

DRAFT MINUTES

**TOWN OF APEX
TOWN COUNCIL REGULAR MEETING
TUESDAY, JANUARY 10, 2023
6:00 P.M.**

The Apex Town Council met for a regular meeting on Tuesday, January 10, 2023 at 6:00 p.m. at the Apex Town Hall located at 73 Hunter Street in Apex North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town’s YouTube Channel. The recording of this meeting can be viewed here:

<https://www.youtube.com/watch?v=Pmg4r5cLJk&t=16019s>

[ATTENDANCE]

Elected Body

- Mayor Jacques K. Gilbert (presiding)
- Mayor Pro Tempore Audra Killingsworth
- Councilmember Brett Gantt
- Councilmember Ed Gray
- Councilmember Terry Mahaffey

Town Staff

- Town Manager Catherine Crosby
 - Town Attorney Laurie Hohe
 - Town Clerk Allen Coleman
 - Deputy Town Manager Shawn Purvis
 - Assistant Town Manager Marty Stone
- All other staff members will be identified appropriately below.

[COMMENCEMENT]

Mayor Gilbert called the meeting to order at 6:00 p.m. and welcomed the community and council back for a new year. He said faith and individual beliefs look differently throughout our community and the Town of Apex recognizes and celebrates those differences. He referred to the incident from the past week where an NFL player, Damar Hamlin, collapsed on the field and had to be resuscitated, and how people of all different religions turned to prayer in that time of fear and uncertainty.

Mayor Gilbert said individuals, regardless of their faith background, were always invited to deliver the invocation at Regular Town Council meetings. He said a prayer offering

DRAFT MINUTES

1 thanks, asking for wisdom in discussing the best way forward for Apex, and emphasizing
2 unity, love, hope, and peace.

3 **Mayor Gilbert** led the Town Council and members of the public in a recitation of the
4 Pledge of Allegiance.

5
6

7 **[CONSENT AGENDA]**

8

9 A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by
10 **Councilmember Gantt**, to approve the Consent Agenda, as amended, with Consent Item
11 No. 11 removed.

12

13 **VOTE: UNANIMOUS (4-0)**

14

15 **CN1 2023 Revised Council Meeting Calendar**

16 Council approved amendments to the Town Council meeting calendar for 2023.

17 **CN2 Appointments - Public Art Committee**

18 Council appointed Bradley Erickson and Susan Kirley to the Public Art Committee for a three-
19 year (3) term each expiring January 31, 2025.

20 **CN3 Fiscal Year 2023-2024 Annual Operating Budget Pre-Public Hearing - Set Public**
21 **Hearing**

22 Council set the Pre-Budget Public Hearing for Tuesday, January 24, 2023 at 6:00 p.m. to
23 receive citizen input regarding the formulation of the Fiscal Year 2023-2024 Annual
24 Operating Budget.

25 **CN4 Encroachment Agreement - 1010 Woodlands Creek Way Lot 6 (Sherika**
26 **Simpson) (REF: CONT-2023-006)**

27 Council approved an encroachment agreement between the Town and property owner
28 Sherika Simpson to install a fence that will encroach 96 linear feet, a pool that will encroach
29 13 square feet, a pool pump that will encroach 5 square feet, two HVAC units that will
30 encroach 12 square feet and a plastic shed that will encroach 40 square feet into the 20'
31 Town of Apex Public Storm Drainage Easement and authorized the Town Manager to execute
32 the agreement.

33 **CN5 Human Resources (HR) Policy Updates and Budget Ordinance Amendment No.**
34 **13 - 2022 Pay Study (REF: OTHER-2023-001, ORD-2023-001A)**

35 Council approved various amendments and revisions to the Town's Position Classification
36 Plan and corresponding pay policies and approved a budget amendment related to the
37 2022 pay study.

38 **CN6 Resolution - North Carolina Department of Transportation (NCDOT) Paved Trails**
39 **and Sidewalk Feasibility Study Grant Proposal (REF: RES-2023-001A)**

40 Council adopted a municipal resolution for the North Carolina Department of
41 Transportation's Paved Trails and Sidewalk Feasibility Study Grant Proposal for the Town of
42 Apex.

DRAFT MINUTES

1 **CN7 Rezoning Case No. 21CZ18 - Olive Chapel Professional Park (REF: ORD-2023-**
2 **005)**

3 Council approved the Statement of the Town Council and Ordinance for Rezoning Case No.
4 21CZ18 Olive Chapel Professional Park. Jones and Cnossen Engineering, PLLC, petitioner,
5 for the properties located at 0, 0, 0, 1480, 1460, and 1400 Chapel Ridge Road. A public
6 hearing was conducted on November 29, 2022.

7 **CN8 Rezoning Case No. 22CZ18 - Humie Olive Place (REF: ORD-2023-003A)**

8 Council approved the Statement of the Town Council and Ordinance for Rezoning Case No.
9 22CZ18 Humie Olive Place. Construction Masters, LLC, petitioner, for the properties located
10 at 2157 and 0 Blazing Trail; 7994, 7988, and 7982 Humie Olive Road. A public hearing was
11 conducted on November 29, 2022.

12 **CN9 Rezoning Case No. 22CZ23 - Yellowbridge PUD Amendment - Set Public**
13 **Hearing**

14 Council set a public hearing for the January 24, 2023 Town Council meeting regarding
15 Rezoning Case No. 22CZ23. The applicant, Tucker Ennis, Lennar Carolinas LLC, submitted a
16 petition to rezoning approximately 48.2331 acres from Planned Unit Development-
17 Conditional Zoning (PUD-CZ No. 22CZ06) to Planned Unit Development-Conditional Zoning
18 (PUD-CZ). The proposed rezoning is located at 2813 and 2817 US 64 Highway West.

19 **CN10 Rezoning Case No. 22CZ24 - Apex Gateway Ph 1 Amendment - Set Public**
20 **Hearing**

21 Council set a public hearing for the January 24, 2023 Town Council meeting regarding
22 Rezoning Case No. 22CZ24 Apex Gateway Phase 1. The applicant Maggie Houston, Beacon
23 Development, submitted a petition to rezoning approximately 132.11 acres from Light
24 Industrial-Conditional Zoning (LI-CZ No. 22CZ02) to Light Industrial-Conditional Zoning (LI-
25 CZ). The proposed rezoning is located at 104 NC Highway 751, NC Highway 751, 106 Off
26 NC Highway 751, Off NC Highway 751.

27 ~~**CN11 Rezoning Case No. 22CZ25 - 0 Prince Dead End Road - Set Public Hearing**~~

28 Council voted to remove this item from the Consent Agenda.

29 **CN12 Tax Report - November 2022 (REF: OTHER-2023-002)**

30 Council voted to approve the Apex Tax Report dated December 09, 2022.

31

32 **[REGULAR AGENDA]**

33

34 A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by
35 **Councilmember Gantt**, to approve the Regular Meeting Agenda, as presented.

36

37 **VOTE: UNANIMOUS (4-0)**

38

39 **[UNFINISHED BUSINESS]**

40

41 **UB1 Appointment of Temporary At-Large Town Councilmember - Unexpired Term**
42 **Ending December 6, 2023**

DRAFT MINUTES

1 Background:

2 On Tuesday, November 29, 2022, the Apex Town Council voted to accept Councilmember
3 Cheryl Stalling's resignation and initiate the selection process. Council unanimously voted to
4 adopt a policy and process timeline for appointing a candidate to fill the unexpired term.

5
6 The application period was open from 9:00 AM on Wednesday, November 30 through 5:00
7 PM on Friday, December 9, 2022. The Town Clerk's Office, in partnership with the Town's
8 Communications' Department, advertised the vacancy using a variety of platforms including
9 the Town's website, social media, and local news media. A total of 34 completed
10 applications were received for the temporary seat vacated by Former Councilmember Cheryl
11 Stallings, who was recently elected to serve on the Wake County Board of
12 Commissioners. Of the 34 applications, three did not meet the eligibility requirements set by
13 the Apex Town Council.

14

15 On Friday, December 16, 2022, the Town Clerk's Office released the nomination results
16 submitted by the Mayor and each individual Town Councilmember. Each member of the
17 Town Council, including the Mayor, were able to select up to seven (7) candidates to be
18 interviewed by the close of business day Friday, December 16, 2022. A total of seventeen
19 (17) candidates received nominations, however, only four (4) received a majority (three or
20 more) vote required to move forward in the process. The individuals who received three or
21 more nominating votes were (in alphabetical order): John Marshall Barnes III, Tayon Dancy,
22 Shagufta Hakeem, and Arno Zegerman.

23

24 On Friday, January 6, 2023, a Special Town Council meeting was held to conduct candidate
25 interviews and hold a public hearing to receive feedback on the potential candidates. Two
26 opportunities were provided for the public to provide comment: (A) Written Statements and
27 (B) In-Person as part of the public hearing. The full meeting, including candidate interviews,
28 the public hearing, and Council deliberations were open to the public and livestreamed on
29 the Town's YouTube Channel: <https://www.youtube.com/c/TownofApexGov>

30

31 The following nominations and votes were captured by ballot form and announced by the
32 Town Clerk:

33 **ROUND ONE:**

34 **Mayor Pro Tempore Killingsworth** for Arno Zegerman

35 **Councilmember Mahaffey** for Arno Zegerman

36 **Councilmember Gantt** for Tayon Dancy

37 **Councilmember Gray** for John Marshall Barnes III

38 **Nomination/Vote Results:** Failed (2-1-1) - lack of majority

39

40 **ROUND TWO:**

41 **Mayor Pro Tempore Killingsworth** for Arno Zegerman

DRAFT MINUTES

- 1 **Councilmember Mahaffey** for Arno Zegerman
- 2 **Councilmember Gantt** for Tayon Dancy
- 3 **Councilmember Gray** for Tayon Dancy

4 **Nomination/Vote Results:** Failed (2-2) Tie (per adopted process the Mayor not
5 eligible to vote)

6
7 **ROUND THREE:**

- 8 **Mayor Pro Tempore Killingsworth** for Arno Zegerman
- 9 **Councilmember Mahaffey** for Arno Zegerman
- 10 **Councilmember Gantt** for Tayon Dancy
- 11 **Councilmember Gray** for Tayon Dancy

12
13 **Nomination/Vote Results:** Failed (2-2) Tie (per adopted process the Mayor not
14 eligible to vote)

15
16 A **motion** was made by **Councilmember Mahaffey**, second by **Councilmember**
17 **Gantt**, to take a 15-minute recess at 6:16 p.m. and reconvened at 6:31 p.m.

18
19 **VOTE: UNANIMOUS (4-0)**

20
21 A **motion** was made by **Councilmember Gantt** to suspend the rules related to the
22 voting process for selecting a candidate to fill the unexpired vacancy and to vote using roll
23 call vote.

24
25 **Motion** failed due to lack of a second.

26
27 **Mayor Gilbert, Councilmember Mahaffey, and Councilmember Gray** all provided
28 comments regarding the process.

29
30 **ROUND FOUR:**

- 31 **Mayor Pro Tempore Killingsworth** for Arno Zegerman
- 32 **Councilmember Mahaffey** for Arno Zegerman
- 33 **Councilmember Gantt** for Tayon Dancy
- 34 **Councilmember Gray** for Tayon Dancy

35
36 **Nomination/Vote Results:** Failed - 2-2 Tie (per adopted process the Mayor not
37 eligible to vote)

38
39 **ROUND FIVE:**

- 40 **Mayor Pro Tempore Killingsworth** for Arno Zegerman
- 41 **Councilmember Mahaffey** for Arno Zegerman

1 **Councilmember Gantt** for Arno Zegerman

2 **Councilmember Gray** for Tayon Dancy

3

4 **Nomination/Vote Results:** Passed (3-1) – Arno Zegerman to fill Cheryl Stallings seat

5

6 **Mayor Gilbert** called for a recess for 10-minute at 6:45 p.m. and reconvened at 6:55

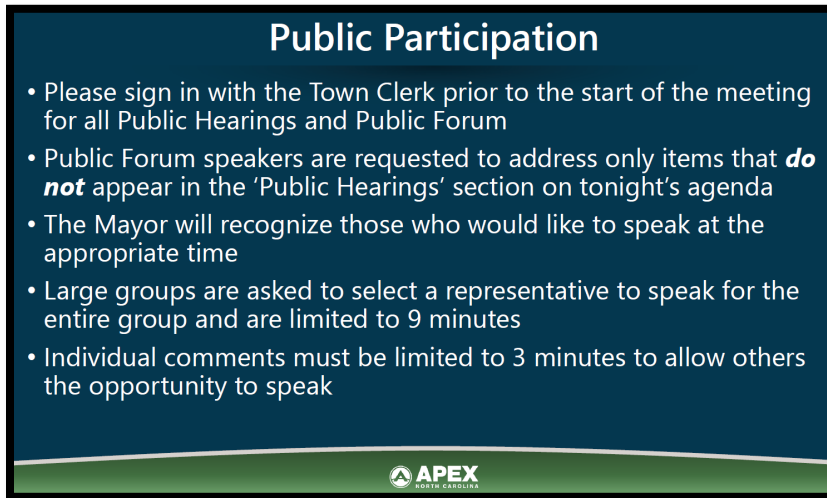
7 p.m.

8

9

10 **[PUBLIC FORUM]**

11



12

13

14 **Mayor Gilbert** opened up Public Forum.

15

16 First to speak was **Elizabeth Ray Stitt** of 3113 Friendship Road:

17

18 “Mayor, Town Council, good evening and Happy New Year’s! At the December council
19 meeting I shared that my neighbors and I were meeting with the town to have further
20 discussions on the Big Branch Force Main that is proposed to come across our properties.
21 What Allen is just handing out is a map that I brought tonight with some discussion points
22 that we talked about in the conversation with the Town. The current route is proposed on the
23 north side of US-1 and the Commons are on the upper left-hand corner. The information that
24 was given to us in the December meeting is still unacceptable, the impact to the various
25 properties. So, at this point, unless there is some major change we don’t believe there will be,
26 all of us neighbors are planning for litigation. We figure you guys are going to have to do
27 eminent domain, because we don’t feel like there’s any common ground on what you’re
28 proposing and the impact to our property. So that’s not good for us and that’s not good for
29 the town. Litigation will cause your timelines to run far on the force main. So, what we’re
30 proposing is to ask the Town to relook at the route on the southern side, and you’ll see the

DRAFT MINUTES

1 points around it. In theory, the 30-foot easement can be 15 feet in the North Carolina DOT
2 right of way, it could be 15 feet in the transmission line, there's a lot of positives to that. And
3 so, to that end, we are, or I am going to keep showing up. Our other neighbors are divide
4 and conquering things, I got nominated to come here every other week. So, we're going to
5 keep it on the radar and keep up the discussion, because we don't want litigation and we
6 don't want imminent domain, just like you guys don't want imminent domain either. We
7 would also like to set up another meeting with the Town, we're waiting for some dates to
8 come back. We would love you guys to come out to our properties to understand how
9 disastrous it is based on the current route. So you know how to get ahold of me, if you want
10 to visit my neighbors without me I can get you in touch with them, but we would like you to
11 get more engaged, especially given the impact to our properties. Thank you."

12

13 **Mayor Gilbert** thanked Ms. Stitt for her comments.

14

15 Next to speak was **Lazuli Abel** of 4306 Haybeck Lane:

16

17 "I guess I have to change my introduction to Good Evening everyone! I couldn't quite get my
18 super awesome master document to you in time so we're just gonna have to role play for a
19 sec. I'm a citizen who's been looking at ordinances across the country and seeing what
20 successful, safe communities have in place to reach a safe vision, and you all are members of
21 a town council who are convinced that mixed-use zoning and walkability are definitely
22 beneficial for the town's citizens and pocket. And go. Hello, do I hear correctly that you all are
23 a collection of Town Council members who are convinced that mixed-use zoning and
24 walkability are important to prioritize. What a coincidence, I've got a perfect list for you all to
25 concretely put that vision in place and bend all the complexities of that to your whim. 1)
26 Require a safe separated two-way bike lane on any new road or road re-surfacing. There's
27 already so much resource going into the car infrastructure that I think it would be great to
28 final treat bicycles as the effective, environmentally safe, and cheaper form of transit that they
29 are. 2) Use a coarser asphalt shown in government studies to reduce noise pollution by over
30 50%. Allow your people to talk to each other and enjoy being alongside a sidewalk not
31 feeling a need to plug their ears every time traffic goes by. 3) Eliminate the huge land
32 subsidies to vehicles by converting massive parking lots into productive areas, or by making
33 parking spaces a paid service. We need to hold these cars accountable for the massive,
34 unproductive, and expensive space that they necessitate and actually give that space back to
35 the citizens, the people. 4) Eliminating parking minimums. This is a simple way to just stop
36 endorsing every time there is a new development, the car first mindset. 5) Zone more mixed-
37 use areas, allow children to learn independence and live healthier lifestyles by making sure
38 parks, friends, libraries, and shops are safe to access by foot or bike. I'll try to get to the
39 others. 6) Convert on-street parking into larger sidewalks. This would give the opportunity to
40 show local businesses that you really respect them, because they need foot traffic, not car
41 traffic going in front of them. Looks like I'm out so thanks for giving me your time, and I just

DRAFT MINUTES

1 hope that together we can use all of Apex's tools to deliver the people-focused mindset they
2 deserve. Bye!"

3

4 **Mayor Gilbert** thanked Ms. Abel for her comments.

5

6 **Mayor Gilbert** closed public forum, with no more signups, and moved the meeting
7 on to Public Hearings

8

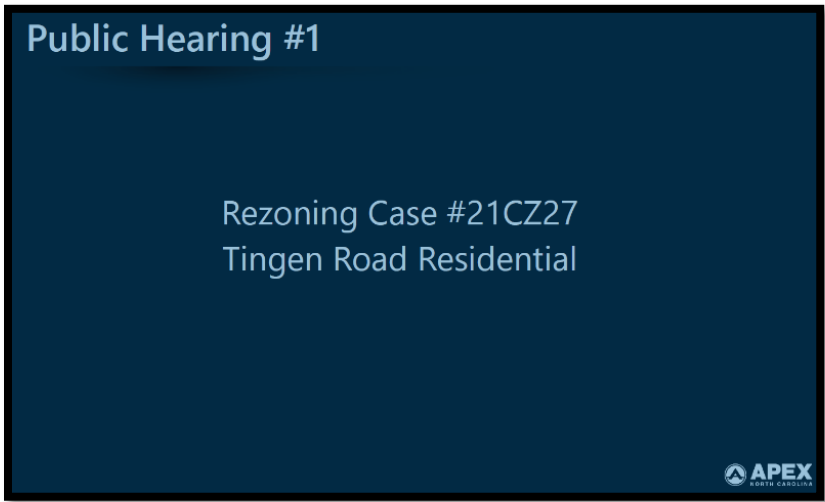
9 **[PUBLIC HEARINGS]**

10

11 **PH1 Rezoning Case No. 21CZ27 - 1010 Tingen Road**

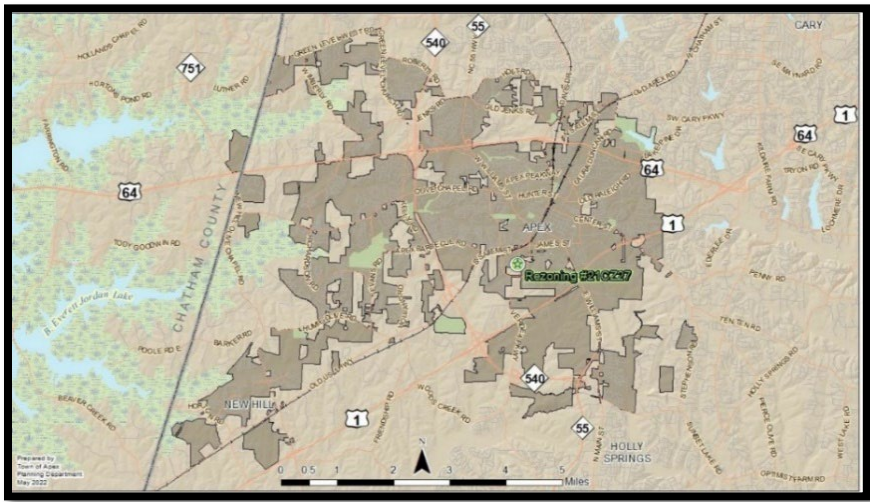
12 **Shelly Mayo**, Planner II, gave a staff presentation on Rezoning Case No. 21CZ27 -
13 1010 Tingen Road. Afterwards, she invited the Council to ask any questions.

14 **[SLIDE 1]**



15

16 **[SLIDE 2]**



17

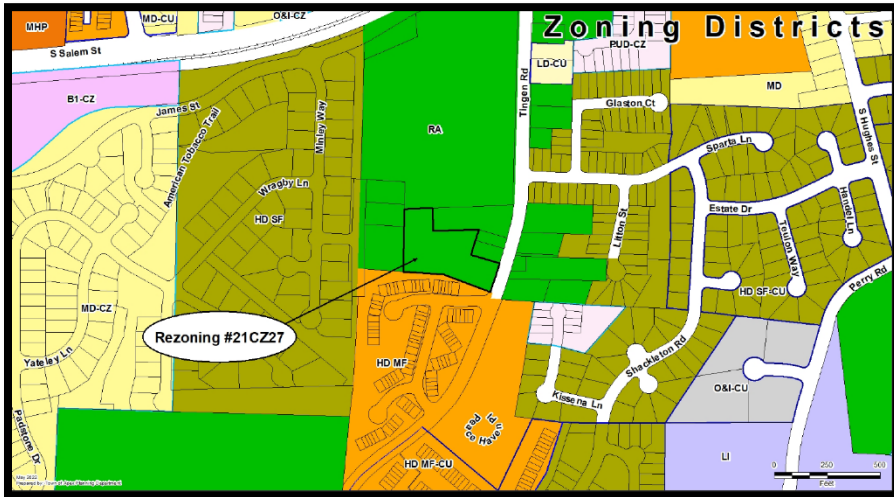
18

DRAFT MINUTES

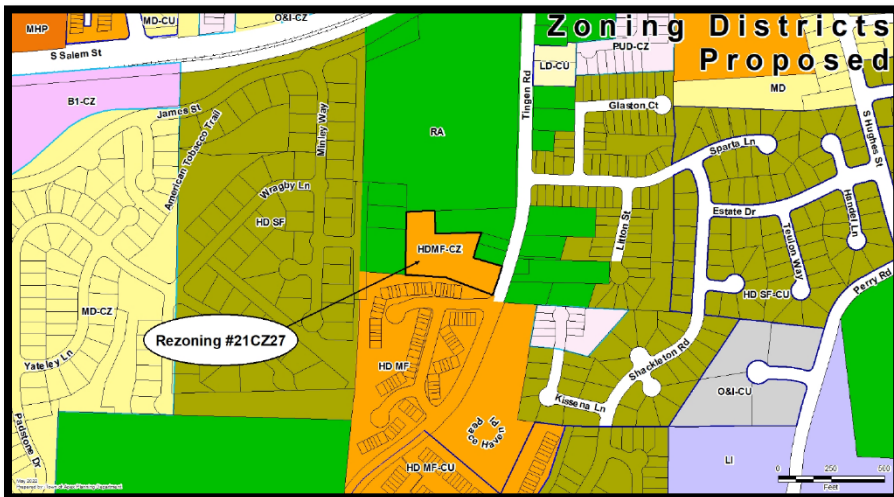
1 [SLIDE 3]



2
3 [SLIDE 4]



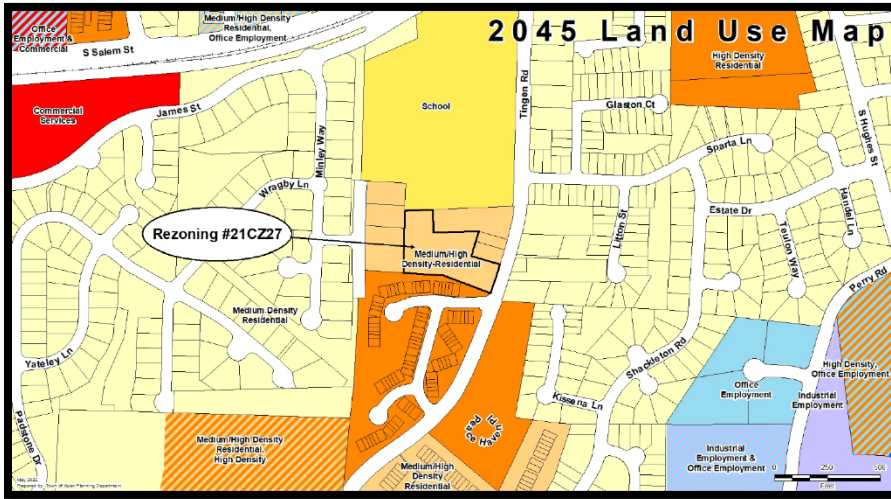
4
5 [SLIDE 5]



6

DRAFT MINUTES

1 [SLIDE 6]



2

3 [SLIDE 7]



4

5

6

7

8

9

10

11

12

13

14

15

16

17

Councilmember Gantt said he was wondering what distance would be required to allow for a full access entrance, and if a full access entrance would be granted if the road were constructed on the property directly Northeast of this one, which is owned by the same person.

Ms. Mayo said Russell Dalton, Traffic Engineering Manager, would have to answer regarding exact distances for those requirements, but said it was possible to craft language to do something like that, and that she would have to confer with the planning director and applicant.

Councilmember Gantt said he was wondering if the additional property could be rezoned as well if it were to be able to be given a full access movement.

Ms. Mayo said she hasn't had discussions with the applicant about that yet and would have to ask them what their plans are for it in the future. She said she was doubtful that adding the property to the Northeast to this rezoning would make the distance 300 feet from

DRAFT MINUTES

1 the previous road on Harbor Haven Drive. She asked Mr. Dalton to clear up the distance
2 requirement on major thoroughfares.

3 **Mr. Dalton** said the department usually recommends 500-foot minimums between
4 roads for full movement access. He also said he believes even if the developer was to add the
5 property to the Northeast to the rezoning that it still would likely not be enough distance to
6 meet that 500-foot minimum for full movement access.

7 **Councilmember Gantt** said he was concerned that people in the neighborhoods
8 near the development would have to turn around within neighborhoods in order to go North
9 on Tingen Road, which he said would be annoying for residents.

10 **Mr. Dalton** said if the property to the West was to develop, there would be an
11 opportunity to provide a full movement access once the road was connected to Owlsmoor
12 Lane, but he said he is uncertain on if or when that development may occur.

13 **Mayor Pro Tempore Killingsworth** said she wanted more information regarding
14 stormwater controls with this development.

15 **Ms. Mayo** said Robert Patterson, Senior Stormwater Engineer, would need to provide
16 answers on that matter.

17 **Mr. Patterson** said he was wondering if Mayor Pro Tempore Killingsworth had any
18 specific questions about the stormwater situation with this property.

19 **Mayor Pro Tempore Killingsworth** said in some of the pictures Council received, it
20 looked as if stormwater from the property was getting very close to the property and houses
21 to the south, and that she was concerned development on the property would cause this
22 stormwater runoff to increase significantly without stormwater controls in this development.

23 **Mr. Patterson** said the development would have to meet 6.1 of the UDO, which
24 requires peak continuation for the 1 in 10-year storm events as well as treatment of the first
25 inch for water quality. He said the development would have to meet the conditions the Town
26 sets for stormwater.

27 **Mayor Pro Tempore Killingsworth** said she was curious if stormwater runoff
28 improvements on the proposed development would improve runoff conditions currently
29 seen by residents at the townhomes to the south.

30 **Mr. Patterson** said it would be difficult to say without having seen the property, and
31 that is a question that is usually answered around construction drawing time, and that the
32 engineer will conduct a stormwater impact analysis for the property to see if any adverse
33 impacts were expected.

34 **Ms. Mayo** said that the Council received pictures showing a stormwater control
35 device that is currently working as intended. She said there would be additional impervious
36 surface with the new development, but that it would be treated based on the UDO and State
37 guidelines. She said it should not increase stormwater impacts for the area to the south for
38 normal storm conditions.

39 **Councilmember Gantt** said it looks like this parcel was draining into the townhome
40 community to the south as the creek overflows. He said he was wondering if the development
41 would add a system where stormwater would be controlled in a runoff pond, then put back
42 into the creek.

DRAFT MINUTES

1 **Mr. Patterson** said that was correct.

2 **Councilmember Gantt** said he was wondering if in Mr. Patterson or Ms. Mayo's
3 experience that an area prone to erosion would have an erosion impact as a result of a
4 development with a new stormwater control system.

5 **Mr. Patterson** said the stormwater control device would help control water quality as
6 well as alleviate impacts of 1 in 10-year storm events to a point that is no worse than when the
7 property began to be developed.

8 **Councilmember Gantt** said he was curious if the stormwater runoff would cause the
9 drainage pond to begin eroding rather than the creek.

10 **Ms. Mayo** said the erosion and stormwater situations may not be completely
11 connected.

12 **Mr. Patterson** said there was always some type of natural erosion in streams. He said
13 the buffered portion goes up about halfway into the property, and that development could
14 do channel stabilization in the area north of that buffer.

15 **Councilmember Gantt** said he wanted to know if the water north of that stream
16 would be going to a pond as well.

17 **Mr. Patterson** said that any runoff coming from north of the site would drain down
18 normally, but any new impervious area on the site would be routed to a device.

19 **Ms. Mayo** said the applicant was not required to treat water coming from off-site but
20 is required to treat the net increase in impervious area caused by the development.

21 **Councilmember Gray** said he wanted to know if there were any conditions that would
22 be appropriate to address potential extra stormwater runoff that we don't fully know about
23 yet.

24 **Ms. Mayo** said they don't have enough information regarding that yet. She said the
25 ordinance does say the ordinance clearly states that the development cannot make the
26 stormwater runoff problem worse than it already is for any property.

27 **Mr. Patterson** said bank stabilization was not in the staff's authority to require a
28 developer to do.

29 **Ms. Mayo** said that was something the Council could ask the applicant to do, but that
30 staff does not currently have language that would make that enforceable at.

31 **Councilmember Gantt** said he was wondering how much of the stream would be in
32 consideration for the bank stabilization issue.

33 **Ms. Mayo** said likely 100-150 feet.

34 **Councilmember Gantt** said he was not sure if right in/right out would be necessary if
35 the traffic patterns on Tingen Road change over time with new road connections and
36 development.

37 **Mr. Dalton** said it was not a classification issue but rather a safety issue, as cars need
38 enough distance to slow down before moving into a turn lane. He said there was a minimum
39 requirement for that distance based on speed, and not traffic volume.

40 **Mayor Gilbert** invited the applicant to give a presentation.

41

DRAFT MINUTES

1 On behalf of the applicant, **Jason Barron** of Morningstar Law Group gave a
2 presentation, and after its conclusion invited Jeff Roach of Peak Engineering and Design to
3 answer questions regarding stormwater for the site.

4 **Councilmember Gantt** said he wanted clarification regarding what was meant by
5 "adverse consequences" in regard to implementing measures for a 1 in 25-year stormwater
6 event.

7 **Mr. Roach** said there was a quantity question as well as a quality question. He said he
8 didn't want to commit to solving a quantity issue of a 1 in 25-year storm, and it end up
9 creating a quality issue downstream. Mr. Roach said they would do whatever was necessary
10 to relieve the stormwater issues downstream. He said they will meet the 1 in 10-year storm
11 and water quality requirements and will work with the Town and go as far as they can in order
12 to ensure the stormwater situation is left as good as possible. He said they are evaluating
13 downstream conditions, but they have not fully researched the issue as the project is still in
14 the zoning phase. He said there is some sand of this property and will work to ensure the
15 sand won't infiltrate pipe systems downstream. He said he just doesn't want to commit to one
16 certain measure at the Council meeting tonight, as the situation may require something
17 different depending on multiple factors in the future.

18 **Councilmember Gantt** said he was curious about the situation with the roads on the
19 property.

20 **Mr. Roach** said he was working with staff and that the property to the northeast may
21 be included in the future. He said the goal would be to have Owlsmoor Lane extended, as it
22 would solve a lot of the connectivity projects described surrounding this project.

23 **Councilmember Gantt** said he was anticipating Harbor Haven Road to become the
24 turnaround area for the people in this development in the interim, which he said would be
25 very aggravating for the residents of that street.

26 **Mr. Roach** said there were many possibilities for people to come into the property
27 currently, and even more with planned projects in the future.

28
29 **Mayor Gilbert** opened up Public Comment for this hearing.

30
31 First to speak was **Bridget Taylor** of 226 Harbor Haven Drive:

32
33 "I don't know if I can do this in 3 minutes but... I went to the planning board meeting for this
34 property, was disappointed with the board only speaking about the low-income and such,
35 how long it was going to property, little to nothing on the issues of this property. Yes, it's
36 great the developer wants to build low-income housing, but there are major issues with this
37 property by adding an additional 16 homes. The first problem is the schools cannot handle
38 any more children at this time, this was stated by the planner. Also, please don't forget the
39 Town of Apex is already building 164 units two miles down the hill. Have you guys taken into
40 consideration all these children. Putting them into these already overcrowded schools, is this
41 okay to increase the overcrowding. Second problem, stormwater issue. Where is the
42 developer going to move the stormwater so that it does not impact the existing homes? Yes, I

DRAFT MINUTES

1 understand the retention pond, but the water has to leave the retention pond, where is that
2 water going to go. The current drainage for this property goes through West Haven
3 Townhome complex. The problems have already occurred with the changes the town of
4 Apex made by increasing the water flow from Tingen Road into the school's stormwater
5 pond, which increased the sediment and water flow into the system. This caused major issues
6 in the West Haven Townhome complex. This area cannot afford, cannot handle another
7 increase. So, where's this water supposedly going to go. According to the developer, if I
8 understand correctly, they will move the water to the back of the property. Now that does
9 have a shallow valley partway down, but only because the construction for the berm that was
10 required for the West Haven townhomes. So how long will it take until it overflows or
11 undercuts the berm and floods out the current residents in Salem Village in West Haven
12 Townhomes. Does anybody even care about this? I mean, West Haven Townhomes is now
13 dealing with a lack of care and resistibility for the stormwater damage done by others. We're
14 getting the crap dumped on us. Last, I sat for the meeting and listened to them discuss a
15 property that had four homes on it, they would not allow those four homes to enter the
16 roadway on Holt Road, and I quote, "because there's an interchange 300 yards away and
17 there was a curve." The planning board said it was too dangerous to connect to the roadway,
18 so could you please explain how this property with 16 homes is acceptable, because this
19 property only has one way in and one way out, and that's on Tingen Road. The property
20 owners on James Extension Street will not sell. This property is bordered by the school on
21 one side and West Haven Complex on the other. There is no other entrance or exit but
22 Tingen Road. Tingen Road has three interchanges: Apex Peakway, Spartan Road, and St
23 James. It also has curves coming from both directions, not one. I really wish you'd look at the
24 issues instead of being all googly-eyed for low-income housing, and that's all the planning
25 board did."

26

27 **Mayor Gilbert** thanked Ms. Taylor for her time and invited the next speaker up.

28

29 Next to speak was **Patricia Fritts** of 206 Harbor Haven Drive:

30

31 "Hello, my name is Patricia Fritts, I live at 206 Harbor Haven Drive, directly on the property
32 line of 1010 Tingen Road. I have submitted numerous comments to the Council and to the
33 planning board regarding the water that flows in between the building that I live on and the
34 first building on Harbor Haven Drive. That water is really probably 10 feet away from the
35 edge, the corner of the one building. And it's flat right there. So, any more water that comes
36 down through there is gonna cause a big impact on our community. The stream bed is
37 eroding and filling up our drainage area going down in to the woods, and it's a lot of sand.
38 Sometimes it decreases and gets washed away a little bit, but it always comes back up. I'm
39 also concerned with adding 20 townhomes there. I mean you figure maybe 2 cars per
40 household, that's 40 more vehicles that are gonna be turning right, right in front of us, and
41 what Ms. Taylor said is true. There's a corner that way and a corner coming this way. And
42 even with the increased traffic caused by Salem Village, it's sometimes hard to get out, and I

DRAFT MINUTES

1 anticipate it probably would increase vehicle accidents, I don't know. But it just seems like 40
2 cars is a lot to add that road right now. I contacted JDI construction and asked for conditions
3 to increase the stormwater management plan. I also asked them to add in a fence along the
4 property line, because right behind our buildings is a hell. That 10-foot buffer is not gonna be
5 enough. I mean those townhomes are gonna be, or apartments, or whatever he's gonna end
6 up building, are gonna be right in my backdoor. I mean, people are probably gonna look
7 right into my building. The buffer there is giant trees there. And that 10-foot buffer is gonna
8 take that tree canopy away that protects those giant trees. And if they topple down on our
9 buildings, they are gonna cause great property damage and probably are a great risk to, you
10 know, cause injury to our residents if someone is unfortunate enough to be in the building
11 when a tree comes down. I mean there's a lot of dead trees in there too because it's pretty
12 old, and there's always branches flying down. So, I really would like the Council to consider
13 carefully the impacts that allowing 20 Townhomes to go up in 2 acres, with a 50-foot stream
14 buffer. The impact its gonna have on our community. I mean I think West Haven Townhomes
15 was built as an affordable community in the first place. I don't know exactly but I think that a
16 non-profit built them. I think we are a diverse community with moderate incomes, and I really
17 want someone to unders...oops excuse me, I'm done. Please consider impacts on us, thank
18 you."

19

20 **Mayor Gilbert** thanked Ms. Fritts for her time and invited the next speaker.

21

22 Next to speak was **Phil Welch** of 1471 Big Leaf Loop:

23

24 "Good evening Mayor and Town Council, my name is Phil Welch, I live at 1471 Big Leaf Loop.
25 I'd like to speak in favor of rezoning the Tingen residential property. As the planner says, it's a
26 great location for affordable housing. It's close to the elementary school, it's close to
27 downtown. And I'd like to point out that affordable housing is critically needed in the town.
28 Especially so that our essential workers have at least a chance to live in the town here they
29 work. I did testify at the planning board hearing about the income qualifications and the
30 affordability period of ten years. I think those concerns were addressed and I think we need
31 to move forward with the rezoning. My hope is, and this is an important point. My hope is that
32 the price of the land will be reasonable so that the full maximum I believe of 20 townhomes,
33 affordable townhomes, can be constructed and sold to income qualified buyers. Thank you."

34

35 **Mayor Gilbert** thanked Mr. Welch

36

37 **Mayor Gilbert** then closed Public Hearing and opened Council discussion.

38

39 **Councilmember Gray** said he had questions for Mr. Dalton regarding the potential
40 traffic issues that had been brought up throughout the discussion so far.

41 **Mr. Dalton** said it would not make a noticeable difference based on the current
42 number of units, but that they are still recommending right in/right out based on the

DRAFT MINUTES

1 geometric spacing. He said he doesn't have any oncoming traffic concerns based on what is
2 currently being proposed.

3 **Councilmember Gray** said he was wondering if a Traffic Impact Analysis was not
4 being done because the development was not large enough to trigger that threshold
5 requirement.

6 **Mr. Dalton** said that was correct.

7 **Councilmember Gantt** said to imagine a scenario in the future where the Peakway
8 was finished and the traffic flow was changed, and that he believed new developments would
9 mitigate traffic flow on Tingen, particularly going north. He says he thinks over time people
10 won't be using Harbor Haven to turn around in the future, and over time the traffic flow will
11 be much better.

12 **Councilmember Gray** felt that was a good way to think about it. He said he
13 understood the skepticism on whether these larger traffic projects would be completed on
14 time, but he said the Council should be focused on the long-term vision for the Town. He said
15 they can't tell the future, but that the town should be making decisions based on the data and
16 information available. He said they should rely on Mr. Dalton's expertise and interpretation of
17 the data as he is an expert in the field. Mr. Gray said the photos of the stormwater runoff were
18 troubling to him. He said he was not sure where the water was coming from, how long it has
19 been going, and other point. He said he'd ask staff to continue researching the issue on the
20 property and provide a report to him within the next 60 days. He said the current situation is a
21 problem, and that it is a good thing that the applicant seems willing to fix the problem on
22 site, even though they did not make it. He said the number of units in that space seems good
23 to him, especially since they are meeting a need for more affordable housing. He said the
24 town would need to address the transportation and traffic issues in the future, and that he is
25 appreciative of the applicant being willing to work with them on those things. He says he
26 thinks the project is overall good, and that he hopes more schools will be coming. He also
27 advocated for the two year-round schools in Apex, which are at less than 70% occupancy to
28 indicate there are possible solutions to problems around this developments and others like it.
29 He said he could support this project if they continue to look at solutions.

30 **Mayor Pro Tempore Killingsworth** said the pictures of the stormwater and sediment
31 runoff we "eye-opening". She offered appreciation for the pictures being sent to them. She
32 said in her experience, a lot of times stormwater runoff to an adjoining property is fixed by
33 the property being developed as they put in the structures necessary to deal with it on their
34 own land. She said the town has a great stormwater team that can help manage these types
35 of situations. She said the affordable housing aspect was great, and that it was wonderful the
36 developer was willing to work with them on mitigating runoff issues, and thus she could
37 support the project.

38 **Councilmember Mahaffey** said stormwater is a very common topic at Council
39 meetings. He said the instinct is a belief that development on a property close by will make
40 stormwater issues worse. He said he believes people don't realize that the Town has a law in
41 its UDO which forbids development from making any stormwater problem on other land
42 worse. He said if it is made worse, it becomes a problem with the town and they will have to

DRAFT MINUTES

1 fix it. He said people will feel better once they learn about that. He said it is actually beneficial
2 to have land developed where a stormwater problem is emanating from, as it gives the
3 developer an opportunity to fix the source of the problem along with their project. He said
4 developers are not allowed to make it worse and can potentially make it better. He said he
5 understands the concern, but the laws state the problem cannot be made worse. He said the
6 developers have a professional reputation to maintain, and that the Council would hold
7 developers accountable for mistakes made by remembering it during future projects in the
8 town. He said overall the motivation is for them to get it right and fix the problem. He asked
9 the neighbors of this development to consider this perspective.

10 **Councilmember Mahaffey** also wanted to address the concern about school
11 capacity. He mentioned a letter from the school system regarding the school capacity
12 situation and how it may change once the planned school developments of the next five
13 years come in. He said the Council takes these recommendations very seriously. He agreed
14 the current capacity problems were bad, but these housing developments would take years
15 to build, along with the expansion of the local schools. He said there is a plan to address the
16 capacity issues by all parties and so he can support the project.

17
18 A **motion** was made by **Councilmember Gantt**, seconded by **Mayor Pro Tempore**
19 **Killingsworth**, to approve Rezoning Case No. 21CZ27 - 1010 Tingen Road.

20
21 **VOTE: UNANIMOUS (4-0)**
22
23

24 **PH2 Annexation No. 735 - Hatcher Property - 28.8420 acres (REF: ORD-2023-001)**

25
26 **AND**
27


28 **PH3 Rezoning Case No. 22CZ12 - Hatcher Property (REF: ORD-2023-004)**
29

30 **Shelly Mayo**, Planner II, gave a presentation regarding Annexation No. 735 and
31 Rezoning Case No. 22CZ12, and said she would field any questions and that the applicant
32 was also there to do the same.
33
34
35
36
37
38
39
40
41
42

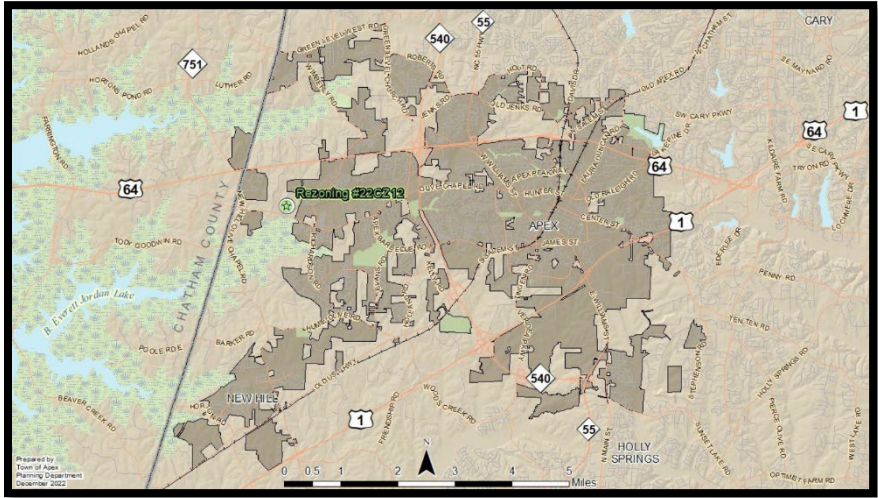
1 [SLIDE 8]

Public Hearing #2 & #3

Annexation #735 &
Rezoning Case #22CZ12
Hatcher Property



2
3 [SLIDE 9]

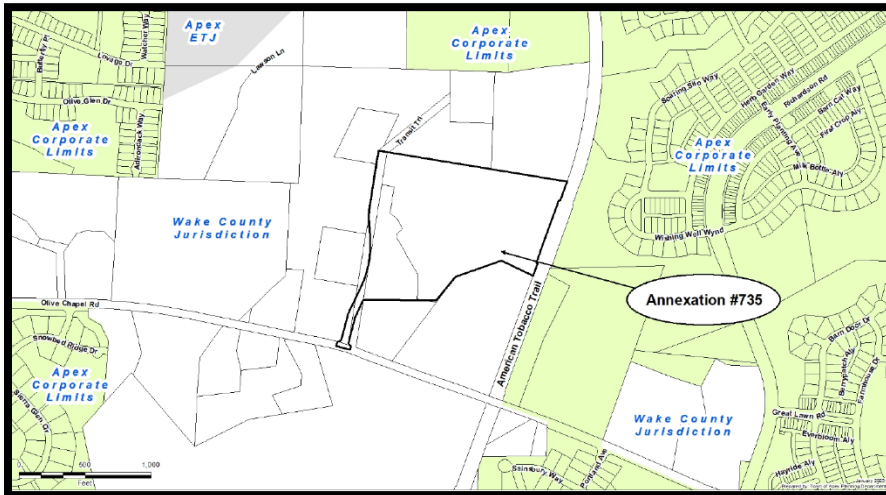


4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

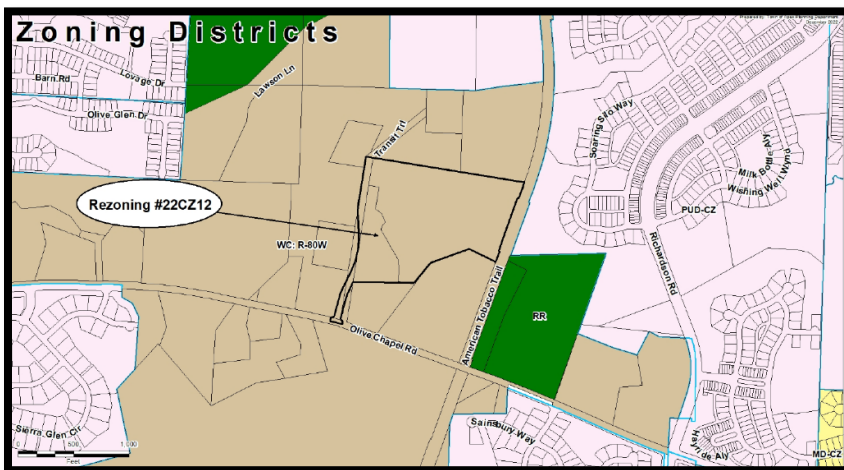
1 [SLIDE 10]



2
3 [SLIDE 11]

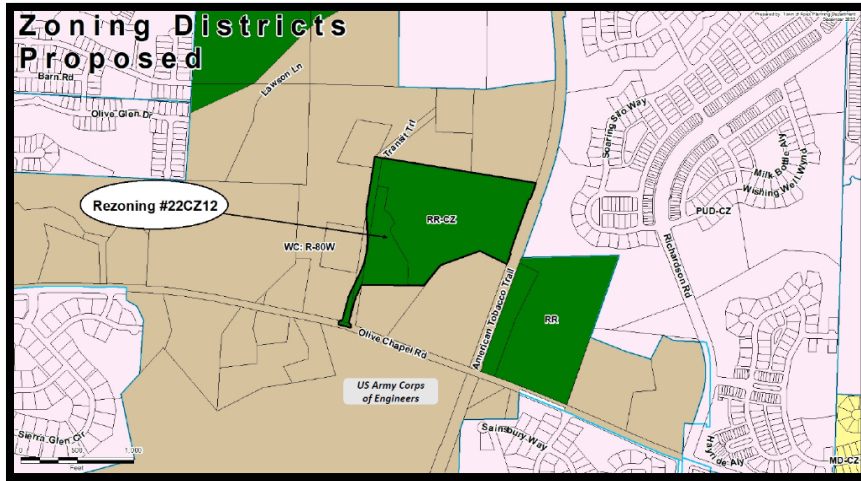


4
5 [SLIDE 12]

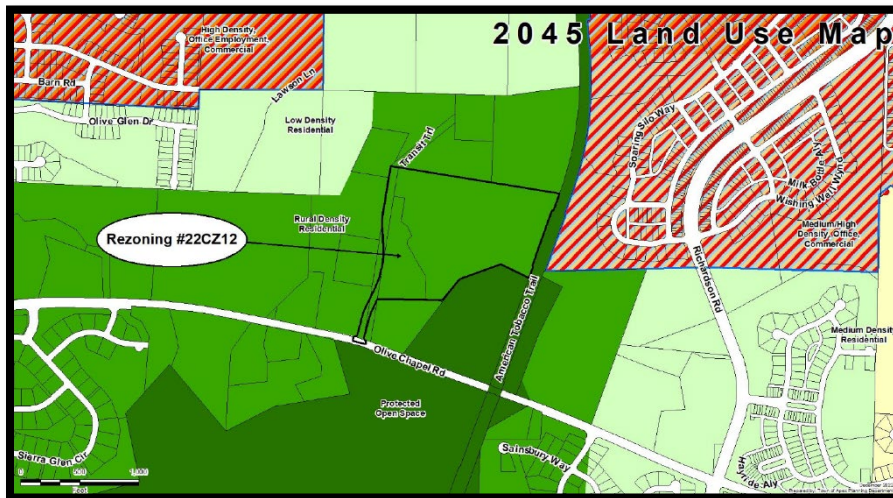


6
7

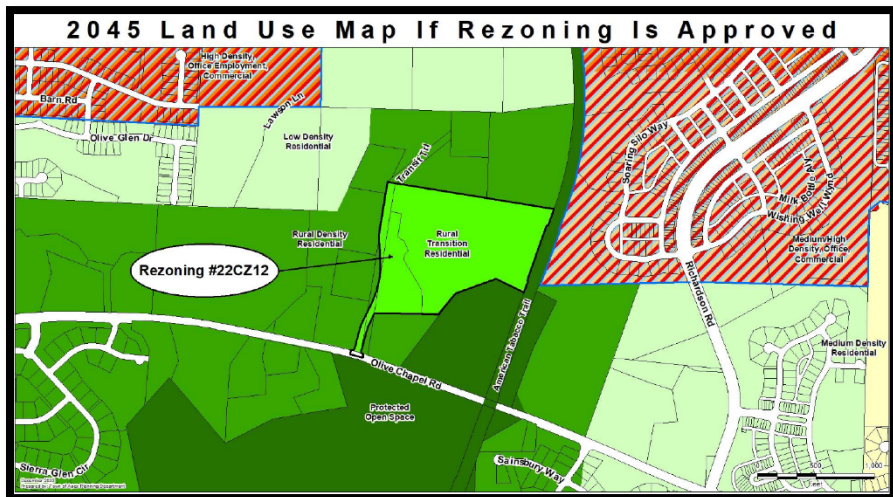
1 [SLIDE 13]



2
3 [SLIDE 14]



4
5 [SLIDE 15]




6

1 [SLIDE 16]



2
3 [SLIDE 17]

- Zone A Condition 4 states:
 - Developer shall construct Transit Trail according to the Apex Thoroughfare and Collector Street Plan on 60' public right-of-way from Olive Chapel Road to the northern boundary of Zone A, along with a 10' Side Path for the entirety of the eastern side of the street, to be dedicated at the time of the first plat of the subdivision.
 - Staff's recommended change:
 - Developer shall construct Transit Trail according to the Apex Thoroughfare and Collector Street Plan on 60' public right-of-way from Olive Chapel Road to the northern boundary of Zone A, along with a 10' Side Path for the entirety of the eastern side of the street, to be dedicated prior to recording a subdivision plat (exempt or otherwise) for Zone A.
- 

4
5 [SLIDE 18]



DRAFT MINUTES

1 **Councilmember Mahaffey** said he had made an inquiry about a potential school site
2 north of the property.

3 **Ms. Mayo** said there is no new information. They remain interested in the site but
4 have not moved forward with anything.

5 **Councilmember Gantt** said there was a clock regarding when the school system was
6 able to zone that land, and asked to be reminded what that was

7 **Ms. Mayo** said she wasn't exactly sure of the conditions, but that they have around 2
8 years from when the approval was granted for the rezoning or 2 years after the site plan for
9 the apartments was submitted. She said she would look it up to find out and also remind the
10 school of the clock and conditions on Councilmember Mahaffey's request.

11 **Councilmember Gantt** said this request would be a change from the original intent of
12 the zoning requirements of 1 unit per 5 acres in this area and asked what staff felt about that.

13 **Ms. Mayo** said the staff feels the construction of Transit Trail north was a big bonus of
14 this project, which would help save the town money and with bringing a new school in at that
15 location. She said the school system typically wants to have 2 major points of access, and this
16 development would help accomplish that while still remaining a relatively low-density project
17 at 1 unit per acre. She said staff feels this is still consistent with the broad intent of the
18 rezoning, while also helping potentially relieve school capacity issues. She said there will also
19 be several lanes and connection of pedestrian trails and sidewalks in the future of this area.
20 She said staff feels the project is overall bringing more positives than negatives.

21 **Councilmember Gantt** said he was wondering if she would still feel the same way
22 about the project's net positive nature if they knew the school was not going to be coming to
23 that area.

24 **Ms. Mayo** said she felt the construction of Transit Trail would still have a positive
25 impact on traffic relief in the area.

26 **Councilmember Gantt** said he wanted to know Ms. Mayo's belief on how the school
27 would take having most of Transit Trail constructed from this project, but not all of it. He
28 asked who would be responsible for the remaining construction and if the uncertainty would
29 impact the school system's decision making.

30 **Ms. Mayo** said state law requires either the DOT or the town to provide any funding
31 needed to complete traffic improvements to schools, depending on if it was a town or state
32 road and if nobody else offered to fund it. She said developers were not required to
33 undertake off-site improvements, and currently the town does not have a way to compensate
34 them for it or require them to do it in this situation. She said staff made a request for this to
35 the applicant but was told it was not doable.

36

37 **Mayor Gilbert** called for a 10-minute recess at 8:18 p.m., and the meeting
38 reconvened at 8:30 p.m.

39

40 **Ms. Mayo** wished to inform the Council that the developer has requested to add a
41 condition saying they were not required to construct curb and gutter along the west side of
42 Transit Trail, while the east side would have it and would have a 5-foot sidewalk from Olive

DRAFT MINUTES

1 Chapel Road to the entrance of the future subdivision, and a 10-foot side path from the north
2 side of the entrance to the edge of the property.

3 **Councilmember Gantt** said he was curious if this would mean the transportation plan
4 would be changed to require side path on the west side of Transit Trail for the future
5 developers to build.

6 **Ms. Mayo** said that was not a conversation staff has had yet, and that there was some
7 greenway along the west side currently.

8 **Councilmember Gantt** said he wanted to know if there was precedent for one
9 portion of the road to be left unfinished for future developers to take on as part of their
10 requirements.

11 **Ms. Mayo** said this case was unique in that usually a public road would have both
12 sides completed by the applicant, while private, rural roads sometimes left one side with just
13 a ditch. She said it usually works out well in situations where the road has been out there to
14 the public for a long time already, but it can depend on the traffic and other conditions in the
15 area.

16 **Councilmember Gantt** asked if the road would crumble under heavier traffic from a
17 potential school if the upgrades were not made by the applicant.

18 **Ms. Mayo** said she believed that would be the case but couldn't be certain. She said
19 there are examples of in the town where one side of a road leading to a school has curb and
20 gutter while the other does not.

21 **Councilmember Mahaffey** pointed out that leaving one half of the road without curb
22 and gutter would provide an incentive for the town to bring more development to the other
23 side under similar zoning conditions to get the road fully upgraded. He also said the
24 requirements in the ordinance for the applicant illustrate a semantic difference, as the road is
25 currently classified as a private driveway, which is different from an already public road they
26 are developing on. He said he also sees a fairness issue in going forward with this.

27 **Councilmember Gantt** said he had a question for staff regarding if it would change
28 the precedent for the zoning in the area in the future.

29 **Dianne Khin**, Planning Director said staff had not talked about that, and any changes
30 to the official zoning of the areas would be part of the 2055 land use map. She said it would
31 make sense to do for the properties north of the property in order to help finish the road.

32 **Councilmember Mahaffey** said it likely wasn't necessary to worry about the overall
33 rezoning right now and that it was likely some of the 1 per 5-acre zones in this area would be
34 changed to 1 per 1-acre zones in the near future.

35 **Patrick Kiernan** of Jones and Clossen Engineering gave a presentation on behalf of
36 the applicant, and offered to answer any questions from the Council

37 **Councilmember Gray** said he wanted to understand the difference between Zone A
38 and Zone B in the plans and why they were split up.

39 **Mr. Kiernan** said the applicant and staff felt as though splitting it up into two zoning
40 areas would allow the landscape buffer to be put between Zone A and Zone B, rather than
41 between the southern part of the property and its adjoining parcel. He said the property
42 owner of the lot to the south does not have any desire for an additional buffer. He said the

DRAFT MINUTES

1 zones allowed the required 10-foot buffer to be placed between areas on the project's
2 property.

3 **Mayor Pro Tempore Killingsworth** said she was concerned about the driveway
4 situation of the development and its safety risk, considering the increased traffic in the area.
5 She said she wanted to follow staff's recommendation for the driveway accommodations in
6 order to decrease risk of accidents. She said the less amount of driveway access to a major
7 collector the better.

8 **Mr. Kiernan** said the grading of the road on the southern bounds of the property was
9 not steep as originally thought and was around 5%, correcting a conversation he had with
10 Mayor Pro Tempore Killingsworth previously. He said the plans for a third driveway were to
11 help accommodate adjoining apartments to houses in Zone A. He said his client feels the
12 third driveway was desirable, and that he (Mr. Kiernan) does not feel it poses a significantly
13 greater risk, especially considering the driveways would allow for residents to typically drive
14 forward onto the road rather than having to reverse to join the flow of traffic.

15 **Mayor Pro Tempore Killingsworth** said even having one driveway onto a road on
16 this kind of grading was dangerous, and that less was inherently better.

17
18 **Mayor Gilbert** opened up public comment for this hearing.

19
20 First to speak was **Lazuli Abel** of 4306 Haybeck Lane:

21
22 "Acquire this property and turn it low density, I dare you to tell the people in this town that
23 the opportunity for this historic land to go to another generic neighborhood that's dime a
24 dozen across the entire state and town itself, we need that as opposed to an inviting forestry
25 space with gravel roads that you can bring your family to, perhaps there's a brick street lined
26 with local shops underneath apartments and office spaces to create a real destination that
27 only Apex could provide. And even from a financial point, a low-density single-family home,
28 I'm looking at the data in Apex, and the best factor that we have for the value per acre is
29 something like 300-400 thousand, which sounds pretty good, but the most important points
30 of interest in the town, i.e. downtown area and North Salem Street in general, places like that
31 pull in over 2 million dollars per acre. So to sit here and claim that low density is the best
32 option for this shows that you would prefer to cripple the town's budget and tell 400 people
33 that don't even live in Apex you deserve the opportunity to live here, rather than looking at
34 everyone in this town and in this room especially, that their quality of life is less important
35 than this engineers vision on what the 20th residential neighborhood is in town. Plus, I love
36 the irony of Transit Trail being used as a high-speed connection between Olive Chapel and
37 64, when, if your mission is to reduce traffic in that area, by putting more people there who
38 need a car to live there, so what if there's another road because all the people who live there
39 are gonna be driving there and it wouldn't even matter. And I don't quite remember what the
40 exact quote was but I think I heard that the engineers aren't willing to build a sidewalk
41 because it doesn't fit the vision of their motive or something. What, so they think that safe
42 infrastructure for us citizens is less important than what number is gonna go in their bank

DRAFT MINUTES

1 account at the end of all this. So, zone this low density and I want you to look at everyone and
2 say their quality of life is less important than people that don't live here."

3
4 **Mayor Gilbert** thanked Ms. Abel for her comment. With no further sign ups, he sent
5 discussion back to Council.

6
7 **Councilmember Gray** said his real concern was the parcel to the north of this one
8 and this parcel in particular. He said if the town wanted to attract a school to it and alleviate
9 some crowding problems, having a large portion of the road be built as part of this project
10 would be very attractive. He said he really liked that it can also be done without using the
11 town's money. He said he likes the idea of not fully developing the west side of the road,
12 because it gives more flexibility on what to do with that side if the school does end up going
13 in that area, for things such as a carpool lane or a bus stop.

14 **Councilmember Mahaffey** wanted to ensure people understood that this project
15 would not guarantee a school to come to this area. He said it does make the site more
16 attractive for a school if the road access is better, and that the site had been reserved for
17 them, though it has yet to be acted on. He said he believes there is still a lot of good in
18 getting the road developed even if the school doesn't end up coming there, and for that
19 reason he will support the project.

20 **Councilmember Gray** said they should keep the option open for the school to come
21 there in the future by further developing the area.

22 **Mayor Pro Tempore Killingsworth** said she was still concerned about the 3
23 driveways on the property.

24 **Councilmember Gantt** said he was proud of the creation of the 1 per 5 acres land
25 designation, and that they're undoing it the first chance they have to keep it. He said he finds
26 some of the suburban develops in the west of the town to be undesirable, and that he always
27 needs a compelling reason to overlook the vision and purpose of the 1 per 5 acres
28 designation. He said this project doesn't offer a full connection between roads for this
29 community, so that doesn't offer a large enough benefit in his mind.

30 **Councilmember Mahaffey** said he wished to push back against these comments a
31 bit. He said it would be large improvements to major road access and would provide great
32 commercial benefit as well as benefit to a potential school in the future. He said getting 90%
33 of the was a lot, and they could work with the property owner on the remainder of the land to
34 complete the connection in the future.

35
36 This property owner was present and offered to speak to this issue.

37
38 **Mayor Pro Tempore Killingsworth** said she wanted to ask the applicant about the
39 driveway situation.

40 **Mr. Kiernan** said the applicant was willing to reduce it back down to staffs
41 recommended 2 driveways instead of 3.

42

DRAFT MINUTES

1 **Kip Clement**, property owner of 1801 Transit Trail gave the following comments:

2
3 “Good evening, I represent the Clement family, which does own the property on the left of
4 Transit Trail, and to the north of Mr. Ioanni’s property. And I just want to be clear, because
5 maybe I’m misunderstanding, as far as this additional missing segment as y’all have liked to
6 put it, that has not been on the table, and at the present time is not on the table. So, if that’s
7 what you’re talking about, and I realize we’re talking about in the future, and I realize that
8 things change, but as far as right now that is as far as we’re willing to change.”

9
10 **Councilmember Mahaffey** said it was fine that the property owner didn’t want to sell
11 now, it would be a concern for the future.

12 **Councilmember Gantt** said there have been instances with lawsuits where there was
13 a missing connection and things have escalated. He said this was something he wished to
14 avoid. He said the lack of a sale or right of way being on the table currently is informing his
15 decision on this.

16 **Councilmember Mahaffey** said he was quoting a wise person from a previous
17 project (referring to Councilmember Gantt) who said “Terry, building something 80% of the
18 way is better than getting nothing at all.”

19 **Councilmember Gantt** said the project he said that in reference to (the Yellowbridge
20 project) was quite a bit different in terms of density and mixed-use zoning than this one is.

21 **Mayor Pro Tempore Killingsworth** said it may help reduce traffic in areas of similar
22 density, and Councilmember Gantt acknowledged it.

23
24 A **motion** was made by **Councilmember Mahaffey**, seconded by **Councilmember**
25 **Gray**, to approve Annexation No. 735 and Rezoning Case No. 22CZ12, with the added
26 conditions of dropping the number of driveways down to two and agreeing to the applicant’s
27 condition of not having curb and gutter on the western side.

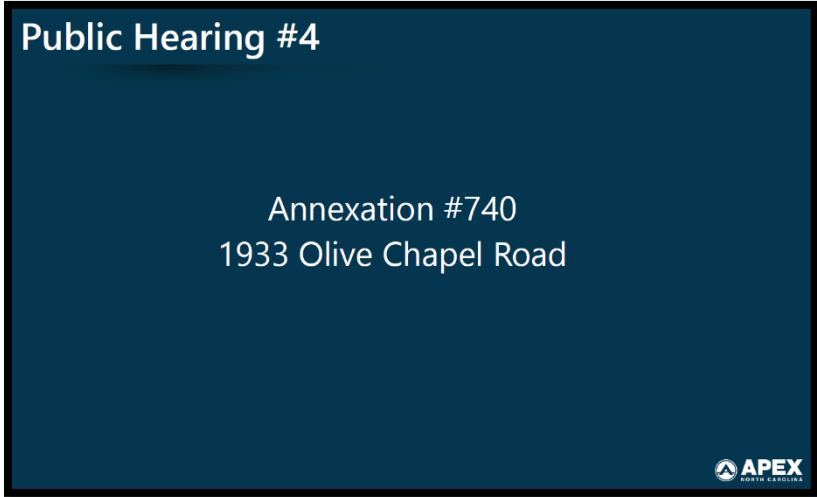
28
29 **VOTE: 3-1, with Councilmember Gantt dissenting**

30
31 **PH4 Annexation No. 740 - 1933 Olive Chapel Road - 3.40 acres (REF: ORD-2023-002)**

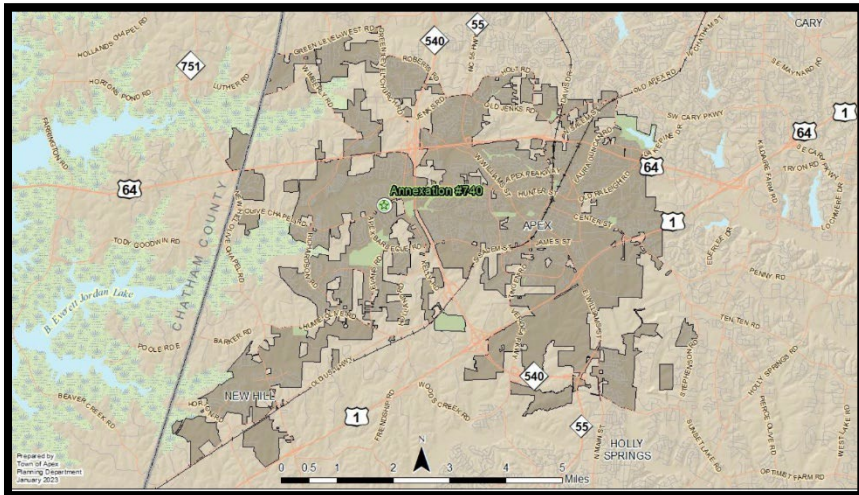
32
33 **Dianne Khin**, Planning Director gave a presentation regarding Annexation No. 740,
34 and offered to answer any questions.

35
36
37
38
39
40
41
42

1 [SLIDE 19]



2
3 [SLIDE 20]

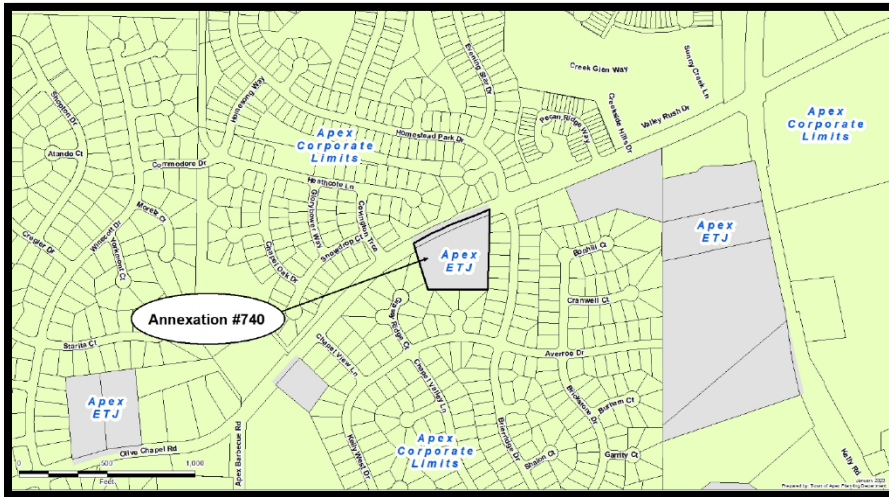


4
5 [SLIDE 21]

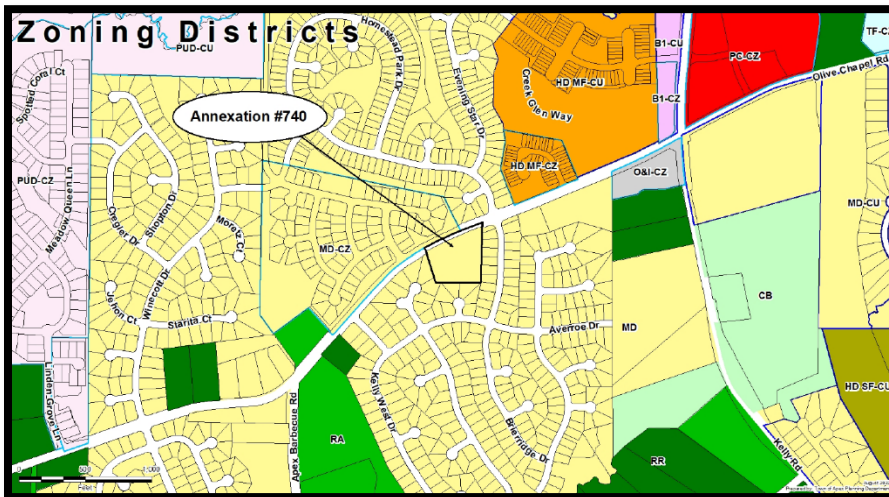


6

1 [SLIDE 22]



2
3 [SLIDE 23]



4
5
6 **Mayor Gilbert** opened up Public Hearing for this item. With no sign ups, he closed
7 Public Hearing and moved discussion back to Council.

8 **Councilmember Gray** said he wanted to note that the town is getting more and more
9 smaller parcels requesting annexation and that inevitably leads to more rezoning requests.
10 He said since these parcels are typically smaller, a lot of considerations such as those from
11 the Parks and Rec advisory board and the Environmental Advisory Board don't apply. He said
12 the Council may need to look at applying things smaller properties are currently exempt from
13 in order to maintain uniformity over time.

14 **Councilmember Gantt** said he wanted to know if the Council could require rezoning
15 in annexation cases like this even if the area was already zoned

16 **Director Khin** said that was not possible, but that you could do that if land is being
17 annexed from the county, but that does not apply here as this land is currently in the
18 Extraterritorial Planning Jurisdiction (ETJ).

DRAFT MINUTES

1 **Councilmember Gantt** also wanted to know if it were possible to limit exemptions
2 currently for properties of this size.

3 **Director Khin** said she did not believe so.

4 **Councilmember Mahaffey** said the Council needed to be sure they remained
5 diligent when looking at potential “donut holes” that would naturally be parts of
6 developments.

7 **Councilmember Gray** said his main point is that the Council may want to look at
8 certain exemptions for smaller properties, such as something like how much sidewalk they
9 are required to construct. He said sometimes there can be conditions that end up creating
10 undesirable scenarios, and asked staff to begin thinking about those kinds of issues as they
11 pop up in properties like this.

12 **Director Khin** said sometimes developers attempt to purchase a “donut hole” around
13 their development but are not as able to do so as landowners are not always willing to sell, as
14 she says in a later case on the agenda tonight.

15 **Councilmember Gantt** said he wondered if they would be required to provide
16 stormwater controls.

17 **Mr. Patterson** and **Director Khin** said based on the size of the plot it was likely that
18 they would.

19
20 A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by
21 **Councilmember Gray** to approve Annexation No. 740 - 1933 Olive Chapel Road - 3.40
22 acres.

23
24 **VOTE: UNANIMOUS (4-0)**

25
26 **PH5 Annexation No. 741 - The Townes at the Station PUD - 16.30 acres (REF: ORD-**
27 **2023-003)**

28
29 **AND**

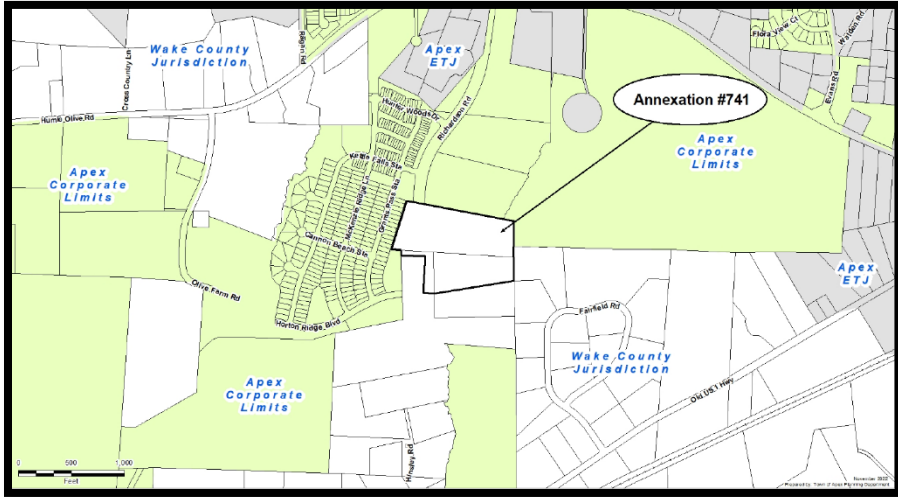
30
31 **PH6 Rezoning Case No. 22CZ17 - The Townes at the Station PUD (REF: ORD-2023-**
32 **007)**

33
34 **Shelly Mayo**, Planner II gave a presentation regarding Rez22CZ17 and No. 22CZ17,
35 and offered to answer questions the Council has.

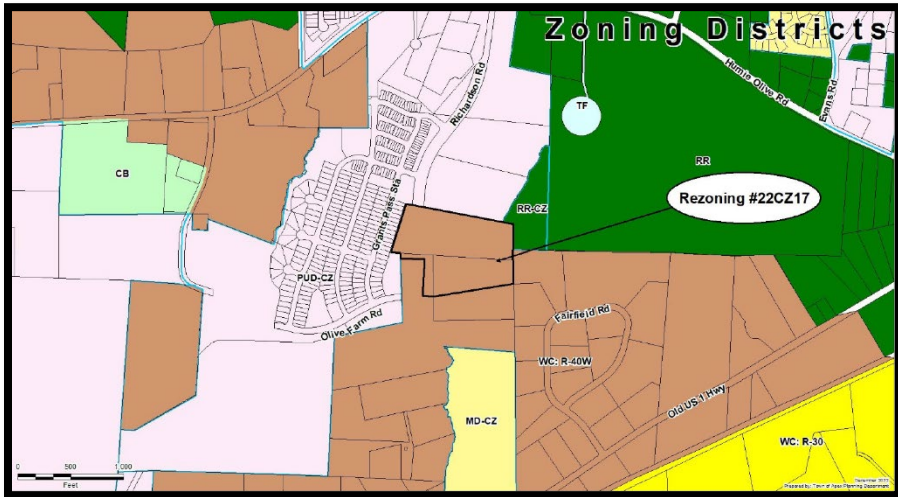
36
37
38
39
40
41
42

DRAFT MINUTES

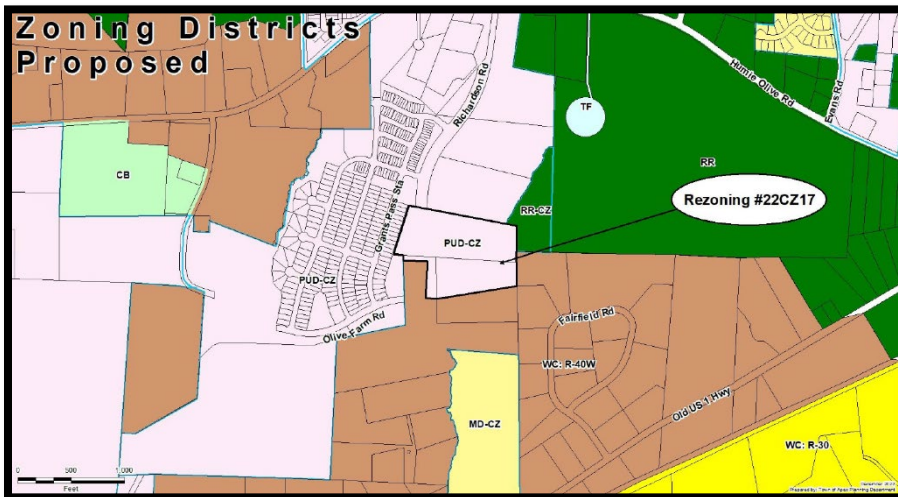
1 [SLIDE 27]



2
3 [SLIDE 28]

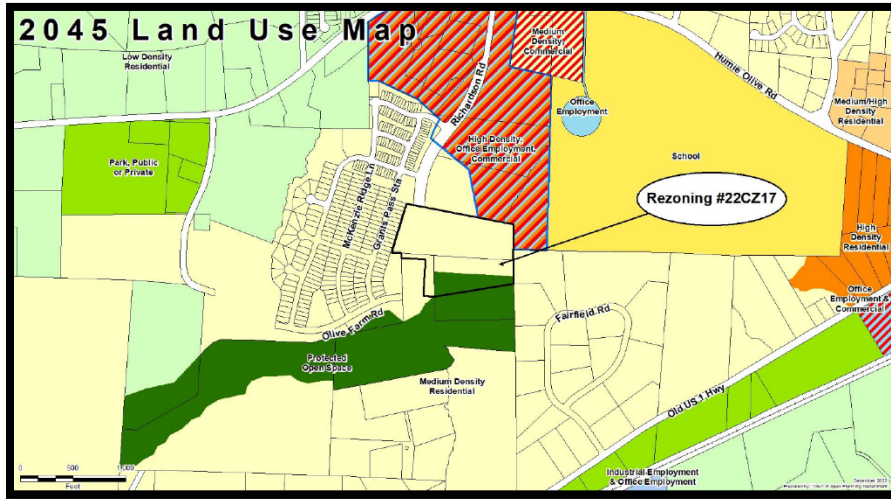


4
5 [SLIDE 29]

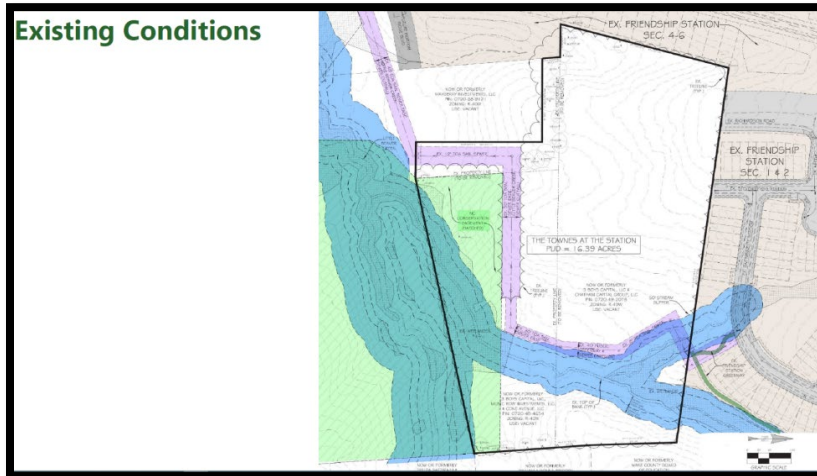


6

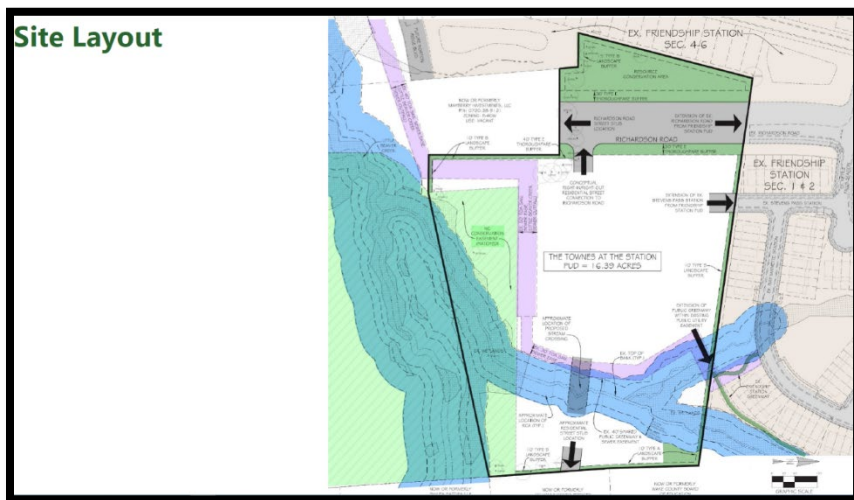
1 [SLIDE 30]



2
3 [SLIDE 31]



4
5 [SLIDE 32]



6

DRAFT MINUTES

1 [SLIDE 33]

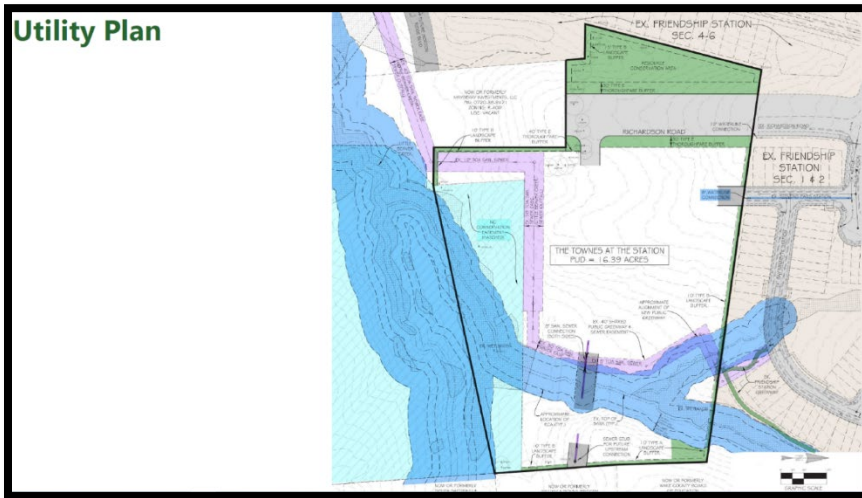
Changes:

- A minimum 4kW solar PV system shall be installed on at least 4 townhomes units within the development. All solar installation required by this condition shall be completed or under construction prior to 90% of the building permits being issued for the development.
- The maximum density for this project shall be 4.6 dwelling units/acre. There shall be no more than 75 townhomes.



2
3 [SLIDE 34]

Utility Plan



4
5 [SLIDE 35]

Elevations



6

DRAFT MINUTES

1 **Councilmember Gantt** said he wanted to ask about the gap in road connection to
2 Horton Ridge Road and whether it would make it so parts of the property would have no
3 commercial value and could only be used for infrastructure.

4 **Ms. Mayo** replied that she guesses the owner of the land that would connect the
5 project to the road on the southwest wants to hold out selling until the town comes to them, it
6 hopes it could bring in more money. She said was able to get some of the land from the
7 adjoining property owner, but the remainder of the land they are not prepared to sell at this
8 time. She said staff is encouraging negotiations between the parties, but there is nothing they
9 can do to force the owner to sell the connecting land. She said staff does not want to
10 recommend against approval based on a piece of land the applicant was not able to get. She
11 said it is still a major positive that the town would get 500 linear feet of road built through this
12 project. She said it would be great for the development to be able to connect to Horton
13 Ridge Road, but staff and the applicant were not able to make it happen at this time.

14
15 **Councilmember Mahaffey** said he was bugged about the land swap that was done
16 among these two property owners, as it maximizes the amount that the town will have to pay.
17 He said the only part of the property that was not given as part of the transaction was the part
18 that could only be built by the town once the development is built.

19 **Mayor Pro Tempore Killingsworth** said she assumed a bridge would have to be
20 built over the protected space.

21 **Ms. Mayo** said the bridge was going to be necessary at some point anyway, and that
22 bridge was always going to be very expensive.

23 **Councilmember Gantt** said that was a problem for future councils.

24 **Mayor Pro Tempore Killingsworth** said it did seem to be expensive but was
25 necessary to build as part of the transportation plan's goal of establishing more connectivity.

26 **Councilmember Mahaffey** said he feels development connecting Richardson Drive
27 was critical moving forward.

28 **Mayor Pro Tempore Killingsworth** said she appreciated EAB recommendations
29 being put into these cases.

30 **Ms. Mayo** responded that she was the link between staff and the EAB, and there
31 would be more cases coming up with that included.

32
33 On behalf of the applicant, **Patrick Kiernan** of Jones and Clossen Engineering, gave
34 a presentation, and offered to answer questions about the land swap.

35
36 **Mayor Pro Tempore Killingsworth** said she was glad the applicant attempted to
37 contact the property owner in regard to the Richardson Road extension, even if they weren't
38 able to come to an agreement. She said there would still be several good things coming from
39 the development.

40 **Councilmember Mahaffey** said he believes there is a school capacity issue.

41 **Mayor Pro Tempore Killingsworth** clarified only elementary and middle school had
42 a capacity issue.

DRAFT MINUTES

1 **Councilmember Mahaffey** said he was tempted to ask for a 55+ age restriction, but
2 that it would be strange to have an older community in a space that would be ideal for kids to
3 live. He said he was still concerned about school capacity issues.

4 **Councilmember Gantt** said in the future he wants more children to be able to walk to
5 school. He said he believes the Town doesn't need this development, and that this
6 development will require more road connections to be made by the Town.

7 **Councilmember Mahaffey** asked Councilmember Gantt what he would prefer to be
8 developed here.

9 **Councilmember Gantt** said the important thing was the fact that the Town would be
10 required to pay for certain connections in this development.

11 **Councilmember Gray** said the Town and the owner of the land in question have
12 options for how to proceed with potential road connections. He said school capacity was an
13 issue, but he said affordable housing, EV charging, and other positive things from the
14 Councils perspective were things that allowed him to support.

15
16 A motion was made by **Mayor Pro Tempore Killingsworth**, seconded by
17 **Councilmember Gray**, to approve Annexation No. 741 and Rezoning Case No. 22CZ17.

18 **VOTE: 2-2 Councilmember Gantt and Councilmember Mahaffey dissenting**

19
20
21 With a 2-2 tie, Mayor Gilbert discussed his position before his tiebreaking vote.

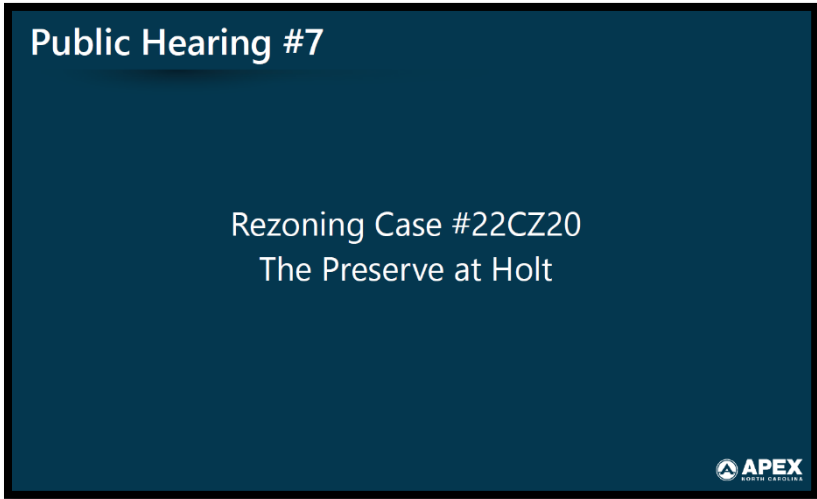
22
23 **Mayor Gilbert** said he respected the opinions of his colleagues and sees the positives
24 and negatives, but believes it is best to get what they can get rather than nothing in this
25 situation.

26
27 Pursuant to Town of Apex Town Charter, **Mayor Gilbert** voted in the affirmative in
28 order to break the tie. Motion passed.

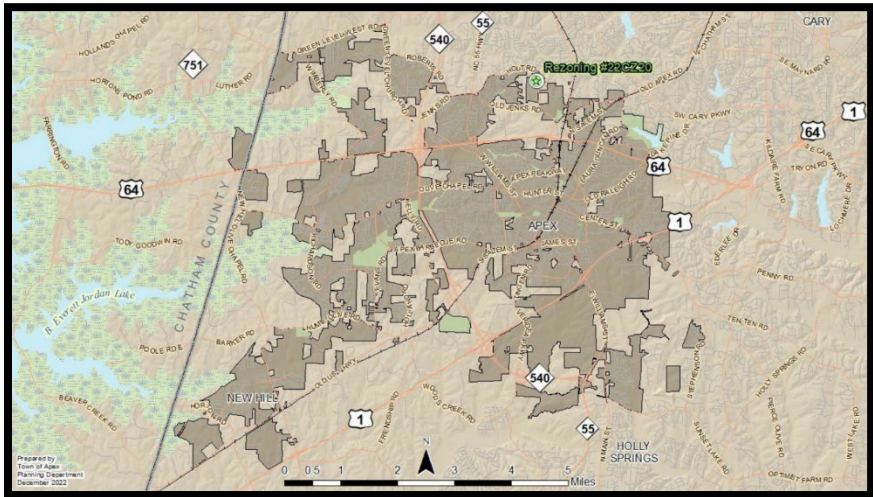
29 **PH7 Rezoning Case No. 22CZ20 - The Preserve at Holt**

30
31
32 **Shelly Mayo**, Planner II gave a presentation regarding Rezoning Case No. 22CZ20
33 and offered to answer questions from the Council.

1 [SLIDE 36]



2
3 [SLIDE 37]



4
5 [SLIDE 38]




6

1 [SLIDE 42]

Without Rezoning – Currently Allowed

- 1.78 acres outside of stream buffer and wetlands
- Rural Residential Zoning
 - 1 lots (average 1 acre buildable area)
 - Driveway may connect to Elk River Dr. or Holt Rd
 - Not required:
 - Perimeter buffers
 - RCA
 - Environmental conditions
 - Architectural conditions
 - Sewer extension
 - Greenway easement
 - ROW dedication & Improvements along Holt Rd



2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Councilmember Gantt asked what the sewer extension did.

Ms. Mayo said that it added sewer lines for potential connection on Howell Road in the future

Councilmember Gantt said he wondered what other arrangements would be needed if this was not added.

Ms. Mayo said it would likely have to go on Middleton Road, and that this project would connect the stubs to allow water flow to be improved.

Councilmember Gray said he wanted to clarify that Holt Road was an NC DOT road, and therefore the Town could not change the speed limit.

Mr. Dalton said that Holt Road was under State jurisdiction, but that residents could petition the NC DOT if they have concerns.

Phil Koch representing the applicant, gave comments regarding the development, and said he was willing to answer questions from Council.

Councilmember Gantt said he was wondering if the applicant knew about the desire of a previous council to have the sidewalk gap fixed in this development area.

Mr. Koch said they were not aware of that being an issue.

Councilmember Gantt said it was very important to have sidewalks along these roads, and that it would fall on the Town to put in sidewalk instead.

Mr. Koch said the topography of the landscape makes putting in a sidewalk in that area very difficult.

Councilmember Gantt said he was surprised this still was not being proposed when the area along the road is actually being developed now.

Mr. Koch said they can get the sewer extension done, and that they can give the ROW and widening of the road, but he said it was a large burden to put on each lot for the extension of the sidewalk.

DRAFT MINUTES

1 **Councilmember Gantt** asked if there was any discussion of more lots, which would
2 have required a sidewalk to be installed.

3 **Mr. Koch** said there was a lot of tradeoffs in the discussions they had for developing
4 the land, he said they wouldn't have accessory dwellings on site in order to stay below the
5 12% impervious.

6 **Councilmember Gantt** said he believes the Town would prefer 15-20% impervious
7 with an SEM would be better than 12% and no SEM.

8 **Mr. Koch** said that would not be the case from an environmental standpoint.

9 **Councilmember Gantt** said the SEMs would do a lot of good for water quality.

10 **Mr. Koch** said that both ways had some positive environmental impacts.

11 **Councilmember Mahaffey** asked about whether the development wanted to merge
12 with the HOA from the development near it or create their own.

13 **Mr. Koch** said they can't join the same HOA at the adjoining property.

14 **Councilmember Mahaffey** said he believed it was possible if enough residents
15 wanted to join with an adjacent property as an annex.

16 **Mr. Koch** said they have not discussed that with the property owner

17 **Councilmember Mahaffey** asked if they were willing to negotiate with the adjoining
18 property to join their HOA.

19 **Mr. Koch** said he could address that with the property owner.

20 **Councilmember Mahaffey** said he wanted to ensure the property would be
21 compatible with the adjoining neighborhood and believes this development should be a 55+
22 community.

23 **Mr. Koch** said that would be difficult as the owner is planning to live there himself and
24 two additional families he is connected with.

25 **Councilmember Gantt** asked if he had worked on any developments where part of it
26 was 55+ and part of it was not.

27 **Mr. Koch** said he had not, he said the circumstances around the project have been
28 unique and difficult, and they would work with the Council and the neighbors on as much as
29 they could.

30 **Councilmember Mahaffey** said his preference was for this development to be
31 completely compatible with the adjoining neighborhood.

32 **Mr. Koch** said he would need to discuss this with the property owner.

33
34 **Mayor Gilbert** moved to public comment to allow Mr. Koch time to discuss.

35
36 First to speak was **Don Azevedo** of 1358 Elk River Drive:

37
38 "Ladies and gentlemen of the council, thank you for allowing me to share my thoughts about
39 the rezoning request from Preserves at Holt. My name is Don Azevedo, I'm a new resident at
40 Courtyards at Holt at 1538 Elk River Drive. My wife and I selected this 55+ active adult
41 community because of its intentions for the needs of the people past child-raising age,
42 accommodating our changing physical capacities, and creating a positive community for

DRAFT MINUTES

1 folks in the later chapters of their lives. Following my presentation, seven of my neighbors will
2 present more detailed discussions of the ways in which the rezoning request negatively
3 impacts our community. Let me be clear, we are not against the development of the land in
4 some way that makes sense. We are opposed to the forced traffic for potentially four homes
5 with multiple drivers in each home, through Elk River Drive and Phillips Branch Road. IO will
6 briefly review the issues you will be presented by my neighbors. The land being considered
7 for rezoning is restricted by wetlands and a stream. Although the developer mentions
8 preserving more than the required 50% of the existing canopy, this statement may be a bit of
9 misdirection. Mr. Garr will go into more detail about the potential impacts. The numbers
10 presented by the developer can be easily confusing. Mr. Mettina will describe the unique
11 characteristics of this property and share some of the very real concerns about the
12 environmental impact as proposed. In the current proposal the Preserves becomes a cul-de-
13 sac attached to the Courtyards as you have mentioned. It will not be apparent that it is a
14 separate development at all. Mr. Pacioli will provide more detail on how this rezoning
15 proposal creates many compatibility concerns, as the Council has already mentioned. The
16 residents at Courtyard on Holt selected this community because it was designed for people
17 in later stages of life. Dr. Pearlmutter will describe how allowing the Preserves to use this
18 community as its access to Holt diminishes that value considerably, and possibly completely.
19 There are nearly a dozen entrances to communities from Holt Road. Mr. Ginsburg will discuss
20 the traffic challenges created by granting The Preserves access through Courtyards. The
21 current plan for the Preserves is that the construction equipment will enter, although we have
22 heard that will be changed and that's wonderful, we are still concerned about that and we'd
23 like more reassurance about it. A 55+ citizenry has a set of needs that differ from the general
24 populace. Mr. Braden was going to share with you his personal story of choosing the
25 Courtyards and Apex as his new home. Unfortunately, his wife has an acute illness that
26 prevents him from being here. Mrs. Botts has offered to read his statement. Forethought is a
27 difficult skill to practice as you all have mentioned several times. Hindsight is always easier
28 and yet often impossible to correct. Thank you again for this opportunity to present these
29 concerns to you. Ultimately, we ask that you reject this rezoning request as currently written
30 and send it back to the developer and the planning commission for revision. The needs of
31 the developer, our adjacent community, the environment, and the Town's plan for growth
32 require better balancing in any approach to the use of the land."

33

34 **Mayor Gilbert** thanked Mr. Azevedo for his comments

35

36 Next to speak was **Armando Garr** of 1339 Elk River Drive:

37

38 "It's late, we're tired, everybody wants to go home so I'll be brief. I just want to talk about the
39 trees. Back in the pre-application review with the EAB and the applicant, they had several
40 suggestions or recommendations, I'll just focus on two of them. One was to preserve 50% of
41 the tree canopy, the other was to plant a tree for everyone that they cut. 12 inches in
42 diameter, replace with a one-and-a-half-inch caliper. When the application for the Preserve

DRAFT MINUTES

1 was presented, they only had 50%, they didn't include replacing the trees. As we know, the
2 50% sounds very nice, but when you look at the property, a big chunk is occupied by
3 wetlands and the creek buffer. I looked at the applicants site map, I took the 4 lots, and I
4 added the surface of the tree extension. All that adds to 60,432 square feet. We know it's 4.9
5 acres, the whole property. That's 214,000 square feet. So, if we divide 60,432 square feet
6 over 214,000 square feet we get 28%. 28% represents the area that can be developed and is
7 going to be developed according to the plan. That also means that 72% cannot be
8 developed. So, if we're talking 50%, maybe it's a low target. This land we have here, as you
9 saw is covered with trees, mature trees, we have a permanent creek. It's not unusual to see
10 foxes, deer, raccoons, all types of birds over there, it's a valuable ecosystem we have, so what
11 we are asking is for you to help us preserve as much as we can of this ecosystem. To that end
12 I have two requests for your consideration. One is to preserve at least 70% of the existing tree
13 canopy. I think 50% is too low. The other one is that if you agree to have 4 houses built in this
14 lot, and if those 4 houses are built, there's gonna be a lot of space to plant trees, so my
15 request is to follow the EAB request to plant one tree for every one that is cut. And to plant
16 them in this property, not around Apex. Thank you."

17

18 **Mayor Gilbert** thanked Mr. Garr for his comments.

19

20 Next to speak was **Chuck Mettina** of 1328 Elk River Drive:

21

22 "My name is Chuck Mettina and I live at 1328 Elk River Drive and I'm going to speak about the
23 environmental concerns that we have about the property. I'm going to start with what the
24 builder has told you guys so far. One is that it only adds 4 units on an almost 5-acre site, and
25 the second the design preserves more open space than is required. I want to help the
26 Council understand why we feel these are a little bit misleading. The property's 4.9 acres, no
27 one disputes that, however the claim that the property has a large area of open space is very
28 misleading because of the wetlands and the stream that runs the entire length of the
29 property. The UDO states that all developments under low density option have buffers for
30 perennial stream of about 100 feet and intermittent streams need a buffer of no less than 50
31 feet. As Armando said when you subtract all this, all that adds up to 3.4 acres of land that
32 cannot be developed by the builder. This is not open space, this is 3.4 acres of
33 environmentally protected area. So that does leave about 1.5 acres of developable land. So,
34 this design does not add 4 units on a 5 acres site as the builder states, the design adds 4
35 large homes and an oversized cul-de-sac on 1.5 acres. So, the UDO also states that the built
36 upon area for medium density development should not exceed 12% of the total lot's area,
37 which to us is 1.5 acres. The plans for Preserve on the design include 25,000 square feet of
38 impervious surface, which equals about .6 acres. Take .6 over the 1.5 and you got 40% of
39 impervious surface on the land they actually can build on. The last thing I want to talk about is
40 that the builder also states all stormwater drainage will run between lots 2 and 3 and
41 discharge to the stream, that's what the builder says. Diverting all stormwater to the wetlands
42 and stream would be in direct conflict with the Town's commitment to control the adverse

DRAFT MINUTES

1 effects of increased post-development stormwater runoff associated with new development.
2 It's also in conflict with the Town's goal of minimizing sedimentation of streams. So, we feel
3 like the unique environmental restriction of this property would indicate that maintaining the
4 current RR zoning is the most appropriate zoning of the property. The right user, right
5 location, we feel RR is the best for that. So, for these reasons, we're asking the Council to
6 consider the real environmental impact of the proposed development and reconsider the
7 rezoning from RR to MD."

8

9 **Mayor Gilbert** thanked Mr. Mettina for his comments.

10

11 Next to speak was **Stephen Pacchioli** of 1342 Elk River Drive:

12

13 "Mr. Mayor, members of the council, I'm Steve Pacchioli, I reside at 1342 Elk River Drive.
14 Thank you for introducing many of the points I was going to cover tonight. Nonetheless, let
15 me begin by emphasizing that the proposed project provides virtually no physical separation
16 or visual transition between the Courtyards and the Preserve. For all practical purposes, the
17 Preserve will be a cul-de-sac, immediately adjoined to our neighborhood, providing a clear
18 line of sight to residents with a character that is highly incompatible with that of the
19 Courtyard. Aesthetically, architecturally, operationally, and from a lifestyle standpoint. The
20 courtyards feature one story ranch homes with consistent design and exterior construction
21 materials throughout. Complementary models and colors, private patios, low profile rooflines
22 that accommodate second level living spaces. All homes are of a similar height. We've not
23 seen the elevations intended for the preserve so we don't have insight into the exterior
24 materials or colors to be used, but we are obviously concerned that the Preserve will visually
25 clash with the aesthetic continuity of the Courtyards. Likewise, we're concerned that the
26 requested MD zoning would allow construction of homes with heights of up to 40 feet in the
27 Preserve. Such home will tower over the existing courtyard homes. The courtyards have a
28 covenant that restricts the use of our properties and committees must evaluate and approve
29 architectural changes and landscape enhancements. Trailers, storage bins, swing sets, similar
30 items are prohibited on home sites and common areas. Lawn and landscape maintenance is
31 required and performed consistently through our HOA. We know that the Preserve's
32 covenant will not even restrict the construction of accessory dwelling units, which can be
33 aesthetically unappealing. We are unclear on whether the Preserve will have maintenance
34 requirements or a committee to govern future architectural changes. Without appropriate
35 controls, the level of compatibility between the developments will likely decrease over time.
36 The sightlines and privacy levels on the patios of the two homes adjacent to the Preserve will
37 be drastically impacted by this project. So, we agree it's essential that any development
38 completed in the Preserve provide for type B landscape buffer of at least 20 feet. Over and
39 above the buffers that already exist along the adjacent Courtyard's lots. The prints that we've
40 seen only reflect the landscape buffer of ten feet, Shelly has indicated that that might be 20
41 feet, perhaps that's been amended since our last meeting, we ask you to keep that point in

DRAFT MINUTES

1 mind. I'll close by thanking you for your time, we appreciate your consideration of our
2 concerns as you contemplate your vote. Have a good night.”

3
4 **Mayor Gilbert** thanked Mr. Pacchioli for his comments

5
6 Next to speak was **Dr. Donald Perlmutter** of 1362 Elk River Drive:

7
8 “Mr. Mayor, Council, I appreciate your time and attention tonight. My name is Dr. Don
9 Perlmutter and I reside at 1362 Elk River Drive. I'd like to address the issue of the vulnerability
10 of our residents. Imagine if you will, elderly residents moving slowly and cautiously on their
11 street, some with walkers and wheelchairs. They may be on their way to the neighborhood
12 community center and pool, may be walking their dog, or picking up their mail. Consider also
13 elderly drivers, many of whom have impaired vision or hearing, and pulling slowly out into
14 their driveways. Now I understand as of tonight that our concerns about construction traffic
15 can be much reduced and we're very grateful for that, but we still feel that the increased
16 traffic along our street will present a greater risk to our vulnerable residents. The risk does not
17 end with construction. It's predictable that we'll experience at minimum a 30% increase in
18 traffic volume. This is based on the number of structures proposed by the Preserve versus the
19 number of residences currently on Elk River, and the younger demographic likely in the
20 Preserve. Courtyard on Holt is a planned 55+ community, Preserves is not. Once Preserves is
21 populated, there will be an increased volume of vehicles, some commercial, some
22 residential, and possibly including distracted teenage drivers. Furthermore, when
23 construction of Courtyards concludes, Gilwood Drive will connect the Middleton subdivision
24 to our community. It's reasonable to assume that Middleton residents who desire easier
25 access to Cary would use Phillips Branch through Courtyards as a connector. This will
26 compound the traffic issue of increased volume flowing to and from Elk River and creating an
27 even greater safety issue. The planning committee decided that egress on Elk River is
28 preferable to egress on Holt. We strongly disagree with that short-sighted assessment,
29 because it places our most vulnerable residents at greater risk. They must continue to be able
30 to drive and walk our streets safely. We're asking Council to deny egress for Preserves
31 through Elk River Drive. Keep Elk River Drive closed to through traffic. Thank you again for
32 your time.”

33
34 **Mayor Gilbert** thanked Mr. Perlmutter for his comments

35
36 Next to speak was **Larry Ginsburg** of 1324 Elk River Drive:

37
38 “Mr. Mayor, Councilmember, hello my name is Larry Ginsburg and I live at 1324 Elk River
39 Drive in the existing cul-de-sac. I am hoping that you will consider listening to the 29
40 Courtyards on Holt existing homeowners on Elk River Drive and the neighboring streets.
41 Unfortunately, the planning commission did not. Most of us on this block here have lived here
42 for almost a year. In that year we've had to live with construction traffic for more than 6

DRAFT MINUTES

1 months, we waited almost 3 months for a streetlamp to be fixed, and we are still waiting for a
2 clubhouse and pool to open as well as final paving of our street. Now we are being asked to
3 live with more construction, as much as another year, and Elk River will be the easiest access
4 point. Well, what about Holt Road. The town planners at planning committee acknowledged
5 that egress could either be Elk River Drive or Holt Road but chose Elk River Drive because
6 potential accidents at 25 miles per hour are preferable to accidents at 45 miles per hour.
7 Hard to believe this analysis was used to make a decision. Logically, shouldn't the traffic
8 exiting any of the development along Holt Road have the same concern. There's nothing
9 different about exiting the Preserve as any other development along the street. There have
10 been zero traffic studies related to the Preserve's egress off of Holt Road, just a gut feeling of
11 the town officials and some planning board members that Holt Road was problematic and
12 that Elk River Drive was less so. After all, it is only 4 houses, is the statement made by the
13 planning commission meeting. This group does not care that this change would affect 21
14 existing homeowners on Elk River Drive. There are currently 11 street entrances for Apex
15 developments along Holt Road, as well as 6 personal driveways. There would be nothing
16 unique about another entrance for the Preserves on the whole community. Though
17 development is forced to go through another community, so each community has a unique
18 entry/exit onto Holt Road. This separates each community from the other one and allows
19 them to have their own character. We know this is a unique property, but that it is why it was
20 zoned the way it was. So why should the Preserves be given special status to change the
21 character of Courtyard. As I mentioned before, our pool and clubhouse at Courtyard has not
22 been released to our homeowners. This same planning commission had a say in those
23 facilities. We had to wait for some heater on our pool, even though the outside temperature
24 was 90 degrees. The clubhouse couldn't open because lights weren't installed in the parking
25 lot. We asked if we could conditionally use it during daylight hours, again these were denied.
26 The planning commission would not allow our request for deviation, but they are bending
27 over backwards for the current requests. Again, our residents are the ones that suffer from
28 these decisions, not the builder. Consider what you've already heard, the only decision you
29 probably need to make is to deny the change of the zoning, and if they're going to have that
30 development, have it on Holt Road. Thank you."

31

32 **Mayor Gilbert** thanked Mr. Ginsburg for his comments

33

34 Next to speak was **Martin Tenebaum** of 1329 Elk River Drive:

35

36 "Good evening to everybody, and good evening especially to my fellow homeowners on Elk
37 River Drive. Although my topic has been modified already by the agreement of not having
38 construction go through Elk River immediately, it still is a potential problem because they're
39 talking about going through Holt Road in the primary stages, but later on eventually going
40 through Elk River Drive. My most basic concern was that there has been no real evaluations
41 about what they're doing with the property. There's been no studies of the actual
42 positive/negative impact that running construction materials and machinery through our Elk

DRAFT MINUTES

1 River Drive might have. The damage expected and the possible negative impact that heavy
2 machines might have on this just completed roadway, the house foundations, etc. Our
3 houses are built on cement slabs. The cement slabs have only been there for roughly two
4 years. Ours on Elk River Drive have been there two years, other are less. But the impact that
5 would happen with heavy construction material, heavy construction trucks, delivery trucks,
6 what impact would that have on our buildings, our houses, that's what is important. We are
7 already there. You're evaluating based upon what hardships the new owners have, but what
8 about our hardships. We have many hardships. If you look at Elk River Drive, it is not a very
9 large street. It is a small street and I was looking at how we had some construction there
10 because they're trying to repair the streets so they can cover and turn it over to the Town of
11 Apex. When there's one truck on the street, that's the entire traffic, unless you want to overrun
12 the workers, I mean that could happen. But there's no way that two-way traffic could happen
13 on that street, so if you're talking about bringing in construction trucks and all that material,
14 it's going to cause an impossibility for who lives there already, to live happily. And I don't
15 understand why the fourth house they're claiming they want to build needs to be delayed,
16 why can't they do it now with the construction trucks coming in from Elk River Drive. The point
17 is, when we purchased our properties, it was a cul-de-sac. A lot of us purchased those
18 particular properties because they were cul-de-sacs, and there was not going to be through
19 traffic, and we didn't have to worry about being hit or anything of that nature. Now we're
20 talking about putting four houses on the adjacent property, and specifically requiring that
21 development to come through ours. There's no other way out provided that we we've been
22 made aware of out to Holt. Thank you."

23

24 **Mayor Gilbert** thanked Mr. Tenebaum for his comments

25

26 Next to speak was **Ginny Botz** of 1320 Elk River Drive:

27

28 "My name is Ginny Botz, I live at 1320 Elk River Drive, which is the very last house on the left-
29 hand side after the cul-de-sac. What I'm going to do tonight is read for the Don Braden
30 statement, because he's not here. You heard earlier, his wife is in the hospital, and she has
31 other health concerns that I think my reading what he wants to say is more important than
32 what I had to say. He lives at 1321 Elk River Drive, right across the street from me. This comes
33 from Don's heart through my voice: Until January 2021, I lived in Richmond, Virginia on a
34 corner wooded lot that I loved. During our last years in the house, my wife's advanced
35 Alzheimer's worsened and I began to need more help than I had nearby. For example, she
36 got lost and knocked on the neighbor's door thinking it was her own house. For that main
37 reason I decided to move to the Raleigh area closer to my daughter and son-in-law so that
38 they could help me when I needed it. This allowed me to take care of my wife's needs at
39 home. I chose to move to Apex, and particularly into the Courtyards on Holt for three primary
40 reasons. This was a 55+ community, I got a secluded cul-de-sac lot with tree view, and it was
41 within ten minutes of my family support. He has come up with three basic reasons, because of
42 my time limit, I'm only going to go to the one I think is the most important, which is regarding

DRAFT MINUTES

1 the secluded cul-de-sac lot. Since my wife's diagnosis 13 years ago, the activities she was
2 able to participate in and enjoy slowly declined and has actually disappeared. She no longer
3 can take walks with me because of her mobility deficits. My wife has always been an avid
4 nature lover and bird watcher. One thing that continues to enhance her quality of life is sitting
5 on our courtyard looking out onto the woods and looking and listening to the birds. My fear
6 is that building the homes as proposed, including one directly across from my courtyard, will
7 eliminate the woods and wildlife that serve her primary source of engagement. I bought this
8 lot for thirty-thousand-dollar premium specifically to provide the highest quality of life for her.
9 Another issue with Alzheimer's that the people wander and get lost, I intentionally chose a lot
10 at the end of that cul-de-sac to minimize that risk. Just in his summary, not going to his other
11 two issues. You have heard the summary of requests today. For me, I hope the Town will
12 consider allowing Preserves to extend its entrance to Holt Road, where a driveway already
13 exists, to minimize traffic on Elk River Drive. I also hope it will require a 30-40-foot buffer from
14 the lot edge to preserve trees. It's my responsibility to protect my wife, and I ask the Town to
15 join me in providing her the protection she needs and deserves. I never said hello to you all,
16 but I will say thank you for listening, and I know Don will as well."

17
18 **Mayor Gilbert** thanked Ms. Botz for her comments and wished Mr. Braden and his
19 family well.

20
21 **Mayor Gilbert** opened discussion back up for Council, beginning with the property
22 owner answering the previous about joining the HOA.

23
24 **Mr. Baksha**, the property owner, said he did not want to join the HOA of Courtyards
25 because he is 47, and thus would not be allowed to live in the community, since the HOA
26 says residents should be age 55+. He said he was willing to accommodate as much as he
27 could and that he bought the property in order to live there. He said he would be happy to
28 join the HOA in 8 years or so when he turns 55. He says it also adding additional constraints
29 on him, making the process more difficult.

30
31 **Mr. Koch** said a connection to Holt Road would have to be a pass-through. He said
32 Elk River Drive is not a cul-de-sac, and that it was a pass-through road with a temporary turn-
33 around. He said the turnaround that is there does not meet the requirements of a cul-de-sac.
34 He said a cul-de-sac they would have to put in would be larger and would provide better
35 access for emergency vehicles. He said he understands the concern about Mr. Braden's wife,
36 and says he had a family member who passed away from it. He said he believes he could get
37 the upper to about 25, possibly 30 feet. He said the property owner could not meet the 55+
38 age requirement of the HOA of Courtyards. He said stormwater is based on 12% of the entire
39 lot being developed, and not 12% of the individual housing lots. He said the water would not
40 go directly into the stream, and they will have to meet all stormwater guidelines for
41 construction. He said if this was not approved there would not be a sewer extension, the
42 Town would have to work out the greenway situation, the right of way situation, and more. He

DRAFT MINUTES

1 said they have chosen to maintain a corridor of canopy, rather than having it be placed in
2 separate locations around the property, which he says is better for the wildlife. He says they
3 want to be good neighbors and do the best they can, which is why it was initially limited to 4
4 lots.

5 **Councilmember Mahaffey** asked if there was a sign at the end of the road that says,
6 "site of a future road extension".

7 **Mr. Koch** said there was not.

8 **Ms. Mayo** said there are three red diamonds at the end of that road, and there is
9 supposed to be a sign indicating that it is a potential future road extension. She said the sign
10 was likely there originally but came down somehow before houses were built and says
11 inspections may have missed it if it was not there originally. She apologized on behalf of
12 staff.

13 **Councilmember Gray** said he was wondering about the design of the new large cul-
14 de-sac and whether it was consistent with the desire for connectivity.

15 **Ms. Mayo** said staff recommended a cul-de-sac instead of an extension to Holt Road
16 is because there are roads in close proximity to each other in the same area, and ordinance
17 states there needs to be at least 500 feet of space between connections on a road such as
18 Holt. She said the most space they could get for a connection on this property between
19 another connector was about 350 feet.

20 **Mr. Dalton** said they could propose a right in/right out on Holt Road, but that NCDOT
21 does not like that idea and would prefer them to use the existing residential streets. He said
22 staff agrees with NCDOT for an extension of the cul-de-sac.

23 **Councilmember Gray** asked how many units they could max out on given the site
24 medium density residential designation.

25 **Ms. Mayo** said they could do 7 units per acre if it were townhomes, around 35 in total.
26 She said density is calculated based on total size of the land, and not the size of the
27 developable land only.

28 **Councilmember Gantt** said he wanted to know how many units would be required
29 for them to build a sidewalk on Holt Road.

30 **Ms. Mayo** said 5.

31 **Councilmember Gantt** asked if it was possible to fit 5 units in this lot.

32 **Ms. Mayo** said it was possible but would make it more difficult to meet the impervious
33 surface requirements.

34 **Councilmember Mahaffey** asked if they joined the HOA if they could use an existing
35 SCM.

36 **Ms. Mayo** said it was not possible.

37

38 **Mayor Gilbert** closed the public hearing for comments and sent it back to Council for
39 discussion.

40

41 **Councilmember Mahaffey** said the applicant has proposed an incompatible project
42 with the neighbors, which he believes goes against the concept of maintaining compatibility

DRAFT MINUTES

1 as part of their application process. He said this was a clear case of what incompatibility
2 means for rezoning. He said he was also concerned with the lack of a sidewalk on this project
3 and the continuing trend of the Town losing out on opportunities for gaining infrastructure.
4 He said the Council should decide how it wants to go about approving projects that has
5 “donut holes” or missing parcels that end up being developed separately and don’t allow for
6 the infrastructure to be developed fully, except by the Town.

7 **Councilmember Gray** said there have been many conversations about stub streets,
8 and that it is difficult to have one here and not go about meeting their goal of connectivity.
9 He said he understands the neighbors’ concerns about the area being a cul-de-sac, but he
10 said it is not that but rather a stub street. He said he believes having 4 residences is more
11 amenable to the neighbors than if it was a townhome development. He said this project does
12 not meet the goals of connectivity, which would extend Elk River to Holt. He said the large
13 sidewalk gap was a significant problem.

14 **Mayor Pro Tempore Killingsworth** said currently there are several things the
15 developer could do even without this project. She said they could construct without buffers,
16 cut down more trees without replacing, and still connect to the stub street. She said
17 accessory apartments were not a concern because that would contribute to impervious
18 surface space. She said this would be around 8 cars, while a townhome community could add
19 50 or more cars. She said it was difficult to weigh this against her view that it may not be
20 compatible with the Courtyards as a 55+ community, but that computability was difficult to
21 define in this sense.

22 **Councilmember Mahaffey** said the precedent needed to be set regarding
23 compatibility, whether that mean any resident projects were compatible with one another or
24 if HOA, community lifestyle, and other factors should be applied to compatibility
25 requirements for donut parcels such as this one, and in this case, it comes down to one being
26 55+.

27 **Mr. Koch** said the applicant was willing to do a payment in lieu of \$40,000 to go
28 towards construction of a sidewalk, and that \$150,000 would not be possible. He reiterated
29 there were grading challenges on the terrain where the sidewalk would be built.

30 **Councilmember Gantt** said he was voting no, and that he remained irritated that this
31 sidewalk was still not being proposed to be constructed as part of development of this
32 property.

33
34 A **motion** was made by **Councilmember Gantt**, seconded by **Councilmember**
35 **Mahaffey** to deny Rezoning Case No. 22CZ20

36
37 **VOTE: UNANIMOUS (4-0)**

38
39 **Mayor Pro Tempore Killingsworth** said she felt as though there was a lot of dialogue
40 and compromise that could happen by the applicant to help close some of the gaps their
41 position, the position of the Courtyard community, and the Council.

DRAFT MINUTES

1 **Councilmember Mahaffey** said he would be willing to support a project that was
 2 more compatible with the surrounding development, including the covenants and the homes
 3 aesthetics.

4
 5 **PH8 Unified Development Ordinance (UDO) Amendments - January 2023 (REF: ORD-**
 6 **2023-008)**

7
 8 **Dianne Khin**, Planning Director gave a presentation regarding Unified Development
 9 Ordinance (UDO) Amendments - January 2023.

10 **[SLIDE 43]**

Public Hearing #8

Possible motion regarding various amendments to
the Unified Development Ordinance (UDO)

11
 12 **[SLIDE 44]**

Amendment #1

1. Amendments to Secs. 4.2.2 *Use Table*; 4.3.5 *Use Classifications, Commercial Uses* and 4.3.6 *Use Classifications, Industrial Uses* in order to create the use “Warehousing fulfillment center”, change the definitions of “Truck terminal” and “Warehousing, general”, and to change the use “Wholesaling, general” to “Wholesaling distribution center”.


Use Type	Definition Section	Zoning Districts																Standards								
		Residential						Business						Planned Development		Other			Section(s)							
		R A	R R	L D	M D	H D	H M	M H	M P	M O	O & I	B 1	B 2	P C	I L	T F	M E			T N	P U	C B	S D	S T		
Industrial service																										
Warehousing, general	4.3.6.A.8																									
Warehousing fulfillment center	4.3.6.A.11																									
Woodworking or cabinetmaking	4.3.6.A.9																									
Wholesaling distribution center-general	4.3.6.A.10																									

13
 14
 15
 16
 17
 18

1 [SLIDE 45]

4.3.5 Use Classifications, Commercial Uses
...
H) *Vehicle repair and service*
...
8) *Truck terminal. A facility for loading and unloading freight or package express from trucks the dispatching, storage, and maintenance of large vehicles, such as but not limited to tractor trailers and dump trucks. Does not include "Warehousing fulfillment center", "Warehousing, general", and "Wholesaling distribution center".*


4.3.6 Use Classifications, Industrial Uses
...
A) *Industrial service*
...
8) **Warehousing, general**
An establishment primarily engaged in the storage of materials, equipment, or products within a building, ~~for manufacturing use or for distribution to wholesalers or retailers, as well as activities involving significant movement and storage of products or equipment. Typical uses include motor freight transportation, moving and storage facilities, cold storage, warehousing and dead storage facilities, but exclude self-service storage facilities and office-warehouse combinations. This use excludes "Wholesaling distribution center", "Warehousing fulfillment center", and "Self-service storage".~~



2
3 [SLIDE 46]

10) **Wholesaling, general distribution center**
An establishment primarily engaged in the display, storage, distribution and sale of goods to other firms for resale, but excluding vehicle sales, wholesale greenhouses or nurseries, wholesale of gas and fuel, and wholesale building supplies. selling of goods in large quantities to be retailed by others and/or the delivering of large quantities of B2B (business to business) products, such as but not limited to beverage distribution centers and electronics distribution centers. This use excludes "Vehicle sales and rental, heavy", "Vehicle sales and rental, light", "Building Supplies, wholesale", "Gas and fuel, wholesale", "Greenhouse or nursery, wholesale", and "Warehousing fulfillment center".


11) **Warehousing fulfillment center**
An establishment which serves as a third-party logistics (3PL) warehouse that receives, processes, and fills customer orders on behalf of eCommerce retailers, such as but not limited to Amazon Fulfillment Center, FulfillmentCompanies.net, or FedEx Fulfillment. This use is primarily B2C (business to consumer) in nature. This use excludes "Wholesaling distribution center" and "Warehousing, general".



4
5 [SLIDE 47]

Amendment #2

2. Amendment to Sec. 6.1 Watershed Protection Overlay Districts in order to change all references to "Environmental Engineering Manager" to "Stormwater Engineering Manager".



6

1 [SLIDE 48]

Amendment #3

3. Amendments to Sec. 6.1.11 Riparian Buffers and 6.1.13 Modifications by Variance in order to modify the single-family residential riparian buffer requirements and riparian buffer variance standards, and to provide updated references to state law.


6.1.11 Riparian Buffers

...

D) *Appeals of Stream Classification*
 Because the Neuse River is protected by a state-wide buffer program, which is managed by the NC DEQ, the authority to hear appeals of stream classifications for that portion of the Town of Apex and its ETJ that lies within the Neuse River Basin, which shall be indicated on the Town of Apex's "Watershed Protection Overlay District Map," rests within the sole jurisdiction of the NC DEQ unless the Town of Apex is delegated the authority to maintain its Neuse Buffer Program locally. Therefore, appeals of stream classifications shall be handled in the following manner:

1) *Within the Neuse River Basin*
 When any affected party within the Neuse River Basin believes that the maps have inaccurately depicted surface waters, the affected party shall consult the NC DEQ as set forth in 15A N.C.A.C. ~~02B 0233(3)~~ **0714(4)**.

...



2
3 [SLIDE 49]

...

G) *Uses Permitted Within the Riparian Buffer*
 This Section shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Sec. 6.1.11.E upon, a riparian buffer regulated by this Section. The Town shall issue an approval for new development only if the proposed development will avoid impacts to riparian buffers regulated by this Section or, if an impact to any such buffer is proposed, in accordance with the requirements in Sec. 6.1.11.G.1 or 2 below, as applicable, the applicant has demonstrated that: (i) the proposed activity is exempt, (ii) the proposed activity is allowable or allowable with mitigation, and the requirements of this Section for proceeding such designated use have been met, or (iii) a variance authorizing the proposed activity has been obtained.


1) *Within Zones 1 and 2 of the Neuse River Basin*
 Riparian buffers within the Neuse River Basin shall be maintained and protected per 15A NCAC ~~02B 0233.0714~~ Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, **as readopted effective June 15, 2020, which is hereby incorporated by reference**. Development activity may take place within Zone 1 or Zone 2 of a riparian buffer provided that the landowner has one of the following:

a) For any use, other than one specified as exempt, an authorization certificate that documents that the NC DEQ has approved an allowable use, or an allowable use with mitigation, as described in 15A NCAC ~~02B.02330714~~ Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian of Existing Riparian Buffers.

b) An opinion from the NC DEQ that vested rights has been established for that activity.

c) A letter from the NC DEQ documenting that a variance has been granted for the proposed activity.


...



4
5 [SLIDE 50]

Table 6.1.11.G.1


Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
Recreational and accessory structures in Zones 2 and 3:			
• Sheds and gazebos in Zones 2 and 3, except along perennial waters in Neuse River Basin where high-density development option is utilized		X	
o Total footprint less than or equal to 150 square feet per lot			X
o Total footprint greater than 150 square feet per lot			
• Wooden-slatted Slatted uncovered decks and associated steps, provided the use meets the requirements of Sec. 6.1.11.E and F of this Ordinance:		X	
o Deck at least eight (8) feet in height in Zone 2 and no vegetation removed from Zone 1			X
o Deck less than eight (8) feet in height in Zone 2 or vegetation removed from Zone 1		X	
o Deck in Zone 3		X	
...			



1 [SLIDE 51]

Table 6.1.11.G.1

Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
Residential Properties: Where application of this Section would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in Zone 3 of the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence meets the requirements of Sec. 6.1.11.E and F of the UDO; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:			
• The residence or necessary infrastructure only impacts Zone 3		X	
• Impacts other than the residence or necessary infrastructure in Zone 3. Covered porches and pools are not considered necessary infrastructure.			X
...			




2
3 [SLIDE 52]

6.1.13 Modifications by Variance

A) *General*
Requests for minor and major variances from the standards of the Watershed Protection Overlay Districts shall be made to the Board of Adjustment, except for variance requests pertaining to impacts within Zone 1 and/or Zone 2 of a riparian buffer within the Neuse River Basin which shall be made to the Director of the NC DEQ as specified below in Sec. 6.1.13.B.1.b and B.2.c. Due to certain process differences in State statutes or rules for decision making and appeals based on which basin or watershed a proposed project is located, a separate variance provision is set forth below for each of the following basins or watersheds: (i) the Neuse River Basin, (ii) the Jordan Lake Watershed portion of the Cape Fear River Basin and (iii) the Cape Fear River Basin outside of the Jordan Lake Watershed.

Sec 6.1.13.F sets forth an alternative variance process that is available for, but not required to be used by, an applicant seeking a variance from Sec. 6.1 density requirements for a project located in the Secondary Watershed Protection District and/or from Town Buffer requirements. Town Buffers and State Buffers are defined in Sec. 6.1.14.C. The purpose of this alternative variance process is to provide additional design flexibility for a project that provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development located in areas within the Town or its ETJ where the applicable requirements of Sec. 6.1 are not part of a State authorized program, or where separate State rules do not apply.

All applications for variances made to the Board of Adjustment shall be reviewed by the Board of Adjustment, which shall approve, approve with conditions (which may include mitigation requirements), or disapprove the variance after a public hearing noticed pursuant to Sec. 2.2.11 *Public Notification*, and conducted pursuant to Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures*, based on the applicable standards in Sec. 6.1.13.E or F.



4
5 [SLIDE 53]


B) *Variances for Activities in the Neuse River Basin*

1) *Minor Variances*

...
b) *Minor Variance Requests that are to be Submitted to the NC DEQ.* A variance request for an activity in the Neuse River Basin shall be considered minor and a decision on such request shall be made by the NC DEQ when:


o It pertains to activities that will impact Zone 2 of a riparian buffer located within the Neuse River Basin. However, if the impacted area is also within the Neuse River Basin's Primary Watershed Protection District and along perennial waters within a high-density development option area, the proposed impacts to the buffer also shall not exceed five (5%) percent of the buffer area. If such proposed activity within the Neuse River Basin requiring a variance for Zone 2 also includes impacts to Zone 3 that require a variance, then the Director of the NC DEQ shall consider the variance request as it pertains to Zone 2 impacts, and as specified in Sec. 6.1.13.B.1.a.iii a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

Pursuant to 15A NCAC 02B.0714(10)(a)(iv)0233(9)(b), a minor variance application for activities that will impact Zone 2 of a Neuse River Basin riparian buffer shall be submitted to the NC DEQ, and an appeal of a decision by the Director of the NCDEQ shall be to the Office of Administrative Hearings.



1 [SLIDE 54]

2) Major Variances
...
c) Major Variance Requests to be Submitted Directly to the NC DEQ for Determination either by the Division or by the Environmental Management Commission. A request for a variance for an activity in the Neuse River Basin shall be considered major, and pursuant to 15A NCAC 02B.0714(10)(a)(iv) an application shall be filed directly with the NC DEQ, and the Division will either determine that the major variance request meets the applicable requirements and submit its preliminary findings to the Environmental Management Commission, or determine that such requirements have not been met when:
...



2
3 [SLIDE 55]


E) Standards

1) General. The standards set forth in Sec. 6.1.13.E.2-3 shall be applicable to all variance requests submitted to the Board of Adjustment, except for a request submitted pursuant to the alternative variance process in Sec. 6.1.13.F.

2) In order to approve an application for a variance permit, the Board of Adjustment shall make a finding of fact as to whether **there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements** ~~the standards of Sec. 2.3.8.D.1.3 Variance Permit Standards area met.~~

a) **If the applicant complies with the provisions of this Sec. 6.1.11, applicant can secure no reasonable return from, nor make reasonable use of, applicant's property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board of Adjustment shall consider whether the variance is the minimum possible deviation from the terms of Sec. 6.1.11 that shall make reasonable use of the property possible;**

b) **The hardship results from application of Sec. 6.1.11 to the property rather than from other factors such as deed restrictions or other hardship;**



4
5 [SLIDE 56]

c) **The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of Sec. 6.1.11 would not allow reasonable use of the property;**


d) **The applicant did not cause the hardship by knowingly or unknowingly violating this Sec. 6.1.11;**

e) **If in the Jordan Lake watershed, the applicant did not purchase the property after August 11, 2009, the effective date of 15A NCAC 02B .0267, and then request a variance;**

f) **The hardship is rare or unique to the applicant's property;**

g) whether the variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; and

h) whether in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.



DRAFT MINUTES

1 **Councilmember Gantt** said he was trying to figure out the reason for the difference
2 between business to business vs. business to home.

3 **Director Khin** said it was to differentiate between activities that supported economic
4 development (business to business) and activities that fulfilled transactions to consumers
5 (business to home, i.e. Amazon).

6 **Councilmember Gantt** said he figured business to home would be more traffic on
7 site.

8 **Director Khin** said the major difference was the amount of parking needed for
9 fulfillment centers, which was another differentiation. She said the new classification would be
10 easier and more efficient for staff.

11
12 A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by
13 **Councilmember Gantt** to approve Unified Development Ordinance (UDO) Amendments -
14 January 2023.

15
16 **VOTE: UNANIMOUS (4-0)**

17
18 **[CLOSED SESSION]**

19
20 **Council** consensus was to postpone the below mentioned closed session item and
21 schedule for their next meeting, January 24, 2023.

22
23 **CS1 Laurie Hohe, Town Attorney**

24 **RE: Town of Apex v. Marcia M. Lund; 22-CVS-11706 and**
25 **Town of Apex v. Susan S. Smills, et al; 22-CVS-11707**

26
27 **NCGS §143-318.11 (3):**

28 *"To consult with an attorney employed or retained by the public body in order*
29 *to preserve the attorney-client privilege between the attorney and the public body."*

30
31 **[ADJOURNMENT]**

32
33 **Mayor Gilbert** adjourned the meeting adjourned at **11:39 p.m.**

34
35 Jacques K. Gilbert
36 Apex, Mayor

37
38 Allen Coleman, CMC, NCCCC
39 Apex, Town Clerk

40
41
42 Submitted for approval by the Town Clerk Allen Coleman and approved on _____.