



| VIRTUAL REGULAR TOWN COUNCIL MEETING

September 28, 2021 at 6:00 PM

The meeting will adjourn when all business is concluded or 10:00 PM,  
whichever comes first

Town Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier  
Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey  
Town Manager: Catherine Crosby | Assistant Town Managers: Shawn Purvis and Marty Stone  
Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

In attendance were, Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members Audra M. Killingsworth, Brett D. Gantt, Terry Mahaffey, and Cheryl F. Stallings. Also in attendance were Town Manager Catherine Crosby, Assistant Town Managers Shawn Purvis and Marty Stone, Deputy Town Clerk Tesa Silver, and Assistant Town Attorney Brian Meyer.

COMMENCEMENT

Mayor Gilbert called the meeting to order and roll called attendance. Mayor Gilbert reflected upon a recent tree planting experience, and how it is important it is to leave a legacy for the next generation. Mayor Gilbert led the pledge.

PRESENTATIONS

PR1 Jacques K. Gilbert, Mayor  
Presentation of Indigenous Peoples Day Proclamation

Mayor Gilbert read the proclamation for Indigenous Peoples Day.

PR2 Jacques K. Gilbert, Mayor  
Presentation of the Government Finance Officers Association's (GFOA's) Award of Achievement for Excellence in Financial Reporting to Vance Holloman, Finance Officer and Suzanne Parmentier, Accounting Manager.

Mayor Gilbert presented the award and acknowledged the achievements made by the finance department over the last 27 years. He congratulated Mr. Holloman and Ms. Parmentier. Council congratulated both Mr. Holloman and Ms. Parmentier, they recognized the department's level of excellence and the quality of work that has been contributed over the years. Mr. Holloman thanked Council, the finance staff, the departments, and Ms. Parmentier for their contributions.

#### CONSENT AGENDA

- CN1 Shannon Cox, Long Range Planning Manager  
Authorize the Town Manager to sign and execute, a Municipal Agreement with Wake County, North Carolina to use Community Development Block Grant (CDBG) funding to complete a sidewalk connection and enhancements to transit stops that would benefit low- and moderate-income persons.
- CN2 Amanda Bunce, Current Planning Manager  
Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendments of September 14, 2021.
- CN3 Michael Deaton, PE, Director  
Multi-year Master Agreements for On-Call Professional Services for multiple firms.
- CN4 Megan Pendell, Sustainability Coordinator  
Appoint Greg Reger as a new member on the Environmental Advisory Board (EAB).
- CN5 Michael Deaton, PE, Director  
An ILA with Holly Springs for water supply mutual aid.
- CN7 Colleen Merays, Downtown & Small Business Development Coordinator  
Co-Sponsored Special Event Permit request for Apex Rotary Christmas Parade with the approved date of Saturday, December 4, 2021.
- CN8 Colleen Merays, Downtown & Small Business Development Coordinator  
Amend the approved Co-Sponsored Event to end December 9, 2021.
- CN9 Angela Reincke, Parks Planning Project Manager  
Authorize the Town Manager to execute Final Conditional Letter of No Objection from Cardinal Operating Company, LLC in conjunction with Kelly West Homeowners Association for construction of the Beaver Creek Greenway PHI, PHIA and PHII.
- CN10 Mary Beth, Manville  
Additional 1% for Merit Budget and corresponding Budget Ordinance Amendment No. 6

CN11 Shawn Purvis, Assistant Town Manager

Resolution approving the Memorandum of Agreement (MOA) Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation

Council Member Mahaffey requested that CN 6 be removed from the Consent Agenda for further discussion.

Mayor Gilbert called for a motion to adopt the Consent Agenda with the requested change.

Council Member Gantt made the motion;

Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 roll call vote.

#### REGULAR MEETING AGENDA

Mayor Gilbert stated that there was a request to hear Unfinished Business 1 before the Public Hearings, and that Consent Number 6 was moved to New Business 1.

Mayor Gilbert called for a motion to adopt the Regular Meeting Agenda with the requested changes. Council Member Killingsworth made the motion;

Council Member Stallings seconded.

The motion carried by a 5-0 roll call vote.

#### PUBLIC FORUM

Brad Springer, shared thoughts on the removal of the downtown dining program, his hope is that Council would bring the program back, and he shared how the downtown area benefited from the program.

#### UNFINISHED BUSINESS

UB1 Vance Holloman, Finance Director

Resolution authorizing the execution and delivery of an Installment Financing Agreement, a Deed of Trust and related documents in connection with the financing of various capital improvements for the Town of Apex, North Carolina.

Staff stated that the resolution before Council authorizes the Town to execute an Installment Financing Agreement for \$8,700,000 for the construction of Public Safety Station #6 and a portion of an office building for Town Staff. The financing is at a 1.5% interest rate with Pinnacle Bank with the final payment set for September of 2036. Staff provided Council with a draft of the resolution and the Deed of Trust.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to approve;

Council Member Gantt seconded.

The motion carried by a 5-0 roll call vote.

#### PUBLIC HEARINGS

PH1 Liz Loftin, Senior Planner

Continued from the August 24, 2021 Town Council meeting. Rezoning Application #21CZ15 Chapel Ridge Towns PUD. The applicant, Toll Brothers, Inc., seeks to rezone approximately 21.60 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 1412 Olive Chapel Road; 1400, 1401, 1408, 1409 Barnside Lane and Barnside Lane right-of-way.

Staff reviewed the site with Council. The proposed rezoning is consistent with the 2045 Land Use Map. A letter of impact was received from Wake County Schools, and elementary and high schools are anticipated to have insufficient capacity for future students. The applicant has accepted the recommended zoning conditions provided by the Environmental Advisory Board, and the Parks and Recreation Advisory Commission unanimously recommended fee in lieu for the project. The Planning Board and planning staff also recommended approval.

Jason Baron with Morning Star Law Group, representing the applicant, briefly reviewed the history of what had occurred in the process for the project and he stated that the applicant has met Council's and the community's expectations. He stated that the plan is consistent with the town's long-range plan, that the applicant has accepted all the zoning recommendations from the Environmental Advisory Board, and that the Planning Board unanimously recommended approval.

Mr. Baron stated that the applicant will offer an option that includes a master bedroom on the first floor with a full bathroom and a separate entrance. He also stated that the applicant will contribute \$215 per unit to the Affordable Housing Fund and that a minimum of 8 units would be built 15% smaller than the standard unit to offer lower pricing.

Council requested more information about the site distance, improvements on Olive Chapel Road and the pond located adjacent to the area. Mr. Baron stated that there would be a dedication of additional right of way and construction of road widening along the Olive Chapel Frontage and that a retaining wall with a fence would be placed around the pond. Council expressed concerns regarding affordable housing as it relates to the project, and Mr. Baron explained that the contribution to the town's fund would make the town's affordable housing goal more obtainable. The applicant stated that they could also provide either \$3,500 towards closing cost or a \$3,500 discount, along with the units to be reduced in size going to a minimum of 12 units.

Mayor Gilbert declared the Public Hearing opened. Staff stated that three comments were received from Michael and Catherine Mohan, Anne Cain, and Rita Boykin. Mayor Gilbert declared the Public Hearing closed.

Council stated that they had reservations about the plan based on location, and the impact the project would have on the community.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve; Council Member Stallings seconded.

The motion was denied by a 3-2 roll call vote.

Mayor Pro Tem Dozier and Council Members Gantt and Mahaffey voted against;  
Council Members Killingsworth and Stallings voted in the affirmative.

PH2 Liz Loftin, Senior Planner

Ordinance on the Question of Annexation - Apex Town Council's intent to annex Shri Varni, LLC (Apex C-Store) property containing 6.064 acres located at 3600 Old US1 Hwy, Annexation #716 into the Town's corporate limits.

AND

PH3 Liz Loftin, Senior Planner

Rezoning Application #21CZ11 Apex C-Store and Ordinance. The applicant Kalpesh Patel, Shri Varni LLC, seeks to rezone approximately 5.37 acres from Wake County R-40W to Neighborhood Business- Conditional Zoning (B1-CZ). The proposed rezoning is located at 3600 Old US 1 Highway.

Staff oriented Council to the site. The rezoning is consistent with the 2045 Land Use Map. The applicant accepted all the suggested zoning conditions provided by the Environmental Advisory Board. The Planning Board and planning staff recommended approval.

Mr. William Pugh, representing the applicant, briefly discussed the benefits of having a convenience store in the area and discussed the possibility of a restaurant being added to the store or the parcel at a later date.

Mayor Gilbert declared the Public Hearing opened. With no comments, Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion. Council Member Gantt made a motion to approve the annexation and rezoning; Council Member Mahaffey seconded.

The motion carried by a 5-0 roll call vote.

PH4 Shannon Cox, Long Range Planning Manager

Amendments to the Transportation Plan in the vicinity of US 64 Highway associated with Rezoning Case #21CZ12.

Staff oriented Council to the amendments to the Bicycle and Pedestrian Plan, and the Thoroughfare and Collector Street Map. There were no concerns from staff in regards to the amendments. The Park and Recreation Advisory Commission and the Planning Board unanimously recommended approval.

Mayor Gilbert declared the Public Hearing opened. With no comments, Mayor Gilbert declared the Public Hearing closed.

Staff requested that Council wait to decide on the amendments until Public Hearings 5 and 6 were heard, as it related directly to the Annexation and Rezoning.

PH5 Shelly Mayo, Planner II

Ordinance on the Question of Annexation - Apex Town Council's intent to annex John William and Faye C. Long and Deanna's Dowry, LLC (Legacy PUD) property containing 34.335 acres located at 0 Olive Chapel Road and 3601 US 64 Hwy, Annexation #711 into the Town's corporate limits.

AND

PH6 Shelly Mayo, Planner II

Rezoning Application #21CZ12 Legacy PUD and Ordinance. The applicant, Ryan Linker for GCI Acquisitions, LLC, seeks to rezone approximately 60.97 acres from Rural Residential (RR) and Wake Co. R-80W to Planned Unit Development - Conditional Zoning (PUD-CZ). The proposed rezoning is located at 3601 and 3609 US 64 Hwy W, and 0 Olive Chapel Rd.

Staff oriented Council to the site. The plan is consistent with 2045 land use map, and a neighborhood meeting was conducted. A letter of impact was received from Wake County Public Schools and there is insufficient capacity for elementary and high school. However, within 5 years the high school issue will be addressed. The applicant is working with the school system to try to work out the capacity issues for elementary aged students. No plans will be submitted for areas where single family homes will be developed until 2 years after a rezoning approval. The applicant has accepted all the recommended zoning conditions provided by the Environmental Advisory Board, except condition 13 as they are not sure if this will be needed or not at this time. The Parks & Recreation Advisory Commission recommended fee in lieu of for the construction of a greenway.

Glenda Toppe, representing the applicant GCI development, stated that the project follows the 2045 Land Use Plan. Mrs. Toppe explained that there are several types of zonings throughout the parcel. The applicant is committing \$10,000 to an organization for the planting

of trees, is designating a portion of the parcel as a potential site for an elementary school in conjunction with working with Wake County Schools to achieve this, and is offering \$500 per unit into the Affordable Housing Fund.

Council questioned why the applicant contributed a larger amount to the fund opposed to providing more affordable units, and the applicant stated the decision was made based on their research. Council questioned the frequency of increase for potential tenants and the applicant stated that the complex would be driven by the market rate.

Mayor Gilbert declared the Public Hearing opened. With no comments, Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the transportation amendments, the annexation and the rezoning;  
Council Member Gantt seconded. The motion carried by a 4-1 roll call vote.  
Council Members Gantt, Killingsworth, Stallings, and Mahaffey voted in the affirmative;  
Mayor Pro Tem Dozier voted against.

#### OLD BUSINESS

There were no Old Business items for consideration.

#### NEW BUSINESS

NB1 Colleen Merays, Downtown & Small Business Development Coordinator

Close to up to 2 on-street parallel parking spaces along N. Salem Street from Center St. to Chatham St. to allow for extended outdoor seating, and to approve an ordinance temporarily modifying Town Code Sections 14-14 and 18-11 as they relate to sidewalk dining on public streets and sidewalks beginning September 30, 2021 through November 12, 2021(This item was previously Consent Agenda Item 6).

Staff recommended a proposal to bring back two smaller parklets as they relate to the parking to dining program. A survey was sent out to merchants and businesses, and the responses were split, and the survey determined how staff developed the current proposal.



Council stated that a major concern in regards to the program was the ability to serve alcohol. Council stated that current legislation was passed that allows Council to establish an ordinance to allow the sale of alcohol. Staff stated that the program would go through November 12, 2021 to allow for holiday decoration and holiday shopping.

Mayor Gilbert called for a motion. Council Member Mahaffey made a motion to return to parking to dining as configured over the summer, to have the Town Attorney prepare an ordinance regarding the ABC Bill, and for Council to approve call a Special Meeting once the ordinance is ready, and to direct the Town Manager to provide written permission to every ABC permit holder on Salem Street the authority to extend onto Town property;

Council Member Killingsworth seconded.

The motion carried by a 4-1 roll call vote.

Mayor Pro Tem Dozier and Council Members Killingsworth, Stallings, and Mahaffey voted in the affirmative;

Council Member Gantt voted against.

#### UPDATES BY TOWN MANAGER

TM1 Catherine Crosby, Town Manager  
There were no updates.

#### CLOSED SESSION

CS1 Laurie Hohe, Town Attorney  
Possible motion to go into closed session to consult with the Town Attorney pursuant to NCGS 143-318.11(a)(3) to discuss the handling of the matter of Caloggero v. Town of Apex.

Mayor Gilbert called for a motion to go into Closed Session. Council Member Killingsworth made the motion; Council Member Stallings seconded.

The motion carried by a 5-0 roll call vote.

Mayor Gilbert called for a return to Open Session with no objection from Council.

WORK SESSION

There was no Work Session.

ADJOURNMENT

With no further business, Mayor Gilbert adjourned the meeting.

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Tesa Silver, CMC, Deputy Town Clerk

ATTEST:

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Jacques K. Gilbert, Mayor