



TOWN COUNCIL MEETING

TUESDAY, SEPTEMBER 17, 2013

Keith H. Weatherly, Mayor
Eugene J. Schulze, Mayor Pro Tempore
Terry L. Rowe, Scott R. Lassiter,
William S. Jensen, and Lance Olive, Council Members
Bruce A. Radford, Town Manager
J. Michael Wilson, Assistant Town Manager
Donna B. Hosch, CMC, NCCMC, Town Clerk
Henry C. Fordham, Jr., Town Attorney

The Regular Meeting of the Apex Town Council scheduled for Tuesday, September 17, 2013, at 7:00 p.m. was held in the Council Chamber of Apex Town Hall, 73 Hunter Street

In attendance were Mayor Keith H. Weatherly, Mayor Pro Tempore Eugene J. Schulze, and Council Members Terry L. Rowe, Scott R. Lassiter, William S. Jensen, and Lance Olive. Also in attendance were Town Manager Bruce A. Radford, Assistant Town Manager J. Michael Wilson, Town Clerk Donna B. Hosch, and Town Attorney Henry C. Fordham, Jr.

COMMENCEMENT

Mayor Weatherly called the meeting to order, Council Member Olive gave the Invocation, and Mayor Weatherly led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations to be made.

CONSENT AGENDA

Consent 01 Minutes of the August 29, 2013 Personnel Committee Meeting and the September 3, 2013 Regular Council Meeting

Consent 02 Apex Tax Report dated 8/12/2013

Consent 03 Encroachment and Maintenance Agreement with Donald P. Fisher and wife, Mary Jo Fisher and to authorize the Town Manager to execute same

Consent 04 Statement of the Apex Town Council and Ordinance for Rezoning Case #13CZ07, Stuart Jones, Jones & Crossen, Engineering, PLLC, petitioner for the property located at 0, 1005, 1013 and 1015 N. Salem Street

Consent 05 Statement of the Apex Town Council and Ordinance for Rezoning Case #13CZ12, Jason L. Barron, Morningstar Law Group, petitioner for the property located at 6609, 6613, 6633 and a portion of 6501 Old Jenks Road

Consent 06 Statement of the Apex Town Council and Ordinance for Rezoning Case #13CZ17, Standard Pacific Homes Carolina Division, petitioner for the property located at Castleberry Road and Green Level West Road

Consent 07 Resolution of Intent to close a portion of Third Street south of its intersection with West Street

Consent 08 Agreement with Wake County regarding buffer encroachment at Apex Nature Park

Consent 09 Apex High School Homecoming Parade and street closures

The Town Attorney stated that if the Regular Meeting to be held on November 5, 2013 was to be cancelled (New Business 05), then for Consent 07, closing a portion of Third Street, the date of the Public Hearing would need to be changed to November 19, 2013. Additionally, for Consent 08, Agreement with Wake County, the County returned an Agreement slightly different than what was in the Agenda Packet. The change was read, with the Attorney stating there were no objections from a legal standpoint. All aspects have been covered, and the change was an acceptable resolution for the situation.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE
THE CONSENT AGENDA WITH THE STATED CHANGES TO CONSENT 07 AND 08; MAYOR PRO
TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda, requesting that New Business 04, skate plaza, be moved to New Business 01 in order to accommodate the many participants in the audience.

Town Manager Radford requested that Public Hearing 06 be continued to October 1st [next Regular Council Meeting].

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO APPROVE THE REGULAR AGENDA WITH THE STATED MODIFICATIONS; COUNCIL MEMBER ROWE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

PUBLIC HEARINGS

Public Hearing 01 : Dianne Khin, Planning Director

Public Hearing and motion to adopt an Ordinance on the Question of Annexation – Apex Town Council’s intent to annex Equity Trust Company property containing 5.45± acres located off Mt. Zion Church Road, Annexation #495, into the Town’s corporate limits. This item is requested to be continued to the October 15, 2013 Town Council meeting.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO CONTINUE THE PUBLIC HEARING TO THE OCTOBER 15TH COUNCIL MEETING; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 02 : Lauren Simmons, Planner II

Public Hearing and motion regarding rezone #13CZ13, 133.7 #13CZ13, rezone from Planned Unit Development – Conditional Zoning (PUD-CZ), R-80W and Rural Residential (RR) to Planned Unit Development Conditional Zoning (PUD-CZ) district classification for the property located at Milano Avenue between Venezia Way and Mt. Zion Church Road containing 133.7± acres. This item will be re-noticed to the property owners within 300 feet of the subject property and re-advertised on the Town’s website for the October 15, 2013 Town Council meeting.

Mayor Weatherly stated that this item would be re-advertised and brought back before the Council.

Public Hearing 03 : June Cowles, Senior Planner

Public Hearing and motion regarding Rezone #13CZ18, 99 acres located at 7924 Green Level Church Road from Rural Residential Zoning to Planned Unit Development Conditional Zoning

Staff oriented Council to the site, stating it concurred with the recommendations regarding access roads. The Parks and Recreation Commission made a recommendation for a partnership for a regional park facility according to the Town’s Master Plan. If this is not to the Town’s satisfaction, then the developer shall be required to pay a fee in lieu with the caveat that a partnership can continue to be sought. The neighborhood meeting raised concerns about traffic congestion. The Planning Board unanimously recommended approval as did the staff.

Mayor Weatherly declared the Public Hearing open.

Glenda Toppe of Pulte Corporation further detailed the site, stating that all conditions by staff were accepted. They are agreeable to the Commission recommendation for a regional park. The average lot size will be about 1/6 of an acre, and the recreational facilities will be two informal gathering areas.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE REZONING; MAYOR PRO TEMPORE SCHULZE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 04 : June Cowles, Senior Planner

Public Hearing and motion regarding Rezone #13CZ21, 12.21 acres located at 2804 Holland Road from Rural Residential Zoning to Medium Density Conditional Zoning

Staff oriented Council to the site. No one attended the neighborhood meeting. The Planning Board unanimously recommended approval as did staff with conditions.

Mayor Weatherly declared the Public Hearing open.

Stuart Jones, Jones and Crossen Engineering on behalf of Joey Iannone, stated this parcel would to be added to the ones that were previously rezoned. The same conditions as before would apply.

Mayor Weatherly declared the Public Hearing closed.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE REZONING; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 05 : Brendie Vega, Principal Planner

Public Hearing regarding various amendments to the Unified Development Ordinance

Staff detailed the requested amendments. There was discussion about signs painted directly on walls vs. signs being affixed to walls. Also discussed were the buildings in which microbreweries would be permitted.

Council requested that numbers 4 (painting of signs directly on a wall) and 5 (three flag poles per entrance or road frontage) be considered separately. The flag issue has been around for a while.

There is a problem when there are a number of flags on a pole advertising a business. Council stated it was not ready to exclude people willing to paint their walls professionally. It wanted to see more evidence before this was done away with. If the word “professional” needed to be clarified, then maybe that should be done. Council questioned the cost difference, especially to a new business starting up.

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

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER JENSEN MADE THE MOTION TO APPROVE THE AMENDMENTS MINUS NUMBER 4; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Public Hearing 06 : Dianne Khin, Planning Director

Public Hearing and motion to adopt an Ordinance to relinquish extraterritorial jurisdiction (ETJ) on 21 parcels and a portion of 3 parcels in accordance with the 2013 annexation agreement between the Town of Apex and the Town of Holly Springs

Mayor Weatherly stated this Public Hearing would be continued to the October 1st Council meeting.

OLD BUSINESS

There were no Old Business items for consideration.

PUBLIC FORUM

Tray Cromwell, Kim DeStefano, Michael Litt, and Jeremy Johnson spoke on the benefits of a skate plaza: the teens having something to do would eliminate boredom and keep them out of trouble; it would support entertainment of future generations; it would support local business; the youth and parents would help keep the plaza clean; it would help teens to stay fit mentally and physically; skating brings out determination, patience, and ambition; it’s a family-oriented sport; and maybe other events could be held there, bringing in financial rewards. It is not fair that other sports have places to be played but not boarding, and teens want to have a place to enjoy with no issues (would take boards off of merchant properties). It was felt there would be no graffiti or vandalism.

Ms. DeStefano stated she vans kids to other skate parks. Some look at boarding as a destruction to a town, but she sees it as a life changing event. Mr. Johnson, pastor of a local skate church, stated they have 30 to 50 kids each Sunday, ranging from ages 10 to 36. The church has a temporary free skate park which tries to meet the needs of the local skate community. The kids are helpful and respectful, and they have had no negative incidents. The closest free park is beyond the reach of typical teens.

NEW BUSINESS

New Business 01 : Councilman Lassiter

Discussion on a skate plaza in Apex and possible motion to move forward with a design and to approve the expenditure for design fees

Council Member Lassiter stated this is an example of how local government should work, and it shows some of the great things done in Apex. This plaza comes from the Master Plan, with quantifiable data showing there is a need. The Parks and Recreation Commission is supportive, and funding would be from the Parks and Recreation Subdivision Trust Fund from developers who don't bring their own parkland. The funds are set aside for this purpose. With widespread support from the public and staff, Council Member Lassiter asked the support of Council to set this in motion. The cost would be roughly \$350,000.

Chris Hilt of CLH Design presented her proposal for the project, which would encompass design through construction. The cost would be about the same as a baseball field, but it will also depend upon what the design team comes up with. If this needs to be designed in phases, it can be.

Ms. Hilt presented the goals for skate plaza, showed several plaza designs, and detailed the full design team and team leaders. The Town Attorney has researched liability, reporting that there is a specific statute which limits the liability of a Town as long as guidelines are followed. This would not be difficult. Council stated it liked this idea, which gives a solution to both sides of the fence.

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER LASSITER MADE THE MOTION TO APPROVE THE PLAZA, APPROPRIATE FUNDS, AND ACCEPT A DESIGN FROM CLH UP TO A COST OF \$22,000; COUNCIL MEMBER JENSEN SECONDED THE MOTION. THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Staff briefly updated Council on the funding and progression of the Nature Park and golf course. The estimated opening date is the end of this year.

New Business 02 : Hank Fordham, Legal Department

Motion allowing Town Manager Bruce Radford and Fire Chief Mark Haraway to execute contract agreement for FireHouse software to replace existing Aegis fire management software currently in use

There is a liability limitation in this contract, but it doesn't cause a great amount of concern. Staff stated this software was discussed last year during the Retreat, and it is in the budget. This will comply with State and federal requirements, and will help in the implementation of gathering data for a business license and/or other programs.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE AGREEMENT AND SOFTWARE; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 03 : Lauren Simmons, Planner II

Motion approving West Street Subdivision - Master Subdivision Plan - for the property located at West and Third Street containing 1.73 acres and 7 lots

Staff oriented Council to the site. This is a Habitat for Humanity project; there is no home owners association. One person attended the neighborhood meeting; no changes were made. This project will utilize a community block grant through the Town. The Parks and Recreation Commission recommended payment in lieu of fee for each lot. The Planning Board unanimously recommended approval; staff recommended approval with the approval of the abandonment of Third Street.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE PLAN; COUNCIL MEMBER ROWE SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 04 : Mark Haraway, Fire Chief

Motion to enact an Ordinance Amending Section 5-9 of the Town of Apex Code of Ordinances to adopt Appendix D of the IFC (North Carolina State Building Code: Fire Prevention Code 2012)

Staff explained that in 2008, the ordinances were adopted except for this one appendix for which there was no explanation. The appendix deals with access of fire apparatus and other emergency vehicles. The appendix is currently used as a guide; this will allow enforcement. In relation to gates as discussed in an earlier meeting, this will allow the Town to define width of access, enforce that access, and control the gate.

MAYOR WEATHERLY CALLED FOR A MOTION. MAYOR PRO TEMPORE SCHULZE MADE THE MOTION TO APPROVE THE ORDINANCE; COUNCIL MEMBER JENSEN SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

New Business 05 : Mayor Weatherly

Motion to cancel the Regular Town Council Meeting of November 5, 2013 as this is Election Day

MAYOR WEATHERLY CALLED FOR A MOTION. COUNCIL MEMBER OLIVE MADE THE MOTION TO
CANCEL THE MEETING; COUNCIL MEMBER LASSITER SECONDED THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business,

MAYOR WEATHERLY CALLED FOR A MOTION TO ADJOURN.
MAYOR PRO TEMPORE SCHULZE MADE THE MOTION.
THE MOTION CARRIED BY A UNANIMOUS 5-0 VOTE.

Donna B. Hosch, CMC, NCCMC
Town Clerk

ATTEST:

Keith H. Weatherly
Mayor