



REGULAR TOWN COUNCIL MEETING

Tuesday, December 15, 2020 at 6:00 PM

Council Chamber at Apex Town Hall, 73 Hunter Street

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: Drew Havens | 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 (remotely), and Council Members Audra M. Killingsworth, Brett D. Gantt, Terry Mahaffey, and Cheryl F. Stallings. Also in attendance were Town Manager Drew Havens, Assistant Town Manager Shawn Purvis, Town Clerk Donna B. Hosch (remotely), and Town Attorney Laurie L. Hohe.

COMMENCEMENT

Mayor Gilbert called the meeting to order, gave the Invocation, and led the Pledge of Allegiance.

Mayor Gilbert stated that Mayor Pro Tem Dozier was attending remotely but that she would not be voting.

PRESENTATIONS

PR1 Keith Joyce of Joyce and Company, Independent Auditor

Presentation of June 30, 2020 audit report from Joyce and Company

Mr. Joyce presented highlights of the audit report. The audit opinion was clean, and the Town was awarded the Certificate of Excellence, a nationwide award, which has been received 26 years in a row. There was one finding but no Management Letter. There was one deficiency similar to the one from the prior year, this year's deficiency most likely being related to COVID.

CONSENT AGENDA

- CN1 Donna Hosch, Town Clerk
Minutes of the November 4, 2020 Regular Council Meeting, the November 17, 2020 Regular Council Meeting, the November 24, 2020 Special Council Meeting, and the December 1, 2020 Regular Council Meeting
- CN2 Donna Hosch, Town Clerk
Apex Tax Report dated October 5, 2020
- CN3 Jacques K. Gilbert, Mayor
Reappointment of all members of the Bee City Committee – Kaitlin Hartman, Michael Erana, Heidi Deja, Guy Loeffler, and Jennifer Springer – to a second term and appointment of a new member, Kimberly Rossi, to a first term to fill the current vacancy on the Committee
- CN4 Jacques K. Gilbert, Mayor
Re-appointment of Reginald Skinner and Tim Royal to the Planning Board as their terms expire December 31, 2020, and naming Michael Marks as Chair and Reginald Skinner as Vice Chair
- CN5 Jacques K. Gilbert, Mayor
Approval of Renisha Battle to fill a vacant seat left by Jane Wolfgang on the Public Art Committee
- CN6 Sarah Van Every, Senior Planner
Findings of Fact, Conclusions of Law and Decision approving a Major Site Plan for Crossroads Ford Truck Center located at 1200 Key Ring Drive
- CN7 Amanda Bunce, Current Planning Manager
Set the Public Hearing for the January 12, 2021 Town Council meeting regarding amendments to the Unified Development Ordinance related to the deadline for the submittal of requested quarterly receipts for businesses that serve alcohol for on-premise consumption
- CN8 Russell Dalton, Sr Transportation Engineer
Amendment to Design Services Agreement – Supplemental 1 with Stantec Consulting Services Inc., for Downtown Streetscape and Parking Design in the amount of \$10,000 and the corresponding Capital Project Ordinance Amendment No. 2021-03.
- CN9 John M. Brown, Director
Contract with Field Turf USA Inc. for conversion of multi-purpose athletic field at Salem Pond Park to synthetic turf and authorize Town Manager to sign all related documents / agreements
- CN10 Marty Stone, Assistant Town Manager
Encroachment Agreement and authorization for the Town Manager to execute the same for Lennar Carolinas, LLC to install a private water line that will encroach on the Town's right-of-way and public drainage easement

CN11 Mitch McKinney, Deputy Chief of Police

One "Chief of Police" badge and one handgun to be declared "surplus", that the price for such handgun be set at \$1.00 (One Dollar), and that the badge and handgun be awarded to Retiring Police Chief John W. Letteney

CN12 John M. Brown, Director

Temporary change in park hours at Apex Nature Park

The Mayor stated that there was a change to the public hearing date in Consent 07 from January 12th to January 26th, and there was an add-on related to the COVID leave policy.

Mayor Gilbert called for a motion to approve the Consent Agenda. Council

Member Killingsworth made the motion with the requested changes;

Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

REGULAR MEETING AGENDA

Mayor Gilbert called for a motion to approve the Regular Meeting Agenda.

Council Member Mahaffey made the motion; Council

Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

PUBLIC FORUM

Nicholas Brautcher, Peak of the Vine, spoke about his business and its business model. They are a retail wine shop with membership. He stated that with less parking and less foot traffic, he cannot compete with other larger businesses. Because of the pandemic, they are holding activities outside, which are being stopped by the police. He spoke about the hardships and harassment they face because of permitting to which other businesses don't have to comply.

Michelle Phoenix spoke about music at their place of business, Peak of the Vine, for which they have been thanked by the public. They were forced to move from their old location to the new location (on Salem Street). While they have been successful here, they are being forced to be outside because of COVID. They wanted music and outdoor seating, bringing in revenue to the Town, and they are being attacked and harassed by cops being sent to their location. They were asking for solo duo before 10:00 p.m. on Friday and Saturday nights with the playing of music during COVID. Ms. Phoenix felt

they are bringing people and revenue into the community, and simply wanted outdoor seating and music on Fridays and Saturdays.

Elvis Greer, designated speaker for the Stillwater community, asked for a greenway project to be placed in the upcoming budget. At the end of Ragan Road, there is a space that is a clear path to the American Tobacco Trail. They wished for the Town to acquire legal permission to cross through that area and to clear some of the debris to provide a safe walking path, other communities being in support. Right now, there is not a safe place to walk around their neighborhood.

Juan Ortega, Sophie and Mollies Boutique, spoke in support of Peak of the Vine. Downtown Apex's history is music, i.e., Apex Jazz Festival. These venues have stopped across the country, and there are only places like Peak of the Vine left to enjoy. Downtown businesses were in the news, Peak of the Vine included, for the creative things they are trying to do to stay alive. The news showed Peak of the Vine's winter wonderland with lights and guitar playing. For them to be harassed by the police, the Town, and the alcohol bureaus is unacceptable. Mr. Ortega was upset that this continues to happen and that there is no support from the community. He asked Council to fight for them.

Laurie Nelson, Brookfield subdivision, spoke about her holiday card that depicted a Black Lives Matter photo. She thought her card would bring joy, but it brought anger to one neighbor, David Swope, a police officer. He sent her an angry text message. She was wondering what would happen when his tolerance ran out. There are those who have signs displayed in yards that depict Black children. Will her Black Lives Matter car sticker make her a target for other officers who felt the same way? Ms. Nelson reported her concerns to Officer McKinney, and found this was a pattern that causes concerns about Apex PD. Officer McKinney, while polite, left her questioning herself – she did not feel heard or safe. Ms. Nelson formally requested a cultural assessment of the police department be initiated immediately to understand diversity, equity, and inclusion issues in the police department – especially as we prepare to hire a new police chief. She hoped the new chief will respect the dignity and cultural diversity of the community. She hoped this would be a first step in developing a police advisory board where all cultural and diversity concerns could be heard by all.

PUBLIC HEARINGS

PH1 Joanna Helms, Economic Development Director by Assistant Town Manager Shawn Purvis

Conveyance of +/-26 acres of the Cash Corporate Center located at 2100 Production Drive for \$1,955,460.00 for the purposes of Economic Development, pursuant to N.C.G.S 158-7

Staff stated this was similar to the public hearing heard two weeks ago. Council has provided for purchase of the property. Staff oriented Council to the site, which would be for Project Delta. Responding to Council, staff stated Project Protein was looking to close within the next 45-60 days.

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

Mayor Gilbert called for a motion. Council Member Stallings made the motion to approve the conveyance of +/- 26 acres for \$1,955,460.00;

Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

PH2 Shawn Purvis, Assistant Town Manager and Amanda Grogan, Budget & Management Analyst

Citizen input regarding the formulation of the Fiscal Year 2021-2022 Annual Budget
Staff stated this would give the community an opportunity for feedback into the budget. She stated there was a public participation and prioritization tool on the website, detailing what was included.

Responding to Council, staff stated public input was for board projects, and that we can determine if respondents live within the town limits. The rough budget calendar was stated. Staff responded that prioritization was better done through the survey than through emails. However, emails are monitored and responded to year-round. Most responses come after the budget is adopted, most being complimentary.

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

Council stated that prior to his becoming a Council Member, he and his neighbors used the email address which can be a useful tool to get what want is wanted as a need in the community. Council stated this is where there is the most citizen impact for certain projects. Both hoped these tools were something that the community would use this year.

PH3 Dianne Khin, Director of Planning and Community Development
Ordinance on the Question of Annexation – Apex Town Council's intent to annex MFW Investments, LLC (Colby Crossing) property containing 7.578 acres located along a portion of the future connection of Colby Chase Drive between Merion and Pemberley subdivisions, Annexation #651 into the Town's corporate limits
Staff oriented Council to the site. The subdivision was approved previously, and staff recommended approval.

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

Mayor Gilbert called for a motion. Council Member Stallings made the motion to approve the Ordinance related to Annexation #651; Council Member Killingsworth seconded the motion.
The motion carried by a 4-0 vote.

PH4 Dianne Khin, Director of Planning and Community Development
Ordinance on the Question of Annexation – Apex Town Council's intent to annex Kimberly & Loomis Horton, III, Mary Elizabeth Horton, Dwight Marvin Wright, MFW Investments, LLC, and MFWIRA, LLC (Horton Park PUD) properties containing 101.356 acres located at 8140, 8252, 8306, and 8308 Smith Road; 0 East Williams Street; 0, 0, 0, 0, & 0 Dezola Street; and 5220 Jessie Drive, Annexation #687 into the Town's corporate limits
Staff oriented Council to the site which was in a similar location to that in Public Hearing 3. Staff recommended approval.

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

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the Ordinance related to Annexation #687; Council Member Mahaffey seconded the motion.
The motion carried by a 4-0 vote

PH5 Dianne Khin, Director of Planning and Community Development
Ordinance on the Question of Annexation – Apex Town Council's intent to annex MCI Enterprises LLC (MCI Business Park Buildings 3 & 4) property containing 5.53 acres located at MCI Business Park, Annexation #697 into the Town's corporate limits

Staff oriented Council to the site, which was also in the same general vicinity as Public Hearings 3 and 4. Staff recommended approval.

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

Responding to Council, staff answered questions about any future environmental remediation for which the property owner would have responsibility.

Mayor Gilbert called for a motion. Council Member Stallings made the motion to approve the Ordinance related to Annexation #697; Council Member Killingsworth seconded the motion.
The motion carried by a 4-0 vote

PH6 Shelly Mayo, Planner II

2020 Annual Hazard Mitigation Action Plan Update

Staff stated two federal acts require these Plans in order to be eligible for federal money. This was a group project with a lot of input, and staff identified those persons in the group. Staff spoke about several of the items in the action plan. Exciting was the completion of the White Oak Greenway, and staff explained how this can help in an evacuation effort. Three new items were added – Public Stations 6 and 7 and the future fire administration building.

Staff spoke briefly about ongoing items and stated those with a concrete ending point. Beaver Creek greenway, Middle Creek greenway, Apex West greenway, the Beaver Creek sewer line improvement, the Peakway loop are in the works. Staff spoke about updates to the UDO. Police and Fire and IT are working together to improve our communication abilities.

Responding to Council, staff spoke to how this document influences CIP decisions which will be made by Council. We try to get major projects on as many documents as possible to increase the likelihood of federal funds. The Town Manager explained this information will be incorporated in the upcoming CIP discussion with Council.

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

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

Council stated he likes doing this type of planning as disasters are not well predicted and not always well planned for. He felt comfortable that we will be prepared as best we can because of this plan.

Council stated sometimes we undersell to the public and hazard mitigation should be a larger topic of information.

The motion carried by a 4-0 vote

PH7 Amanda Bunce, Current Planning Manager
Various amendments to the Unified Development Ordinance
Staff oriented Council to the amendments.

Responding to Council, staff spoke about non-ETJ areas and these areas being counted as offsite RCA. Staff stated we requested ETJ expansion in 2007, but this was not granted by the County. Staff explained there are benefits to having people annexed when they get rezoned. The ETJ is not necessarily beneficial for many reasons. Council expressed wanting to hear more about this.

Planning staff and the Planning Board recommended approval.

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

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

Council stated excitement in seeing the RCA changes, and he talked about our policy goals and what he hopes to see happen in the future.

Council spoke about the benefit of being able to expand for park purposes.

Council appreciated the work done by everyone and how this is tied to our strategic goals.

The motion carried by a 4-0 vote

OLD BUSINESS

OB1 Vance Holloman, Finance Officer

Temporary Ordinance Modifications extending the current suspension of utility disconnections and application of penalties and fees for unpaid utility balances
Staff stated there was updated information to the cover sheet – we have 2,083 accounts subject to disconnection totaling \$967,566, and slightly under a fourth have set up payment plans. He explained possibilities as to why there has not been a larger percentage of those setting up payment plans. Staff expounded more on account figures and revenues. He stated there are two surrounding municipalities that plan to reinstate cutoffs in January.

Responding to Council, staff spoke about the average number of people in arrears and where we stood compared to the Statewide average. He spoke about a utility relief program of another municipality and how that program works.

Conversation ensued among Council about our citizens being impacted by the pandemic, how we are not able to forgive utility debt, how we will need to get back to a regular billing process, and our possibly transitioning to a way/program going forward to help our customers. Wake Helps is now closed.

Council stated he would oppose approval because of too much uncertainty and the million-dollar figure is only going to grow. Council stated that if we decided to stop the effort, it did not mean we would get the money. Council provided information leading to more conversation of possible funding that may be forthcoming from the government. Conversation ensued on the Town implementing its own assistance program.

Mayor Gilbert called for a motion. Council Member Killingsworth made a motion to extend suspension of utility disconnections and application of penalties and fees for unpaid utility balances to February 28, 2021;

Council Member Stallings seconded the motion.

Council stated this is the fault of COVID and not the fault of our customers. The Mayor stated that he receives emails weekly from citizens and business owners asking how they can get back on track. We must continue to move forward during these unprecedented times to help the citizens and business owners.

Council Members Killingsworth, Stallings, and Mahaffey voted in the affirmative. Council Member Gantt voted in the negative.

The motion carried by a 3-1 vote.

Mayor Gilbert called for a ten-minute break.

UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

NEW BUSINESS

NB1 Shawn Purvis, Assistant Town Manager

General Title VI Nondiscrimination Policy and associated grievance procedures
Staff stated this was part of the requirement for us to receive federal and state funding, especially for DOT. We have had the required practices in place, but DOT has asked for a formal approval statement. This is the first step to putting us in compliance; other policies are being reviewed. There was an immediate need and deadline for this presented piece.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the General Title VI Nondiscrimination Policy and associated grievance procedures; Council Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

NB2 Shawn Purvis, Assistant Town Manager

Financial support to DHIC for the affordable housing project at Broadstone Walk in the form of grants from the Affordable Housing Fund for Water and Sewer Capital Reimbursement Fees and Recreation Fees-in-lieu and a loan for construction contingent upon final project approval

Staff stated we received two letters from DHIC, Tim Fisher being on line if questions. The first was for grant funding to cover the cost of water and sewer capital reimbursement fees. Council considered this request when the project was in a different phase and design over a year ago, the request being approved. The second letter was a request for a loan of \$1million to mirror what the County does for their housing. This would fill in the gap from other funding sources. Staff explained why DHIC was asking for the \$1 million. Staff was confident with the model in order to market the product. This will also help to assure affordability stays lower, which is what DHIC recommended.

Council stated this request was coming before the final plan and wanted to know what is the biggest bang for the buck in the affordable housing plan. Is this an effective use of the money, and is it the best use of affordable housing money? Staff stated the biggest impact is a reality thing; it helps the 164 units get built for more affordable housing in the town. There are other needs, but DHIC would look to other programs for these.

Staff stated the 4% tax credit is guaranteed money but takes more partnerships. It would be a good thing to do the 4% if we and the County could swing it. DHIC tried but did not get the 9%, which is more competitive and more limited. The County is committing a bit over \$3 million to the project.

Staff stated DHIC would not need funds until this time next year when actual construction begins. We could split funding between this year and next. Staff stated this project was presented at the retreat earlier this year, and the funding was about \$3 million at that time for us and the County. DHIC has figured out a way to lessen our share.

Council stated this would be guaranteed affordable housing that people need. We would be putting our money where our mouth is at this point.

Council asked if the same project came tomorrow, would we have to raise the amount. Council responded saying that this is DHIC's committed focus, doing so in an equitable way and connecting people with resources. We would get people who feel they belong in this community and hopefully they would stay. If we get another project, we would address it when it came along.

Staff stated that if another project comes along, the numbers would be brought before Council. There is a banked fund to be able to use for these types of projects that could be extended. We can prioritize as we go along.

Yolanda Winstead, new president of DHIC, thanked Council for the opportunity. She presented more background on DHIC, which has been in business for over 45 years, and their past and current projects. She expressed the quality and maintenance of their projects. She explained the funding piece, stating their intention to maintain the affordability and that the Town's investment would be well spent.

Council stated she appreciated the range of incomes. Responding to Council, staff stated we are doing a good job of getting started. She spoke about the experience of other municipalities who have been doing this for a while, our being able to benefit from their experiences. Responding to Council, Mr. Fisher spoke a bit about their past relationship with the County and decisions that were made in dealing with them.

Council stated he was not skeptical of DHIC. He was skeptical, however, that we may get pushed soon. Staff stated that money to the fund would be added annually and that this is a loan. Things may happen, but there is an expectation that money will be coming back because this is a loan.

Council stated this was a great use of funding and explained why. He stated that we should try to do this every time such requests come before Council.

Mayor Gilbert called for a motion. Council Member Stallings made the motion to approve the grant funding to cover the cost of water and sewer capital reimbursement fees and the \$1million loan; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

CLOSED SESSION

CS1 Laurie Hohe, Town Attorney

To consult with the Town Attorney pursuant to NCGS 143-318.11(a)(3) to discuss the handling of the matter of Empire Contractors, Inc. v. Town of Apex

CS2 Jacques K. Gilbert, Mayor

To discuss a personnel matter

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

The motion carried by a 4-0 vote.

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

WORK SESSION

There were no work Session items for consideration.

ADJOURNMENT

With no further business and without objection from Council, Mayor Gilbert adjourned the meeting.

Donna B. Hosch, MMC, Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor