



APEX TOWN COUNCIL MEETING

TUESDAY, NOVEMBER 17, 2015

WILLIAM M. SUTTON, MAYOR
EUGENE J. SCHULZE, MAYOR PRO TEMPORE
WILLIAM S. JENSEN, SCOTT R. LASSITER, NICOLE L. DOZIER,
AND DENISE C. WILKIE, COUNCIL MEMBERS
BRUCE A. RADFORD, TOWN MANAGER
DREW HAVENS, ASSISTANT TOWN MANAGER
DONNA B. HOSCH, CMC, NCCMC, TOWN CLERK
LAURIE L. HOHE, TOWN ATTORNEY

The Regular Meeting of the Apex Town Council scheduled for Tuesday, November 17, 2015, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor William M. Sutton, Mayor Pro Tem Eugene J. Schulze, and Council Members William S. Jensen, Scott R. Lassiter, Nicole L. Dozier, and Denise C. Wilkie

Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager Drew Havens, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Sutton called the meeting to Order, the Invocation was given by Council Member Dozier, and Mayor Sutton led the Pledge of Allegiance.

PRESENTATIONS

Mayor Sutton

Presentation of Proclamation for World Pancreatic Cancer Day to Ryan Hillen in the Fire Department

Mayor Sutton read the Proclamation and presented it to Ryan Hillen of the Fire Department. Mr. Hillen spoke as to how this disease tragically affected his family and thanked everyone for their support of this cause.

CONSENT AGENDA

- Consent 01 Minutes of the August 18, 2015, September 1, 2015, and October 20, 2015 Regular Council Meetings and the Closed Session meetings of August 18, 2015 and September 1, 2015 (Closed Session Minutes recorded separately)
- Consent 02 Apex Tax Reports dated 07/02/2015 and 10/08/2015
- Consent 03 Statement of the Town Council and Ordinance for Rezoning Case #15CZ21, David York, Smith Moore Leatherwood, LLP/ Apex Independent Living LLC, petitioners for the property located at 10000 Cambridge Village Loop, Northwest quadrant of S. Hughes St and Apex Peakway

- Consent 04 Construction contract for the alternate bid and authorize Town Manager to execute same for Sidewalk on Apex Barbecue Road at Scotts Ridge Elementary
- Consent 05 Professional services agreement with VHB Engineering NC, P.C. to provide preliminary engineering services including but not limited to environmental surveys, environmental documentation, traffic capacity analysis, and traffic signal design for Operational Improvements and Sidewalk on Kelly Road, located at the intersection of Olive Chapel Road, TIP No. U-5118 AF, and authorize Town Manager to execute same
- Consent 06 Municipal agreement with NCDOT to secure 80% of the project right of way and construction cost in federal funds, requiring 20% matching local (Town of Apex) funds, proposing a three-lane section with bicycle lanes, sidewalk to the west side, and multi-use path to the east side, continued from inside Town of Cary limits across a portion of Apex Community Park, TIP Project No. U-5537 contingent upon Cary's approval of the attached interlocal agreement, and motion to approve an interlocal agreement with Town of Cary for reimbursement of a portion of local funds to Town of Apex, and authorize the Town Manager to execute same
- Consent 07 Statements of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the Unified Development Ordinance (UDO) Amendments of October 20, 2015
- Consent 08 MOVED TO NEW BUSINESS - Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex James H. and Ann C. Woodall and Standard Pacific of the Carolinas, LLC property (Woodall Subdivision) containing 28.228 acres located at 0 and 6515 Apex Barbecue Road, Annexation #551 into the Town's corporate limits
- Consent 09 MOVED TO NEW BUSINESS - Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Anna L. Rhodes property (Caliber Collision) containing 4.66 acres located at 1920 Laura Duncan Road, Annexation #555 into the Town's corporate limits
- Consent 10 MOVED TO NEW BUSINESS - Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Apex Pointe, LLC (Publix Pointe) property containing 35.95 acres located at the northeast quadrant of the intersection of Kelly Road and Olive Chapel Road, Annexation #557 into the Town's corporate limits
- Consent 11 Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Mary K. Bertoncino property containing 0.15 acres located at 2299 Toad Hollow Trail, Annexation #558 into the Town's corporate limits
- Consent 12 Street closure requests for "Christmas on Salem" and the "Apex Christmas Parade"
- Consent 13 Identity Theft Prevention Program Annual Risk Assessment 2015
- Consent 14 Recommendations from Personnel Committee to accept revision to the Drug and Alcohol Testing Policy and Position Reclassification request
- Consent 15 Renewal of online subscription to Westlaw and authorize the Town Attorney to execute the same

Council Member Lassiter requested moving Consents 08, 09, and 10 for later discussion. Mayor Sutton stated they would be discussed as New Business items. A resident asked to not pull the item relating to Hwy 55. Town Manager Radford stated this request was out of order but that Council could discuss this when not addressing the Consent Agenda.

MAYOR PRO TEM SCHUZLE MADE A MOTION TO ACCEPT THE CONSENT AGENDA WITH THE ABOVE REQUEST; COUNCIL MEMBER LASSITER SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, LASSITER, WILKIE, AND DOZIER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.
THE VOTE CARRIED BY A 4-1 VOTE.

REGULAR MEETING AGENDA

There were no requested modifications to the Regular Agenda.

PUBLIC FORUM

With the large number of citizens in attendance, the Mayor asked for individual comments to be kept to three minutes or for each group to appoint three or four persons to speak for them. Staff asked the Mayor if he wished time to be kept to three minutes/individual, to which the Mayor responded in the affirmative.

Glenda Topp, Glenda S. Topp & Associates, requested to continue the West Williams Street rezoning. They've met with neighbors several times and contacted the HOA president and property owners who are interested in meeting more to see if outstanding issues can be resolved. With the amendment, conditions are being added that are not in the existing in PUD that give property owners additional protection. Topp stated that some people would not like the additional time, but the applicant and owner want the continuance in order to meet for what they hope will be a win/win situation. They believe they can come up with a plan that's good for the neighborhood and a good use for Apex.

Jeff Roach, Peak Engineering, asked for Consent 09 (Caliber Collision) which was pulled by Council to be heard at the December 1st meeting to note be pulled since his client is looking to close at the end of November.

Residents Bruce Rifleman, Kent Muzillio, Mark Weiman (also Amherst HOA president), Maggie O'Keif, Diana Londone, Ed Pangburn, Frank Miller, Shelly Glemshire, Nancy Rose, Dan Tilley, Lisa Alfonzo, Jane Siger, and Nicole Riffleman all spoke against the West Williams Street rezoning with the following types of concerns:

- The public hearing should go forward as planned since it's been in the works for a while and has gone to the Planning Committee. They should be ready to have the request heard.
- What is the criteria for allowing a rezoning? There will be ten grocery stores within a two mile radius. This will be the first store of this type from Germany to go in the U.S. with a private label. The development will dump waste onto properties from the stream.
- The store is very large with no footprint in the U.S. We don't know anything about them.
- How is this being considered over citizen needs? This will be a threat to U.S. retailers. Who would buy a home abutting this?
- This will destroy the wetland, there will be a nasty smell, and a possibility of overflow. EPA has rules about wetlands and they will be contacted.
- The continuance should not be approved since all neighborhoods were represented and there's nothing else to talk about with the developer. The large store will negatively affect traffic.
- Kids play in the creek and the developer will cause a cesspool.
- Traffic study shows 40% of the traffic into the store would flow out onto 55.
- Americans have a right to be safe in their homes. It will be a benefit to the store if it operates 24 hours/day; but no benefit to the residents. There was a previous letter which stated it wanted to be harmonious to the neighborhood.
- There was concern about the issue of sound, hours of operation, fencing, and lights. Thought this was going to be an office development.
- The top of the building would be 50+ feet above the houses.

Frank Miller, Civil Engineer, stated the stormwater design will meet all federal, state, and local regulations. He requested a continuation on behalf of the applicant.

Turner Rose, working with the applicant, stated they are not a discount store. They have met all the regulations and standards. They are not asking for a change in use but a change in size.

Jason Wory, Traffic Engineer, stated a study was done on the adjacent intersections. He explained the changes that would be made to affect traffic impact on the area. He also asked for a continuance.

Mayor Sutton asked that all comments from Public Forum relating to Public Hearing 06 be counted as the Public Hearing and that this be considered that Hearing. Council was in agreement.

Topp stated there needed to be a formal public hearing and asked the Town Attorney to weight in. What did they need to do to move forward since this was outside of the public hearing format.

COUNCIL MEMBER JENSEN MADE A MOTION TO GO INTO CLOSED SESSION TO RECEIVE ADVICE FROM THE TOWN ATTORNEY; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

COUNCIL MEMBER JENSEN MADE A MOTION TO RETURN TO OPEN SESSION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

After conferring with the Town Attorney,

MAYOR SUTTON CALLED FOR A MOTION TO MOVE PUBLIC HEARING 06 TO PUBLIC HEARING 01.

Mayor Sutton asked that anyone else wishing to speak would wait for that Public Hearing.

COUNCIL MEMBER WILKIE MADE THE MOTION TO MOVE PUBLIC HEARING 06 TO PUBLIC HEARING 01;
MAYOR PRO TEM SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Brendie Vega, Principal Planner

The applicant requested a continuance of this public hearing to the January 19, 2016 Town Council meeting in order to continue working with the neighbors to address their concerns

Public Hearing and rezoning application #15CZ28 (West Williams Retail) to rezone 5.01± acres located on the west side of West Williams Street, south of Olive Chapel Road and north of Bryan Drive from Planned Unit Development (#02CU13) to Neighborhood Business-Conditional Zoning (B1-CZ)

Going forward as determined earlier by Council, staff oriented Council to the site. A neighborhood meeting was held; the use is consistent with the Land Use Plan. The applicant proposed zoning conditions and those were stated. The Planning Board and staff recommended approval. Responding to Council, staff explained the restriction on hours. There is an official PUD plan on the books.

Mayor Sutton declared the Public Hearing open.

Glenda Topp, Topp and Associates, on behalf of the applicant, stated this is in an approved PUD, and the proposed uses are not changing. The request is to take this out of the PUD and to rezone. They were not opposed to putting this back in the PUD and looking at it that way. They wished to add a condition about hours of operation with no time limit for five years. They were requesting hours from 6 a.m. to midnight, and the only way to change this was through another rezoning. They have added architectural

conditions. As far as the site being raised, they have raised the height of the building to two stories and there is underground parking. They are reducing the height of the building by 10 feet. Stormwater engineers have redesigned the site to accommodate this. They wished to continue the case and had no problem with waiting for the new Council. Ms. Topp believed they could reach a common ground and are open to suggestions. The owner was making an effort for a use good for the community and town. The site has not been in use since 2003. They will respect whatever decision Council makes.

Mike Herbert, resident, stated he supported the PUD when he moved into his house, but he would not have invested if he knew this proposed use would come about. He wanted to see the PUD to stand without change. He would want to see a library, park, or real estate office on the site – anything of a smaller scale. We don't need the concrete water runoff into the creek that runs behind the homes.

Mayor Sutton stated that Council agreed the previous comments did not need to be repeated.

Staff clarified Council questions relating to the buildings per the original PUD.

Mayor Sutton declared the Public Hearing closed. He explained if this was continued to January 19th, others would have a chance to speak then.

MAYOR SUTTON CALLED FOR A MOTION TO CONTINUE THE PUBLIC HEARING UNTIL THE JANUARY 19TH MEETING. MAYOR PRO TEM SCHULZE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

Council explained how past practice has been to give the applicant an opportunity to work with owners, and also to give those not present a chance to speak later. Council stated he understood why we would want to continue this, but he thought the original PUD was a better plan. It's fair to give the owners an opportunity to reconsider this, but he didn't see any different outcome.

Council stated to change the rules now would be unfair to the residents who bought homes based on the PUD. Council stated she saw the area where the high elevation would be and it didn't feel right to her.

COUNCIL MEMBERS SCHULZE, WILKIE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS DOZIER AND JENSEN VOTED IN THE NEGATIVE.
THE VOTE TO CONTINUE CARRIED BY A 3-2 VOTE.

Mayor Sutton called for a brief recess.

Public Hearing 02 : Brendie Vega, Principal Planner

Public Hearing and Rezone #15CZ13, Salem Pointe PUD Plan Amendment 12.81 acres located at 0, 1530, 1604, 1605 Salem Church Rd, 0 N Salem Street from PUD-CZ (Planned Unit Development-Conditional Zoning) & RA (Residential Agricultural) to Planned Unit Development Conditional Zoning (PUD-CZ)

Staff oriented Council to the site. A neighborhood meeting was held; the applicant is proposing the same uses. The applicant agreed to elevation conditions. The use conforms to Apex standards. The PUD plan was reviewed, and the Parks and Rec Commission recommended payment in lieu. The Planning Board and staff recommended approval. Responding to Council, staff stated this property has not been annexed.

Mayor Sutton declared the Public Hearing open.

Jeff Roach, Peak Engineering, representing the applicant, oriented Council to the site. They were simply asking to add two acres to the site with the same conditions as previously.

Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION. COUNCIL MEMBERS SCHULZE, WILKIE, LASSITER, AND DOZIER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBER JENSEN VOTED IN THE NEGATIVE.

The motion carried by a 4-1 vote.

Public Hearing 03 : Michael Clark, Senior Planner

The applicant requested this item be continued to the December 15, 2015 meeting.

Public hearing and possible motion regarding Rezoning Case #15CZ15 (Westhigh subdivision)-The applicant, Standard Pacific Homes is seeking to rezone from Residential Agricultural (RA) to Medium Density Residential Conditional Zoning (PUD-CZ) or the property located at 1523 Salem Church Road and 0 Salem Church Road containing 2.10± acres

Staff stated the applicant requested this be continued to the December 15th meeting since they are in talks with Cary. Jason Baron, on behalf of the applicant, stated a companion case is, in fact, in the works with Cary.

MAYOR SUTTON CALLED FOR A MOTION TO CONTINUE AS REQUESTED. COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 04 : Brendie Vega, Principal Planner

Public Hearing and rezoning case #15CZ22 (Beaver Creek Crossing PUD Amendment), +/- 28.56 acres located at 2501 Creekside Landing Drive. The applicant proposes an amendment to the PUD.

Staff oriented Council to the site. A neighborhood meeting was held; the use is consistent with the Land Use Plan. Staff outlined the proposed changes to the PUD by the applicant. The applicant agreed to additional staff conditions. The Planning Board and staff recommended approval with the amended conditions by the applicant. Council expressed its concern about this butting up against the neighboring subdivision.

Glenda Topp, Glenda S. Topp and Associates, on behalf of the applicant, oriented Council to the site and explained why they felt the amendment was warranted. She stated what they have added to the PUD, i.e., architectural features, to this walkable community.

Chris Irv, Senior VP of DVR, stated this was one of the first projects he developed 10 years ago. They have been working to get retail on the north side, but this has not yet happened. He explained possible reasons why. They believe this residential project will finish their vision for this site. They marketed to all sorts of people, and the interest was for 95% residential.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

Council stated he could not see increasing the density in this area. Council agreed even though this would probably help retail. Council talked about increased traffic and wanting to see this go to ten units/acre. Council stated she wished to see more of a balance between apartments and town homes; she talked about the high prices. Ms. Topp discussed this with the developer, and they agreed to keep the units to ten/acre.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE
THE REQUEST AT 10 UNITS/ACRE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
COUNCIL MEMBERS SCHULZE, WILKIE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS
JENSEN AND DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

Public Hearing 05 : Michael Clark, Senior Planner

Public Hearing and Rezoning Case #15CZ23 (McKenzie Meadows) - The applicant, Parkside Development Group, LLC/Jones & Cnossen Engineering is seeking to rezone from Rural Residential (RR) to Planned Unit Development Conditional Zoning (PUD-CZ) for the property located at 0 and 2600 Richardson Road, 7916 and 8000 Regan Road and 8216 Humie Olive Road containing 61.41± acres

Staff oriented Council to the site. A neighborhood meeting was held. Staff stated the conditions proposed by the applicant. The plan is agreeable with all Apex plans and standards. The Parks and Rec Commission proposed a fee in lieu. The Planning Board and staff recommended approval.

Stuart Jones, Jones and Crossen Engineering, representing the applicant, oriented Council to the site stating that they have proposed six architectural conditions. Mr. Jones clarified the homes having three steps and answered questions from Council about buffers.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

Council stated we need to remember we are now at 4,900 available housing units. How are we going to put the brakes on this?

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION. COUNCIL MEMBERS LASSITER, WILKIE, AND SCHULZE VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS DOZIER AND JENSEN VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

Public Hearing 06 : Michael Clark, Senior Planner

Public Hearing and Rezoning Case #15CZ27 - The applicant, A. Graham and Kimberly Shirley are seeking to rezone from Office & Institutional (O & I) to Mixed Office Retail Residential Conditional Zoning (MORR-CZ) for the property located at 206 S. Salem Street containing .38± acres

Staff oriented Council to the site. A neighborhood meeting was held.

Graham Shirley, owner, gave a brief history of this older home. The family is in the process of making repairs to the structure with hopes of moving into this as their home.

Lance Olive, resident, stated he liked the idea of this being utilized as a residential unit.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 07 : Amanda Bunce, Planner II

Public Hearing and 2030 Land Use Map amendment from Planned Commercial/Office Employment to Medium Density Residential and rezoning application #15CZ29 (1200 Kelly Road) to rezone 17.33± acres located on the west side of Kelly Road and south of US 64 Hwy from Planned Commercial-Conditional Use (PC-CU) to Medium Density Residential-Conditional Zoning (MD-CZ)

Staff oriented Council to the site, stating the use was not consistent with the Land Use Map. A neighborhood meeting was conducted. The applicant has proposed conditions regarding limitations of uses. The Planning Board recommended approval of both requests. Staff did not support the future change to the Land Use Map. Staff recommended denial of the amendment. Responding to Council, staff spoke to buffers.

Alan Maness, BBM Associates, on behalf of the owners, gave a brief presentation as to development on this property, especially as it related to commercial use and its traffic concerns. If all else fails, probably the only satisfactory use would be for something like a storage facility. Mr. Maness gave a list of those larger retailers who have rejected moving to this location. Responding to Council, Mr. Maness explained why the traffic burden would be great if a small office was on this site.

Mayor Sutton declared the Public Hearing open.

An HOA president representing the abutting properties, stated the majority of residents were in support of this request.

Gordon Paulsen, broker on the property, stated they tried for medical uses for the property. The single driveway was a huge problem. Everything they tried that wasn't residential was turned down. Council discussed this property not matching up to the standards in Abbington.

Sue David and Melanie Schuller stated they supported the residential use.

Mayor Sutton declared the Public Hearing closed.

Council talked about wanting a resemblance to Abbington. Mr. Maness addressed how the market would not support this.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO AMEND THE LAND USE PLAN CONSISTENT WITH THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE

THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

Council talked about the live/work concept and larger buffers between residential and non-residential.

THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 08 : Brendie Vega, Principal Planner

Public Hearing and rezoning case #15CZ30 (Mangum Property Commercial Rezoning), +/- 1.74 acres located at 2021, 2023 & 2005 Ten-Ten Road. The applicant proposes changing the properties from Planned Commercial Conditional Use to Planned Commercial Conditional Zoning (PC-CZ)

and

Public Hearing 09 : Brendie Vega, Principal Planner

Public Hearing and proposed 2030 Land Use Map Amendment and Rezoning Case #15CZ31 (Mangum Property Residential Rezoning) for +/-19.5 acres located at 2021, 2023 & 2005 Ten-Ten Road. The applicant proposes amending the 2030 Land Use Map from Commercial Services to High Density Residential, and changing the zoning district from Planned Commercial Conditional Use (PC-CU) to High Density Multi-Family Residential Conditional Zoning (HDMF-CZ).

Staff stated there were two rezonings to this property to include 15CZ31. Staff oriented Council to the property. A neighborhood meeting was held and none of the neighbors attended. The Planning Board recommended approval.

Jason Barron, Morningstar Law, on behalf of the applicant and owners, Sandra and Jewel Magnum, stated there were roughly 22 acres zoned for commercial use. He gave a brief background on the property, pointing out site restraints. He appreciated working with staff who recommended approval. Mr. Barron spoke about why this use is the “right use, right location”. He’d heard concerns from Abbington for Council to listen to the citizens. Now it’s time to listen to the Mangums.

Mr. Baron talked about how the Mangums had been carrying commercial taxes for 50 years. Sanya Mangum introduced Jewell Mangum who gave a history of why the property was rezoned commercial and how this has been unsuccessful. The need to sell the property to move to a quiet place to care for their family members who are ill.

Tommy Drake, broker, briefly stated his selling history. He’s tried many years to get commercial use for this property, but it’s not viable in today’s market. Northview Partners will develop a first class community here; the Mangums have a great relationship with them. Density would be as per Town code.

Mayor Sutton declared the Public Hearing open for both of the requests. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE REZONING FOR CZ30; COUNCIL MEMBER DOZIER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO AMEND THE LAND USE MAP; COUNCIL MEMBER LASSITER SECONDED THE MOTION
THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER WILKIE MADE THE MOTION TO APPROVE THE REZONING FOR CZ31; COUNCIL MEMBER LASSITER SECONDED THE MOTION
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 10 : Michael Clark, Senior Planner

Public Hearing and Rezoning Case #15CZ24 (Colby Crossing) – The applicant, Mike Whitehead, is seeking to rezone from Rural Residential (RR) to Medium Density Residential Conditional Zoning (MD-CZ) for the property located at the eastern and western terminations of Colby Chase Drive containing 7.58± acres

Staff oriented Council to the site. A neighborhood meeting was held. The applicant proposed limited uses along with an additional condition. The Planning Board and staff recommended approval with conditions.

Jeff Roach, Peak Engineering Design, representing the applicant, gave a brief history on the project.

Mayor Sutton declared the Public Hearing open.

Residents Michael Parks, John Bruchard (also co-president of the Marion Home Association), Simone Bullock, Hunter Aamirez, and George King talked about being in support of the project, wanting a larger buffer, being concerned about safety and traffic hazards of the area, a lot of people going into the area to go to Hope Church and two more subdivisions going in, wanting to delay the opening of Colby Chase as a through street until other traffic alternatives could be devised, and wanting traffic calming devices,

Mayor Sutton declared the Public Hearing closed.

Fire staff spoke about public safety in this area. This is not a direct route deal but at least they can get their trucks in there. Luckily, this is not a high call area. Police staff stated they are worried about one road access. There is concern about cut through traffic, street calming, etc. This property is partly in the town and partly in the County, but we have a good relationship with the county to cover the area. Council discussed emergency services getting in and out. Mr. Roach talked about no gravity sewer to this area.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE A MOTION TO APPROVE THE REQUEST AS PRESENTED; MAYOR PRO TEM SCHULZE SECONDED THE MOTION.

Council further discussed emergency services and speed. He would go with not opening Colby Chase or going with the plastic devices that emergency services can ride over. Council stated she would support the motion if we have an alternative to work on and asked should this be continued until the road situation is resolved. Staff said there would be a maintenance issue with anything put out there. No conditions have been offered regarding traffic calming.

COUNCIL MEMBER JENSEN MADE AN ALTERNATE MOTION TO APPROVE THE REZONING AS REQUESTED WITH A DENSITY OF TWO UNITS/ACRE; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 11

Brendie Vega, Principal Planner : Public Hearing and various amendments to the Unified Development Ordinance

Staff detailed the amendments.

Jeff Roach, Peak Engineering Design, stated this went through the Environmental Committee and a language change was made.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER DOZIER MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Public Hearing 12 : Dianne Khin, Planning Director

Public Hearing and Ordinance on the Question of Annexation – Apex Town Council's intent to annex Standard Pacific of the Carolinas property containing 2.00 acres located at 8028 Green Level Church Road, Annexation #556, into the Town's corporate limits

Staff oriented Council to the site.

Mayor Sutton declared the Public Hearing open. With no one wishing to speak, Mayor Sutton declared the Public Hearing closed.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE

THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

OLD BUSINESS

Old Business 01 : Marty Mitchell, Facilities Director

Alternate option for the proposed Senior Services Facility

Staff stated we have discussed for some time specifically where to put a center on campus. We now have two options. After giving it some thought, we believe the best place would be between here and the Tunstall House. Staff presented reasons why this location was chosen. There would need to be additional parking. A funding source has been identified for the construction. There will be an enclosed walkway.

MAYOR SUTTON CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO PLACE THE BUILDING AS SUGGESTED BY STAFF; COUNCIL MEMBER DOZIER SECONDED THE MOTION.

Council was concerned that this was being supported even though we don't have a funding source. Council stated there are ways to be creative as was done with the skate plaza. We owe it to people who are aging to have something special for them. Staff stated one of the goals would be for the building to be three stories.

THE MOTION CARRIED BY A 5-0 VOTE.

NEW BUSINESS

New Business 01 : Dianne Khin, Planning Director

Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex 3121, LLC, Robert and Vivian Lamb, Mallie and Judy Jenks, Ted Mills, ANS Trust Kathie Russell, Trustee properties (Sweetwater) containing 164.154 acres located south of US 64 Hwy and west of Abbington Subdivision at the end of Bryant Pond Lane and Timken Forest Drive, Annexation #559, into the Town's corporate limits

Staff stated the Council needed to make a decision as to when to set this public hearing. Council stated there has been vigorous discussion to clear this off the Agenda so as to go to the new Council. However, this Council has voted for this new development. Backing off this development now would open up the Town to a likely lawsuit.

COUNCIL MEMBER LASSITER MADE A MOTION TO SET THE PUBLIC HEARING FOR THE DECEMBER 1, 2015 MEETING AT 6:00 P.M., PRIOR TO THE CEREMONIAL MEETING. MAYOR PRO TEM SCHULZE SECONDED THE MOTION.

Council stated the Council which really has to deal with this is the one that has been duly elected. Council, after some discussion, asked the Town Attorney about the standard for annexations to which she gave a response. Recent changes have been made in the statues as to annexation procedures, but she did not believe they were applicable in this instance. Council asked if the requesting group could conceivably appeal to the legislature to require the town to provide water and sewer. The Town Attorney asked if Council wished to go into Closed Session to receive legal advice.

MAYOR PRO TEM SCHULZE MADE A MOTION TO GO INTO CLOSED SESSION; COUNCIL
MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

Council stated since the majority of Council did not want the Town Attorney to answer the question in public that he posed, he would speak as someone with a basic understanding of government. The ultimate authority with town business lies with the State Legislature which can require the town to annex a development whether the town council says so or not. This is where this is headed if this is voted down. They also have the authority to require the town, through a local act in the legislature, to provide water and sewer and not benefit from annexation and tax revenue.

Mayor Sutton restated a motion had been made to set this public hearing for December 1st at 6:00 p.m. Council stated since this was a controversial issue, it was important that people in Apex see this Council as one of stability. We are going to follow our own approved rules. To pull the rug out from under the developer now is a mistake – for this and future developers. Hundreds of dollars have been invested and the bottom line is we need to be fair. In this case, the deed has been done and he will support this on December 1st. Council stated we should have looked at any possible impact prior to now.

COUNCIL MEMBERS SCHULZE, WILKIE, AND LASSITER VOTED IN THE AFFIRMATIVE; COUNCIL
MEMBERS JENSEN AND DOZIER VOTED IN THE NEGATIVE.
THE MOTION CARRIED BY A 3-2 VOTE.

New Business 02 : Shelly Mayo, Planner

West Master Subdivision Plan including properties located at Jacks Drive, Richardson Road, and Olive Chapel Road. This project consists of approximately 70.6 acres and proposes 112 new single-family lots

Staff oriented Council to the site. A neighborhood meeting was held. All stormwater requirements are being met. The Parks and Rec Commission recommended a fee in lieu. The Plan is consistent with Town Plans and standards. Council voted to approve the subdivision plans. The Planning Board recommended approval of the request. Jason Barron, Morningstar Law, stated this was approved previously by Council and it meets all Plans and Standards.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE PLAN; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

New Business 03 : Amanda Bunce, Planner II

Jordan Manors Master Subdivision Plan - for the properties located west of New Hill Olive Chapel Road containing 121.1 acres and 240 lots

Staff oriented Council to the site. This is consistent with Apex Plans. The Planning Board and staff recommended approval. Bill Daniel, preparer of the Plan, stated Council asked for stormwater conditions to be raised to 25 years. This plan incorporates that. There is plenty space for a greenway and a multi-use trail with some of it being boardwalk.

MAYOR SUTTON CALLED FOR A MOTION. MAYOR PRO TEM SCHULZE MADE THE MOTION TO APPROVE THE REQUEST; COUNCIL MEMBER WILKIE SECONDED THE MOTION.
THE MOTION CARRIED BY A 5-0 VOTE.

ADDED New Business 04 – Consent items 08, 09, 10

. Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex James H. and Ann C. Woodall and Standard Pacific of the Carolinas, LLC property (Woodall Subdivision) containing 28.228 acres located at 0 and 6515 Apex Barbecue Road, Annexation #551 into the Town's corporate limits

. Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Anna L. Rhodes property (Caliber Collision) containing 4.66 acres located at 1920 Laura Duncan Road, Annexation #555 into the Town's corporate limits

. Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing on the Question of Annexation – Apex Town Council's intent to annex Apex Pointe, LLC (Publix Pointe) property containing 35.95 acres located at the northeast quadrant of the intersection of Kelly Road and Olive Chapel Road, Annexation #557 into the Town's corporate limits

Council stated we need to provide these the same service to have public hearings on December 1st at 6:00 p.m. Council disagreed since two are less controversial and he did not see the urgency to put them on the December 1st Agenda.

COUNCIL MEMBER LASSITER MADE THE MOTION TO MOVE THESE THREE ITEMS TO THE AGENDA OF DECEMBER 1ST AT 6:00 P.M.

Jeff Roach representing Caliber Collision stated his clients have scheduled a closing for November 30 and they are not being permitted to extend the contract to the 15th. This is the third developer that has done

this to her, thus the reason she is not willing to extend. Alan Maness stated Publix would also like to be on the Agenda for December 1st.

After more discussion on when to hear these items,

COUNCIL MEMBER WILKIE SECONDED THE MOTION BUT ONLY FOR CALIBER COLLISION TO BE HEARD ON THE 1ST. COUNCIL MEMBERS WILKIE, LASSITER, AND JENSEN VOTED IN THE AFFIRMATIVE; COUNCIL MEMBERS SCHULZE AND DOZIER VOTED IN THE NEGATIVE. THE MOTION CARRIED BY A 3-2 VOTE.

Council asked for reiteration of the Caliber Collision issue.

COUNCIL MEMBER JENSEN MADE THE MOTION TO KEEP WOODALL AND PUBLIX ON THE AGENDA FOR DECEMBER 15TH; COUNCIL MEMBER SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

CLOSED SESSION

Closed Session 01 : Closed Session to consult with the Town Attorney

MAYOR SUTTON CALLED FOR A MOTION TO GO INTO CLOSED SESSION. MAYOR PRO TEM SCHULZE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO RETURN TO OPEN SESSION. MAYOR PRO TEM SCHULZE MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

MAYOR SUTTON CALLED FOR A MOTION TO APPROVE THE RESOLUTION AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR RIGHT OF WAY AND TEMPORARY CONSTRUCTION EASEMENT TO INSTALL STREETS. COUNCIL MEMBER WILKIE MADE THE MOTION; MAYOR PRO TEM SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A 5-0 VOTE.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR SUTTON CALLED FOR A MOTION TO ADJOURN.

COUNCIL MEMBER JENSEN MADE THE MOTION; COUNCIL MEMBER LASSITER SECONDED THE MOTION.

THE MOTION CARRIED BY A 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

William M. Sutton
Mayor