

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR
FELTON GROVE HIGH SCHOOL MAJOR SITE PLAN**

FINDINGS OF FACT

Based on the competent and material evidence in the record, the Town Council makes the following findings of fact:

1. Wake County Board of Education/Renee Pfeifer, CLH Design, P.A., owner/applicant (the "Applicant"), submitted a completed application for a major site plan on the 30th day of November, 2020.
2. Pursuant to G.S. §160A-384, and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on the major site plan for the Felton Grove High School before the Town Council on the 27th day of April, 2021.
3. The Apex Town Council held a public hearing, including an evidentiary hearing, on the 27th day of April 2021.
4. All persons who desired to present evidence relevant to the major site plan for the Felton Grove High School were allowed the opportunity to present evidence at the public hearing before the Apex Town Council.
5. The Applicant proposed building a 2 to 3 story high school totaling 392,760 square feet with sports fields, exercise fields, separate bus drop-off and carpool lanes, a parking deck, and surface parking.
6. The proposed Felton Grove High School would access Stephenson Road via Thriftwood Drive and Derry Down Lane, through the adjacent Briarwood Farms COSD mobile home park.
7. The proposed Felton Grove High School is projected to generate approximately 1,107 new trips entering and 253 new trips exiting the site during the school weekday A.M. peak hour and 139 new trips entering and 776 new trips exiting the site during the school weekday P.M. peak hour.
8. Town staff presented their recommendations for road improvements based on the UDO standards, but stated that G.S. §160A-307.1 only gives the Town authority to require improvements to municipal streets, as follows:

A city may only require street improvements related to schools that are required for safe ingress and egress to the municipal street system and that are physically connected to a driveway on the school site.
9. The site would be served with access through Thriftwood Drive and Derry Down Lane, located on property owned by Briartac Family, LLC, by way of Stephenson Road.
10. The Applicant, on or about December 23, 2020, filed a Complaint in Wake County Superior Court seeking a Declaratory Judgment declaring that Derry Down Land and Thriftwood Drive are public road rights-of-way
11. Since Thriftwood Drive, Derry Down Lane, and Stephenson Road are not municipal roads, according to G.S. §160A-307.1 Apex does not have the authority to require improvements on those roads or on any of the surrounding state-maintained roads. However, Apex staff did provide a summary of recommendations for offsite roadway improvements on state-maintained roads, both as recommended in the applicant's traffic impact analysis and as recommended by Apex staff based on UDO Sec. 13.19.
12. The applicant provided a traffic impact analysis with recommended road improvements on state-maintained roads including turning lanes at intersections within the study area. However, in

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accordance with NCDOT making no recommendations for turning lanes to be constructed on state-maintained roads as part of the proposed project, the applicant did not incorporate the recommended turning lanes in the Major Site Plan. However, the applicant did propose to upgrade both Derry Down Lane and Thriftwood Drive to Access Road standards, including resurfacing and shoulder/ditch improvement, to be eligible for NCDOT to accept into the state-maintained road system.

13. Mark Cumalander, the owner of Briarwood Farms COSD mobile home park, testified that the construction and operation of Felton Grove High School, as contemplated in the proposed site plan, would be incompatible with his neighboring property and its use as a mobile home park because the traffic impacts from the high school would unduly burden the residents of this neighborhood.

CONCLUSIONS OF LAW

In light of the findings of fact, the Town Council makes the following conclusions of law:

1. The Applicant submitted a completed application for the major site plan for the Felton Grove High School;
2. Competent, material, and substantial evidence establishing that the site plan meets all of the standards for major site plans provided in UDO Sec. 2.3.6.E.2 was not presented.
3. The development proposed in the site plan and its general location is not compatible with the character of surrounding land uses;
4. The development and uses in the site plan comply with Sec. 4.4 *Supplemental Standards*;
5. The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*;
6. The site plan does not propose anything that would be inconsistent with the requirements of Sec. 8.1.4 *Slope Protection Standards*;
7. The development proposed in the site plan conforms to the requirements of Sec. 7.4., *Dedication of ROW for Thoroughfare Streets and Highways*;
8. The development proposed in the site plan conforms to the requirements of Sec. 7.5 *Required Improvements*;
9. The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance;
10. The development proposed in the site plan does not have a significant adverse impact on potable water and wastewater facilities, parks, police, fire, and EMS facilities. It does have a significant adverse impact on surrounding roads, including, but not limited to, Stephenson Road, Derry Down Lane, and Thriftwood Drive;
11. The application and site plan do not meet the standards for major site plans stated in Sec. 2.3.6.E.2;
12. The Applicant is not entitled in law and in fact to the approval of the major site plan for the Felton Grove High School.

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DECISION

Based upon the above findings of fact and conclusions of law, the Apex Town Council hereby denies the major site plan for the Felton Grove High School.

These Findings of Fact, Conclusions of Law and Decision, shall constitute written documentation of Town Council's denial of the major site plan for the Felton Grove High School.

THE TOWN OF APEX

By: _____

Jacques K. Gilbert
Mayor

(Corporate Seal)
ATTEST:

Donna B. Hosch, MMC, NCCMC, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Donna B. Hosch, personally came before me this day and acknowledged that she is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official stamp or seal, this _____ day _____, 2021.

[Signature of Notary Public]

My Commission Expires: _____