Commissioner Jones amendment. Commissioner Jones stated basically that his resolution asks the partners to declare its conclusion on whether or not the alternative site meets criteria which justify continued review or to proceed with Site C. He addressed Commissioner Sutton, stating the reason he did not say and not proceed is because they have already proceeded with Site C – "the horse is out of the barn" not that it couldn't be put back, but the process is already in place, with Commissioner Sutton interjecting, ...lets put it back. Commissioner Jones asked if he were saying and not to proceed, with Commissioner Sutton interjecting, "lets put the horse back". Commissioner Jones continued that's what he's asking them to do, to consider an alternate to see if it meets ... with Commissioner Sutton interjecting, that when he says or to proceed, you are allowing them to proceed, saying either/or is fine with him. Commissioner Jones responded that he didn't say that, and that if he read the first half of the Whereas he would see that that is not how he feels about it. Commissioner Sutton asked how he did feel about it. Commissioner Jones responded if he read all of the Whereas he would know that he thinks the site selection is an inappropriate site. Commissioner Sutton asked if he felt Site C was an inappropriate site. Commissioner Jensen added that's what he said at the public forum, with Commissioner Jones adding that's what he's reading right here, ...that's it's in an area currently recognized as the New Hill community near the intersection of two major roadways where municipal planning might prescribe commercial development, and at lease one alternate site exists with characteristics that differ from Site C, meaning it's not near the New Hill community and not near two major roadways.

Old Business continued

Commissioner Jensen stated the criteria this site was selected under did not consider whether it was at the intersection of two major roads or could be used to a better alternate use; as you well know you folks have been over to Cary and discussed this and the consultant took an evaluation of this next site that is down one mile and came up with a number that made it less desirable for the wastewater facility than Site C because it was based on criteria that in his opinion is highly flawed. It does not consider the ultimate use of the land and should not consider to the degree that it does the number of property owners, and if they don't have some sort of different criteria then they will go back to the same path and right down to Site C. One other thing, he asked, "who is driving the dog, is it the tail or the dog that's doing the driving?" The problem he has is the consultant comes up with the criteria, and they (the board) never voted on what criteria they are going to be talking about. They come up with the criteria and they do their own evaluation and say under this criteria, they came up with... with Mayor Weatherly asking, who is they and addressing Commissioner Jensen, with Commissioner Jensen responding the consultant ... with Mayor Weatherly responding ... that was not true at all, with Commissioner Jensen adding that he had never voted on the criteria. Mayor Weatherly stated they had empowered staff to be their representative at the technical management team; Bruce Radford he thinks was at every one of those meetings; Tim Donnelly Public Works Director represented Apex at every one of those meetings and never once did any member of this body say that was not sufficient representation – the technical aspects of this project being as it is and certainly unless someone wishes to say the incompetence of those staff members representing the board made for a flawed process, then they can entertain that suggestion. Commissioner Jensen stated he believed that the number of criteria and the type of criteria were insufficient; he's not saying staff is incompetent, he's saying the criteria was insufficient; he feels incompetent and thinks they are all incompetent in not reviewing the criteria themselves because they were the folks representing all of these folks and the folks in Apex and the Cary Town Council is representing their folks. Every email he had gotten from anybody in Apex regarding this, the people we all represent, is negative on this site selection and thinks that they (the board) were remiss; he's not picking on anyone, with Mayor Weatherly adding, they had empowered staff to represent..... with Commissioner Jensen interjecting, they should have watched this more closely and had that come back to take a look at criteria. Mayor Weatherly stated hind-sight was a wonderful thing.

Commissioner Jones stated, they may recall when this alternate site was unofficially scored; the resulting score was basically the same as Site C – a fraction and compared to the other sites it was pretty wide variance. Therefore, he didn't think it was the criteria that makes any difference in this process, and it was scored the very same score and he was asking the Partners make an official consideration of the site.

Commissioner Schulze stated, he agreed with this and doesn't think Site C should be taken off the table – that is his opinion. He thinks as it stands now, Site C from everything they have been told is the best site. If there are other sites out there, he's open to listening if they are better than Site C, but he's opposed they remove Site C.

Mayor Weatherly stated they should be honest here; what they are doing is an exercise in grandstanding because it has no substance. The legal status that Apex is in and the legal status of the site is that it has been selected by the Partnership – Apex is a part of that Partnership and until a majority vote of the Partnership, there will be no change in the site nor additional sites reviewed and he comes to them making a wager with anyone of them that there won't be any support on the Partnership, for no matter what the wording of this language is to suggest the criteria flawed or the other sites need to be reviewed; there will not be a single other member support any change in our stance until the State has had opportunity to speak, so we are dealing with an exercise in futility here that has no meaning and no substance. He suggests they move to the vote on Commissioner Jones amendment and will call the question.

Commissioner Sutton asked Attorney Fordham that his understanding is that the Partners each had an equal say contractually in site selection; it was not a majority of the Partners to say this or that, that it had to be a unanimous vote by the Partners, asking if that's what the contract called for. Attorney Fordham answered, that is correct. Commissioner Sutton, then stated, but we haven't voted on it yet, asking, have we? Attorney Fordham deferred to Mayor Weatherly for response to the question.

Mayor Weatherly responded they have formally sent a letter communicating our support for that site before the property was acquired through eminent domain. Commissioner Sutton asked, but we haven't voted on it; he continued, Commissioner Jones told him they had not voted on it. Mayor Weatherly responded, no this body has not voted on it. Mayor Weatherly stated the letter was communicated prior to that based on recommendation from staff. Commissioner Sutton stated he hoped they could vote on it, whether to approve the site or not approve the site; of course his vote would be not to approve Site C.

Mayor Weatherly stated the motion is for the amendment offered by Commissioner Jones, to amend as a substitute for the underlying resolution. Mayor Weatherly asked for the vote of the amendment. Commissioner Jensen stated he had withdrawn his second, with Mayor Weatherly adding, and therefore we have been discussing Commissioner Jones amendment, now the vote is on Commissioner Jones amendment. He asked all in favor to vote eye. Voting eye were Commissioner Gossage, Commissioner Jones and Commissioner Schulze. Mayor Weatherly asked for those being opposed to vote no. Commissioner Sutton and Commissioner Jensen voted no. Mayor Weatherly stated the amendment is adopted 3 to 2. The Resolution was amended by a substitution. He then stated the debate is on the amended resolution.

Commissioner Jensen asked if they were discussing the amended resolution, which is what Commissioner Jones made. Mayor Weatherly stated that is right, the underlying motion; pending motion is the adoption of the amended resolution. Commissioner Jensen asked if they could amend the amended resolution at this point. Attorney Fordham stated a motion to amend would be in order. Commissioner Jensen asked Commissioner Sutton if he wanted to make his motion one more time to amend the amended resolution. Commissioner Sutton asked if he meant the same one they had just voted down. Commissioner Jensen responded no; in order to amend this resolution to say what he had noted before. Commissioner Sutton asked if this were the amendment that was passed out here. Commissioner Jensen stated he wanted to say, and not select Site C, with Commissioner Sutton responding that's what he had asked. Commissioner Jensen asked if he would like to make that motion again. Commissioner Sutton responded he thought they had just voted on it. Mayor Weatherly responded no, it didn't have a second.

Action: Commissioner Sutton then made a motion to strike in the last sentence, the words... or to and add the words ... and not; this means the not proceed with Site C. Commissioner Jensen then made a second. Mayor Weatherly stated the motion was made and seconded and the discussion is on the amendment.

Commissioner Jones again stated Site C is currently – he doesn't like it, but is currently being reviewed by the State, so the process is proceeding. His basic intent is to get as he said before an official re-evaluation of alternate site. Mayor Weatherly stated the site has been acquired. Commissioner Sutton asked how they could re-evaluate then if it's already... with Commissioner Jensen saying been evaluated. Commissioner Sutton again asked how could they re-evaluate; you want them to re-evaluate, but he says they already evaluated Site C. Commissioner Jones responded he wanted them to do it officially as Western Wake Partnership; that hasn't happened previously. Commissioner Sutton stated he wanted officially the Western Wake Partnership to not proceed with Site C. Commissioner Jensen then stated and that's your motion. Mayor Weatherly stated that's the motion and a second, asking all in favor, the vote is on the amendment of Commissioner Sutton's amendment, asking all in favor signify by voting eye. Commissioner Jensen and Commissioner Sutton voted eye. Mayor Weatherly asked those opposed vote no, with Commissioner Jones, Commissioner Gossage and Commissioner Schulze voting no. Mayor Weatherly stated the amendment fails 3 to 2, and now the debate recurs on the underlying motion, Commissioner Jones. There was no debate so he called for the question on the underlying motion, asking all in favor of the resolution as amended signify by voting eye, with Commissioner Jones, Commissioner Gossage and Commissioner Schulze voting eye. Mayor Weatherly asked those opposed vote no, with Commissioner Sutton and Commissioner Jensen voting no. Mayor Weatherly stated the resolution was adopted 3 to 2.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to speak will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Jeff Kaiser, Charleston Village, supports the Resolution to officially oppose the Wake County School Reassignment Plan. He shared negative affects on the neighborhood; has two nodes and would like to see alternate recommendations. They have a proposal to have Salem Elementary remain as the base option with Turner Creek as the year round option.

Bill Lot, New Hill, addressed the wastewater site, concerned with views of the process, with someone being first and appreciates the resolution that was passed and looks forward to the next steps.

Female spoke negatively about the wastewater site at New Hill and its impact on their neighborhood and children; Apex will come that way, and asked if they wanted it there and who would want to move there.

Cal Noric, New Hill, suggested those opposed to Site C have the Attorney to come up with wording to make that clear and all could agree on and vote on again; noted majority against Site C.

David Bristol, New Hill, stated site selection process was unfair and near center of town; staff represented at all meetings – stated head stated New Hill was a zip code and not a community, noting it arrogant and dismissal of their community didn't make them feel represented. Debate gives them some representation and hopes they continue to do so in the future.

Tonya Forbes, New Hill, understood documents stated site selection required unanimous approval from all partners; if Apex Board didn't vote on this, if letter was sent without the Board having opportunity to vote on this, she doesn't understand how it equates unanimous approval by all Partners. Thinks the process was derailed; New Hill has not been represented; if alternative site is equivalent to Site C then she doesn't understand why they have to insist on keeping Site C on the table; if alternative site is better than Site C, it definitely doesn't make sense. She doesn't understand the unwillingness of this Board to take a leadership role – this is opportunity to do this. She wants to take further those that oppose that site and lead for them. She is a part of Apex and relies on Apex to do the right thing for them; continue the discussion.

Darrell Hughes, 1002 Lynnfield Court, opposes Site C with those he's heard from being opposed and having no choice; doesn't understand how Apex Board of Commissioners didn't get a chance to vote on this. He stated to Mayor Weatherly, to say this is futile and is not going to make a difference if they write a proposal – he feels that's not right for Town of Apex. Mayor Weatherly stated his comments were directed at the Resolution, not the process. He understood they should not go forward with challenge of the site selection. Mayor Weatherly responded absolutely not; he would highly recommend all concerns be addressed within the process; the process is the permitting, public hearings and other input with the State of North Carolina; that is the appropriate place to address concerns and the state will make the ultimate decision on whether this is an appropriate site or not and he would certainly encourage folks who have questions about the process, or the site to engage themselves in that way; that's been his position from the beginning; there should be no confusion about this. Hughes responded in going back to partnership and the attorney, it has to be a unanimous decision and still doesn't think it properly came before this board to approve.

John Brubaker, New Hill, is also a member of South Wake Planning District; seems site was selected as a result of Holly Springs leaving the Partners – as result the wastewater treatment site left Holly Springs' long range planning jurisdiction and entered Apex's. He wanted to make sure Apex wasn't selling away its future along with them.

Bob Kelly, New Hill, highlighted notes about the process: Cary is lead agency had communication plan and never followed it. He read email from Susan Moran – avoid publicity as long as possible; requested all documents from board and staff, receiving it from staff, gotten zero from any elected official. He read: Bill Coleman writes N&O that Cary is complying. Attorney Fordham interrupted him, if he were saying emails weren't provided, that it was inaccurate.

Public forum continued.

Kelly asked from the elected staff. Attorney Fordham responded they had provided emails on CD that had emails that touched on this. Kelly stated he has been through that and found zero from one commissioner to another commissioner, or to another elected official. Dialogue began between the Mayor and the Board with the Mayor saying he doesn't normally communicate with emails to commissioners and in his ten years had very few. Kelly stated he had gotten some from Cary that originated from Apex to them or them to Apex; it came from Cary staff, not from him. Mayor Weatherly asked if he were saying they are violating the law in that regard, with Kelly responding the elected officials of the Partner Towns have not complied with their request with Mayor Weatherly stating is a violation of law and highly resents the accusation and charges him to back it up, with Commissioner Schulze agreeing saying he had turned everything of his over and knows others have. Kelly responded he was sorry it didn't make it on the CD. Mayor Weatherly added he was saying communication with other members of the board and if you hadn't had any, obviously there wouldn't be any there. Commissioner Schulze added all his emails related to this issue to anyone was turned over. Kelly mentioned an email that said New Hill is a zip code and not a community – that shows a lot of respect; if you get communication from the media, send them to Susan Moran, if you get any communication with the citizens, send them to the website; this shows a lot of respect. David Cooke Wake County Manger referred to them as mob commentary and his goal is to help keep them on track with the board having to get involved; that's the only people that represent them. Susan Moran saying one incorrect complaint is New Hill will not be served, complying they will be served; not going to happen. Susan Moran, why did she say on TV you have to pump twice as much sewage to put on CP&L property as you do on Site C; she want answer him. Question is have we ever asked CP&L for their property; they tell them they have never been asked; Cary tells them they have been asked; doesn't make sense. He asked why they have to ask CP&L if they will take it; no one came and ask the owners of the property if they could have it; they took it away from them. Jennifer Robinson – historical issues were not considered when the site selection process was undertaken; was disappointed when she learned the preferred site impacted the community that it does. No body is willing to be first in turning this around. He agrees this vote is not one that complies with by and for the people. Seems they have uncovered a tremendous amount of work that consultants are doing is being given to Progress Energy so they have a leg up to go develop their vast holdings down there and that's land they have already taken away from them. They told the guys back in the summer if they put it on Progress Energy property you don't need 200 acres you only need 40 or 45 there; all would sit down and shut up and you would never hear from them again. No body is willing to do that and he doesn't know what would go any better with a nuclear plant than a sewer plant. Carl Dean – we need to develop a method to handle these utility projects without the public hearing requirement; this gives him a warm feeling. Was PGN property ever evaluated – Progress Energy property, yes it was. Was PGN contacted about their property; no. Bill Coleman says they were contacted – Stephanie Sandino says no they weren't. Phil Stout, Wake County, actually it is absolutely their preference to not be a part of the land acquisition; again Wake County is the only ones that represent them. He shared them to get a bit of a feel from where they are coming from; they have been totally left out when Wake County Manager comes down and refers to them as mob commentary – and then says it's his goal to make this happen without the Wake County Commissioners getting dragged into it. He hopes the Board understands where they are coming from. Commissioner Schulze commented that he agrees some of the emails are wrong in tone, but none of those emails came from anyone in Apex or their staff. He has no control of the actions of other staffs. Kelly understood, however, he thinks Mr. Bristol had some somebody has to go first. As he understands the Interlocal Agreement there was suppose to be unanimous consent from the four towns to support this site. Apex never voted on this and from reading the Apex Town Charter, addressing Mayor Weatherly, he doesn't think he can sign something that hasn't been acted on. Mayor Weatherly responded it was for this board to decide that, with Mr. Kelly responding he didn't know, he thinks it's a legal question. Mayor Weatherly added this board has adequately considered those actions in that regard.

Mayor Weatherly closed public comment at 8:47 p.m.

NEW BUSINESS

Keith Joyce, Mills Rouse and Company

New Business Item # 1 – Audit Report

Keith Joyce, former Mills, Rouse & Company, now Joyce & Company presented the June 30, 2005 Audit report, budget highlights and Management Letter (attached). Audit opinion "clean" means the financial statement present fairly in all material respects the financial position of the Town. Town received Certificate of Excellence in Financial Reporting for June 30, 2004 CAFR – 12th consecutive year. Areas for improvement were noted on the management letter. Board accepted the Audit report with minimum clarifications.

End of New Business # 1

Art Hubert, Chief Operations Officer of ElectriCities

New Business Item # 2 – Energy Adjustment Rider

Possible motion to increase the Energy Adjustment Rider by $0.0074 per kWh from $0.0036/kWh to $0.011/kWh effective 01/01/06.

Hubert provided background information on the action taken by the ElectriCities Board of Commissioners concerning an energy adjustment increase to the North Carolina Eastern Municipal Power Agency which Apex is a member. He noted it a wholesale matter the board has already taken action on and depending on retail is up to the board. ElectriCities Board of Directors took action to provide an overall average 10% increase to the wholesale rate through the energy adjustment charge. He explained factors that caused this EAR adjustment. They buy power from the plants through a long term contract with Progress Energy. Eastern Agency has no rate stabilization fund available. Working capital fund is limited; there's limited flexibility to stabilize or absorb this rate increase. He reviewed the budget from last year compared to this year; power is up 20%. He showed charts of increase and based on projections from 05 and 06 budget. Cost of coal has gone up as well as natural gas. They are $47 million higher in cost that were incurred in 05. Agency says for every $5 million they see in increased cost they increase revenue by l% and looking at 10% rate increase. Projections from PE will come down over the years; buying energy from PE is based on the system average price (blend of all their energy costs). New projections from Progress Energy are in the $25 to $27 and looking at over a 20% increase in costs they incur from purchasing power from PE. They are seeing same scenarios across the nation. PE rates are frozen through 2007 but can pass along fuel costs to the retail rate payers and have been doing that over the years. They reached a settlement with the NC Utilities Commission that passes along one-half of their percent increase resulting from increases in fuel with the other half being deferred into the future, and probably try to recover that next year. With out this regulatory leg they would have looked at an 11.4% increase last October, being passed on to retail customers. They expect PE filing in June 06 will fill double digit increase. Net increase $.074/kWh increase in the wholesale rate in the energy adjustment charge, recommended and approved December 14, 2005 effective January 1, 2006. Mitigation efforts are on-going; aggressively reviewing bills and enhancing contracts and had they not taken place in 2005 and prior years they would be looking at a 13% rate increase vs. 10%. Long term contract with PE; anytime they can reduce costs at the peak the cities also decrease in costs as well – load management is important. This not only is affecting Eastern Agency, heating costs are up 70%, heating oil in the northeast over 30%, electricity in the southeast up 15% - not only local and regional but global implications as well.

Commissioner Sutton questioned the two increases this year (15%), asking if he anticipates a wholesale rate increase next year. Hubert responded each time there's a wholesale rate increase, Raber says he thinks it's the last one they will see. If assumptions come through and plants run good, they do not anticipate any additional wholesale rate increases; but if they don't hold true, probably see another increase. ElectriCities Board reviews this monthly. Commissioner Jensen asked about exports of coal (China and India) and not seeing prices go down.

Mayor Weatherly stated the item is to entertain a motion to increase, but recognized Commissioner Jones.

Action: Commissioner Jones doesn't feel comfortable voting on this not knowing the consequence to the average rate payer and would like to see a comparison or calculation of what this does to the average rate payer in the customer classes and let the Finance Committee look at this. Second by Commissioner Sutton. Manager Radford asked the meeting be held as quickly as possible (meeting will be held January 3, 2006 at 4:00 p.m.). Motion carried unanimously. Committee will bring a recommendation to the board for consideration.

End of New Business # 2

Mayor Keith Weatherly
New Business Item # 3 – School Reassignment Plan
Mayor Weatherly presented a Resolution for consideration opposing the Wake County 2006 School Reassignment Plan. He noted it an annual event signifying poor planning and dissatisfaction with the process, hoping the board would adopt this resolution as a means of communicating this to the school system and if adopted copies be sent to each of the Wake County Board of Education and any other interested parties.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to adopt this resolution. Commissioner Jones stated schools and churches define communities and Apex has subdivision split with children going to different schools and doesn't give a sense of community that we are proud of in Apex. Commissioner Jensen knew they wanted to send this in the strongest word but detest, and entirely hostile – he doesn't have a huge knife to grind on this but at the same time want to tell them without making them become hostile towards us and vice-versa. Commissioner Jones agreed. Mayor Weatherly added we are talking fragmentation of attendance within existing subdivisions. Commissioner Jensen realized this and was faced with this a few ago himself and understood the concern and glad the resolution is being put together on this and put forth this suggestion replacing the words misery thinking disruption, and entirely hostile thinking unacceptable and detest is concerned about. Mayor Weatherly stated he would accept any changes suggested as a consensus before entertaining a motion. Commissioner Schulze was ok with changing to oppose. Commissioner Jensen wanted to take off sharp edges but at same time, what's being done is, his subdivision was torn and he fully understands what folks are going through. He's satisfied with the resolution but taking sharp edges off. He thinks Mr. Margiotta is good on the school board, hates to send this, with Mayor Weatherly thinking maybe he would want it toughened up a bit knowing him. Mayor Weatherly suggested family disruption for misery with all agreeing; taking out detest adding and strongly opposed. Attorney Fordham asked if this were in the form of a motion to amend.

Action: Commissioner Schulze withdrew his motion. Commissioner Jensen asked entirely hostile in the last whereas, with Mayor Weatherly wanting to leave it, so Commissioner Jensen was fine with this. Mayor Weatherly stated he would submit the amended text for a motion.

Action: Motion by Commissioner Schulze to accept the text with the following changes in the fourth Whereas; change the term misery to family disruption and in the Be It Resolved clause, change the word detest to strongly oppose. Second by Commissioner Jensen. Motion carried unanimously. Mayor Weatherly ask this resolution be sent to all members of the Wake County Board of Education. For a point of information, Mayor Weatherly stated the Town of Apex will host as oppose to sponsor a public information meeting currently built as the Western Wake School Assignment Information meeting in the Council Chambers on January 5, 2006 at 7:00 p.m. He has commitments from members of the Wake County Board of Education, Ron Margiotta particularly, but anticipate attendance by one or more other members of the assignment by choice folks who have done years of research and have great expertise in being able to provide parents with some sensitive information on how to respond to hostile assignments of their children and maybe county commissioners and others will be invited and hope to have a good attendance for this and will provide a forum for parents to be able to receive acredible information about the assignment plan and based on years of work and study. Hopefully he wanted to communicate this, knowing email boxes are filling up with concerns about this. In a proactive way can do this and anyone that will be helpful in the process, let him know and they will be invited as well.

End of New Business # 3

Mayor Keith Weatherly

New Business Item # 4 – Appointments and Reappointments to Various Boards

Mayor Weatherly recommended the appointment of Mrs. Ann Lassiter for a three year term on the Apex Planning Board filling the vacated seat of Commissioner Sutton from the Apex Planning Board. Term will expire December 2008. Mayor Weatherly noted she recently ran in the past election and actively seeks this appointment and would make a good representative on the Planning Board, with Commissioner Jones agreeing.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the appointment. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There are no Work Session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session at 9:35 p.m. to discuss the following items:

1. Personnel,
2. Land acquisition for the purpose of meeting the requirements of a land and water conservation fund park conversion,
3. Potential land-swap with Joey Iannone for property located on Center Street in accordance with GS 160A-271.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to move into closed session. Motion carried. Minutes of Closed Session are recorded separately. Motion was made by Commissioner Schulze and seconded by Commissioner Jensen to move back into regular session at 10:12 p.m. Motion carried.

End of Closed Session

ADJOURNMENT

With no further business to go before the Board of Commissioners, there was a motion by Commissioner Schulze and a second by Commissioner Gossage to adjourn at 10:13 p.m. Motion carried.

NOTE FOR THE RECORD: This will be the last meeting whereby the Board will be seated as The Town of Apex Board of Commissioners. Effective January 1, 2006 they will be seated as the Apex Town Council having adopted an Ordinance November 15, 2005.

The above minutes were approved on the 3rd day of January 2006.

Georgia A. Evangelist
Town Clerk

Keith A. Weatherly
Mayor