

DRAFT MINUTES

**TOWN OF APEX
REGULAR TOWN COUNCIL MEETING
TUESDAY, NOVEMBER 13, 2025
6:00 PM**

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, November 13th, 2025 at 6:00 PM in the Council Chambers at 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=Qz2L395WV38>

[ATTENDANCE]

Elected Body

Mayor Jacques K. Gilbert (presiding)

Mayor Pro Tempore Ed Gray

Councilmember Audra Killingsworth

Councilmember Terry Mahaffey

Councilmember Brett Gantt

Councilmember Arno Zegerman

Town Staff

Town Manager Randy Vosburg

Deputy Town Manager Shawn Purvis

Assistant Town Manager Marty Stone

Assistant Town Manager Demetria John

Town Attorney Laurie Hohe

Town Clerk Allen Coleman

All other staff members will be identified appropriately below

[COMMENCEMENT]

Mayor Gilbert called the meeting to order at 6:00 p.m. and thanked those who were in person as well as live stream. He asked if there were any Veterans in attendance and recognized them. He asked for Mayor Pro-Tempore Gray, a US Air Force Veteran, to lead in the Pledge of Allegiance. He then invited Pastor Steven of Apex Baptist Church to lead in the invocation.

Mayor Gilbert noted the items in the folder for Council's reference during the meeting.

[CONSENT AGENDA]

Mayor Gilbert asked staff for information about item CN1.

Marla Newman, Community Development and Neighborhood Connections Director said that the CN1 item is a conditional commitment to the Raleigh Area Land Trust to assist in purchasing 10 homes from Pulte Homes for the inclusion in their land trust to make these homes permanently affordable to income-eligible homeowners. This was from when Pulte Homes received a rezoning some years ago, and part of the rezoning there was a commitment to support affordable homes and this is to ask for support for this conditional commitment.

A **motion** was made by **Mayor Pro-Tempore Gray**, seconded **Councilmember Zegerman**, to approve the Consent Agenda as presented.

VOTE: UNANIMOUS (5-0)

CN1 Affordable Housing Conditional Funding Commitment - Raleigh Area Land Trust (RALT) - Support the Acquisition and Long-Term Affordability of Ten (10) Townhomes in Huxley Development in Apex, NC

Council voted to authorize the Town Manager, or their designee, to extend a conditional funding commitment of \$225,000 in grant funding from the Town's Affordable Housing Fund to the Raleigh Area Land Trust (RALT) to support the acquisition and long-term affordability of ten (10) townhomes located in the Huxley development in Apex. This commitment is conditional on funding to be received from Wake County.

AND

Council voted to approve the associated budget amendment (No. 7) and transfer of funds of up to \$225,000 from available funding in the Affordable Housing Fund to the RALT project.

CN2 Agreement and Resolution - Land Exchange AR Custom Homes LLC - 2428 Old US 1 Highway - Subdividing Lot Correction (REF: CONT-2025-409, and RES-2025-066)

Council voted to adopt a Resolution approving a Land Exchange Agreement between the Town of Apex and AR Custom Homes, LLC, for adjacent properties on Old US Hwy 1 (Buckhorn Township), and authorize the Town Manager, or their designee, to execute the agreement on behalf of the Town of Apex.

CN3 Agreement Ratification - Overhead Door Company of Raleigh - Time Sensitive Secure Bay Door at Public Safety Station No. 4 (REF: CONT-2025-410)

Council voted to ratify an oral agreement between the Town of Apex and Overhead Door Company of Raleigh for time sensitive services to secure a bay door at Public Safety Station (PSS) No. 4 following a vehicle collision, for an amount not to exceed \$8,020.95.

CN4 Annexation No. 816 - 1000 Classic Road - 2.59 acres (REF: RES-2025-067, RES-2025-068, and OTHER-2025-095)

Council voted to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for December 9, 2025, on the Question of Annexation - Apex Town Council's intent to annex 2.59 acres, located at 1000 Classic Road (PIN 0751-26-9262), Annexation No. 816, into the Town Corporate limits.

CN5 Budget Ordinance Amendment No. 7 - Conditional Funding Commitment from Affordable Housing Fund and Acceptance of Show Your Park Some Love Grant Award (REF: ORD-2025-075)

Council voted to approve Budget Ordinance Amendment No. 7 which allocates \$225,000 from the Affordable Housing Fund for a conditional funding commitment for an affordable housing project through the Raleigh Area Land Trust (RALT) and accepts and allocates \$10,000 in grant funds to support new and ongoing recycling programs in Town Parks and Community Spaces.

CN6 Construction Contract Award - Comfort System Systems USA (Mid Atlantic), LLC - HVAC Renovation at Public Safety Station No. 4 and Budget Ordinance Amendment No. 6 (REF: CONT-2025-411 and ORD-2025-076)

Council voted to award an HVAC Construction and Repair Contract between Comfort Systems USA (Mid Atlantic) LLC and Town of Apex, for Public Safety Station No. 4 HVAC system renovation, and to authorize the Town Manager, or their designee, to execute the contract on behalf of the Town.

AND

Council voted to approve Budget Ordinance Amendment No. 6 appropriating funds for the Public Safety Station No. 4 HVAC Renovation Project in Fiscal Year 2025-2026.

CN7 Council Meeting Minutes - Various

Council voted to approve Meeting Minutes from the following meetings:

October 11, 2022 - Regular Town Council Meeting Minutes

November 1, 2022 - Town Council Public Safety Work Session Minutes

November 8, 2022 - Regular Town Council Meeting Minutes

November 29, 2022 - Regular Town Council Meeting Minutes

CN8 Rezoning Case No. 24CZ10 Ashburn PUD - Statement and Ordinance (REF: ORD-2025-077)

Council voted to approve Statement of the Town Council and Ordinance for Rezoning Case No. 24CZ10, Ashburn Development, petitioner, for the properties located at 0 & 0 Mt. Zion Church Rd. (PINs 0721448562 & 0721442048)

CN9 Surplus Badge and Service Weapon - Former Apex Police Lieutenant Thomas Parody

Council voted to declare one (1) badge and (1) service weapon (Glock Model 47 9mm handgun, with S/N Serial Number CCVX718) as surplus property, set the price for such weapon to be \$1.00 (One Dollar); and, award the stated badge and service weapon to

Former Apex Police Lieutenant Thomas Parody who retired from the Apex Police Department effective November 1, 2025.

CN10 Tax Report - September 2025 (REF: OTHER-2025-096)

Council voted to approve the Apex Tax Report dated October 16, 2025.

CN11 Unified Development Ordinance (UDO) Amendments October 2025 - Statement (REF: OTHER-2025-097)

Council voted to approve the Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendments of October 28, 2025, proposed by staff.

[REGULAR MEETING AGENDA]

Mayor Gilbert noted there were changes to the Regular Meeting Agenda. He said that PR1 will be removed and recognized during the Town Manager's report, PH3 is clarified to also refer to 1093 White Oak Creek Drive, PH7 will be continued to a later date and Closed Session Item No. 1 will be removed.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Gantt**, to approve the Regular Agenda, with the removal of PR1 and recognition of that item during the Town Manager's Report, clarification of PH3 referring to 1093 White Oak Creek Drive, continuation of PH7 to a later date, and removal of CS1.

VOTE: UNANIMOUS (5-0)

[UPDATES BY TOWN MANAGER]

Town Manager Vosburg gave the following updates:

Upcoming Events

- Nov 22: Turkey Trot (non-competitive and competitive options).
- Nov 23: Kids Holiday Craft Fair at the Halle, 2:30-5:00 p.m.
- Nov 29: Small Business Saturday.
- Dec 5: Tree Lighting Ceremony at Town Hall, 4:30-7:00 p.m. (new location; expanded activities).
- Dec 6: Rotary Christmas Parade; chair-placement presentation and the Police Department put out a video on additional guidance.
- Dec 6-31: Holiday Tour of Lights, nightly 6-9 p.m.
- Town holiday closures: Town of Apex closed Nov 27-28 for Thanksgiving.

Nonprofit Funding

- Applications open Dec 1, the Administration of funds is shifting from Budget to Administration. There is a new emphasis on resident impact, including testimonials, and Awards range \$500-\$20,000; typical overall funding limit approx. \$1 per resident, around the \$80,000, which was slightly reduced last year.

Budget Survey

- The Theme: "How would you choose to spend \$5 million?" aligned with five strategic goal areas. This is found on the Town's website and is available through December 1st.

Capital Improvement Projects

- Update video releasing Friday, November 14th which will include the Peakway construction, elevated storage tank, and other major projects.

Team Apex / Service Day / Food Drive

- Town Service Day was held Nov 7 at Western Wake Crisis Ministries (now renamed "Neighbor Up") with 60 staff volunteers in food packaging and facility support. Organization currently facing low food supply (19,000 lbs. on hand vs. 90,000-lb capacity), some was driven by the recent SNAP issues. Town food-drive competition winner: The Mason Street Municipal Building with 524 lbs. collected, the town collectively contributed: 2,200 lbs. donated to Neighbor Up. He announced the Town received the 2025 Howard Manning Community Partner of the Year Award.

Utility Update

- Ask Apex: 86% of calls resolved on first contact; average wait time 1:07.
- Billing cycles: Cycle 1 was at 30.2 days average and Cycle 2 was at 30.1 days average normalized at close to 30 days for both cycles.
- SEW (company that helped with technical support during transition to the utility portal) contract has been discontinued due to reduced call volume; staff are now able to manage inquiries based on November volume.
- Variance reports: Significant reductions; Cycle 1 down from 5,500 to 945 variances and Cycle 2 by about 50%.
- Customer service log: Over 62% (remining 382) reduced and are aiming to clear remaining backlog by year-end but may extend slightly into January.
- Overall utility metrics are trending positively, with continued progress expected.

[PRESENTATIONS]

PR1 Proclamation – Recognizing Team Apex Service Day and Winning Team for Food Collection

Removed through Council vote setting Regular Meeting Agenda.

PR2 Proclamation - Small Business Saturday - Saturday, November 29, 2025 (REF: PRO-2025-044)

Mayor Gilbert invited the Council to read the Proclamation for Small Business Saturday 2025. He invited Economic Development Manager, Colleen Merays, and Small Business Consultant II Barbara Belicic to accept the proclamation and take a picture.

Ms. Merays asked for all Apex Small Businesses that were in attendance to come up to be recognized.

[PUBLIC FORUM]

Mayor Gilbert opened the Public Forum.

First to speak was **Allen Stadium** of 2005 Brandenton Way:

“Good evening, Mr. Mayor, members of the council. For years, Miss Annie, a lifelong Apex resident and respected member of our community, has graciously allowed students and families to use her gravel lot for parking. She’s helped relieve traffic congestion on Humie Olive Road, kept students safe from crossing busy streets, and offered parking when the town has ticketed students for using spots now marked as no parking. She provided a practical solution where neither the town nor the school system has. What she offered isn’t a business venture. It’s a community service that’s filled a very real need for our growing high school population. Recently, that goodwill has been met with unnecessary government overreach. The town’s actions to restrict parking on her private property under the guise of UDO enforcement or rezoning interpretations are both misguided and unfair. This is private land. It’s been recognized as a public vehicular area, and Miss Annie has every right to allow responsible individuals to park here. Let’s be clear, this should not be about politics, this is about people. We’re talking about an elderly woman who has lived here her entire life, giving back to a community she loves, now facing threats of fines and legal pressure simply for helping families. We used to celebrate that kind of neighborly spirit, not punish it. I urge this council to reconsider its stance and work with Miss Annie and help Apex Friendship families find a fair and lasting solution. This can mean clarifying our UDO language or even relinquishing the ETJ jurisdiction altogether. There are many paths forward, but all of them

1 start with common sense and compassion. Under no circumstances should this council take
2 legal action nor pursue zoning enforcement against Miss Annie during this school year. We
3 have hardworking families, many of whom have supported this council in the past, and we all
4 deserve to make it through this school year without undue stress or disruption to our
5 children's parking situation. Of course, I don't have to remind any of you of the Town versus
6 Rubin. The town also thought it had the upper hand in that scenario as well. Our students
7 need safe, accessible parking, and Miss Annie's lot provides exactly that. Our students
8 deserve safety and stability, and our town should stand for fairness, not heavy-handed
9 enforcement or what feels like retaliation against a Mayor and his constituents who stand with
10 the people. Thank you for your time and for doing what's right for Miss Annie, our families,
11 and the Town of Apex. Thank you."

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13 **Mayor Gilbert** thanked the speaker and called up the next speaker.

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15 Next speaker was **Dawn Cozzolino** of 3632 Bosco Road:

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17 "Dawn Cozzolino, 3632 Bosco Road, New Hill. Good evening, mayor, council
18 members, and staff. Before I get started, so I thought of an idea, instead of \$5 million to
19 spend, how about \$5 million to save? Just a thought. I come here tonight as a resident who
20 still believes local government should operate openly, honestly, and lawfully. But what I've
21 observed tells a different story, one of concealment, delay, and disregard for the public's
22 right to know. On tonight's consent agenda, item number seven, the Town Council is seeking
23 approval for various meeting minutes. These are actually from 2022. They're almost three
24 years late. They're still missing. August and September, but I think they are the months
25 October through December. That's not routine business. Under North Carolina General
26 Statute 143-318.10, the minutes of every official meeting must be prompt and fully prepared
27 and made available for public inspection. Three years of silence is not prompt. It's unlawful.
28 The North Carolina public records law, 132-1, states clearly that the people of the state are
29 the rightful owners of public records. Yet through this period, those records were missing.
30 One of these is very interesting because the July 19, 2022 special work session by the Town
31 Council was advertised with less than 48 hours' notice, which itself is a violation of 143-
32 318.12, and the meeting discussed far more than the limited topic that was described in the
33 notice. These are not minor clerical issues; they are failures of process and duty. When
34 minutes are withheld and meetings are poorly noticed, decisions affecting land,
35 infrastructure, and millions in public funds occur in the shadows. Under 159-25, the finance
36 officer is responsible for ensuring that every disbursement of public money is lawful and
37 properly documented. If the record of those deliberations is absent or altered, that obligation
38 cannot be met and what I want to finish with, because I'm almost out of time, is that things in
39 government are built on honesty, accuracy, and lawful transparency. When a town withholds
40 its history, it loses its credibility, and leaving office does not erase responsibility, public

officials, past to present, remain accountable under state law for failing to uphold their duties.
Thank you.”

Mayor Gilbert thanked the speaker and called up the next speaker.

Next speaker was **Lee Howell** of 3514 Jordan Shires Drive:

“Lee Howell, 3514 Jordans Drive. I feel like the primary emphasis of this data center has been the direct impacts that will be felt by surrounding residents and while those are important, I think the bigger picture is being lost, and I’d like to shed some light on that topic tonight. The big picture is this: the data center will have far and wide impacts to the region and even to the State of North Carolina as a whole. If the water that comes out of your tap in your home is sourced from Jordan Lake, or the power that keeps your air conditioning and lights running comes from Duke Power, this data center will impact you. You might say, “They’re planning to use reclaimed water. How does that impact the water I use?” Reclaimed water in its simplistic form is just highly chlorinated, treated effluent or discharge that would otherwise be released back into the watershed. This data center is planning to use somewhere between 500,000 to a million gallons per the developer of water each day, some of which will be evaporated into the atmosphere and taken out of the watershed. That means less water to replenish local and downstream reservoirs. This facility will also have a potable water connection that it can switch to when the reclaimed water is offline. So, the next time you’re placed on water restrictions due to drought conditions, this data center will still be consuming 500,000 to a million gallons of water a day. You might also say, “I’m an Apex resident. My power comes from Peak Electric, not Duke.” While true, Peak Electric negotiates with Duke Energy to provide power to the Apex grid. This data center is 300 megawatts in size. That is three times larger than the entire Town of Apex grid and a third of the power Shearon Harris is capable of producing. While we rely on a grid and not just Shearon Harris for our power needs, 300 megawatts is a significant load that Duke Power will need to plan for. Just like the water, when it’s above 90 degrees outside and Duke limits the temperature of your home, this data center will still be consuming 300 megawatts. In July of this year, North Carolina legislators passed Senate Bill 266, which essentially shifts the burden of power infrastructure upgrades and new power plant construction from the commercial consumer to the residential customer. So, when Duke Energy decides they need to build new plants or upgrade existing ones to meet ever-increasing energy demands, we as consumers get to bear the cost through rate hikes to our utility bills. This data center will not just affect residents of New Hill or Jordan Point, Belterra, Jordan Manors, or Woodbury. Its impact won’t even be isolated to Apex. The impact from this data center and others like it will have far-reaching consequences for the entire state of North Carolina. It will rob us of our water resources and will contribute to increases in our electric bill rates. When the time comes to decide on whether this data center should be constructed here, I hope that you take these

1 concerns into consideration and not only do what is right for Apex, but for all of North
2 Carolina. Thank you for your time.”

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5 **Mayor Gilbert** thanked the speaker and called up the next speaker.

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7 Next speaker was **Dr. Michelle Hoffner O’Conner** of 2664 Jordan Pointe Boulevard:
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9 “Dr. Michelle Hoffner O’Connor, 2664 Jordan Point Boulevard. I want to be respectful
10 of everyone’s time tonight and have submitted my full remarks intended for tonight to the
11 Town Clerk. Tonight, I will read excerpts of the testimony of Amara Strand, a young woman
12 who passed away a few years ago from cancer. Her cancer developed as a result of exposure
13 to toxic chemicals called PFAS, which all of Apex will be exposed to via air, water, and dirt
14 contamination if the proposed data center is built. “I am 20 years old, and at the age of 15 I
15 was diagnosed with stage 4 fibrolamellar hepatocellular carcinoma, an incredibly rare form of
16 liver cancer that occurs in one in five million. Due to its rarity, there is no standardized form of
17 systematic treatment other than surgery. There are no curative options, no road map, no
18 plan. Growing up, I lived in the 3M plume and attended Tartan Senior High School, where I
19 met many classmates also directly affected by cancer as a result of what we now understand
20 these chemicals to be, PFAS. When toxin in the environment hits a person’s DNA at a
21 particular vulnerability, a cell mutates, resulting in cancer or other serious illnesses. One of
22 my cells mutated, and cancer began to grow. Unfortunately, people being subjected to
23 dangerous chemicals unknowingly happens far too often. It’s a repeated offense that has
24 festered in our land, water, and bodies for decades, and despite public knowledge of said
25 environmental waste dumping, little has been done to clean up or hold those deemed
26 responsible for the deadly cause and effect that has robbed my community. We have all paid
27 a high price due to large corporations carelessly dumping known toxic chemicals. However,
28 we have yet to see public health repaid for the time, money, and emotional turmoil inflicted
29 by the same chemicals at the expense of our lives.” Amara is gone because of the reckless
30 choices others made. If this data center comes here, our children will breathe in PFAS at Apex
31 Friendship Schools and at Pleasant Park. Our gardens and yards will be contaminated; our
32 pets’ paws will drag particles into our homes after walks on the greenways. Our drinking
33 water will be at greater risk than it already is and require more effort to clean, and we will
34 bear the cost of all of this with respect to our wallets and the health of our loved ones. The
35 developer will be long gone, and there is nothing in any ordinance that will hold the end user
36 responsible. That is not Live, Work, Play. That is not the peak of good living. Every essence of
37 this application is the antithesis of what drew everyone in this room to Apex to begin with.
38 The developer and his representatives have continuously failed to convey how they will keep
39 our community safe, how they will prioritize us and I truly hate to think that the next child who
40 could be the next Amara is the child of someone in this room. Thank you.”

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2 **Mayor Gilbert** thanked the speaker and called up the next speaker.

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4 Next speaker was **Truth McDavid**, on behalf of **Annie Scott** of 8008 Humie Olive
5 Road:

6 "Greetings and salutations from the 10th Judicial Bar. Attorney Truth McDavid for Ms.
7 Scott. She has her representatives in addition to the council. Your Honor, Pro Tem, let me
8 start off by saying I was asked to do some research and do some reviews based on a letter
9 that seemed to misstate the law. So, first and foremost, the statute in question is 20-219.4. I
10 looked the statute up, and after I looked the statute up, I went to the book stacks at the law
11 library downtown Raleigh. As I looked in the book stacks, I pulled the statute. There are no
12 judicial legislative notes. Legislative notes tell you why the law was created in the first place,
13 what harm they were trying to prevent. It appears they just wanted to find a way to create
14 public vehicular rest areas. Now, there's only one case that I found that's anywhere on point. I
15 brought it here, and what the case says, as I pulled it from the book stacks and I'll turn to
16 page five, and I'll leave it for the council's review, is basically: when an enabling statute is
17 clear and unambiguous, there's no room for judicial construction, and the court must give it
18 its plain and definite meaning. That means the statute is what it says, no more, no less. She
19 pays \$200; it gets turned into a public vehicular area. So, then I tried to figure out what they
20 were trying to do. In North Carolina, we have communities, these homeowners' associations.
21 That's this green book. Homeowners' associations function just like the Town of Apex or any
22 town council and what they do is create these cutouts where we have homeowners'
23 associations that make sure the lawns are cut, that people pick up their trash and the reason
24 why I use this is because they also put up stop signs. Everybody's been to a lot of these
25 parking lots at restaurants where they put up parking signs, and people don't obey them
26 because it's a restaurant. But in homeowners' associations, the homeowners obey the parking
27 signs because they want people to obey the parking sign; that's why they pay for them to get
28 put up. The problem is the parking signs are not what is called "duly erected." Duly erected
29 means they have to get a DOT sticker that they can't give themselves; they have to get it from
30 the state, once the state puts the DOT sticker on the back of the sign, suddenly law
31 enforcement can use that sign to arrest, ticket, and all these other things. Even though the
32 homeowner's association can erect the signs, they can't make them duly erected. This issue
33 that you guys are having based on the case law that wasn't presented, it kept saying "I
34 believe," which seems to be someone's really smart opinion, but the case law is pretty
35 straightforward. You guys can zone whatever you want, but once someone petitions the state,
36 and best as I can see, the state has put up the signs, they have stickers, they've put it on the
37 maps, and they've done what they're supposed to do, it is what it purports to be, and there's
38 no way to undo that. Like I said, I brought the case law and I brought the statute book, and
39 there were only three cases in this area. Two of them had to do with horses and animals,
40 which have nothing to do with what we're talking about and then the King case dealing with
41 the idea that once we start talking about undoing what the state wants to do, it can't be

1 undone by the municipality because they have reasons for doing it, but nobody decided to
2 write any of that down with this statute. I literally went to the book stacks in downtown Raleigh
3 and checked and looked for legislative notes. I had my people do the research, and what we
4 have is a situation where once the sticker goes on the sign, the only people who could take
5 the sticker off would be DOT. The problem for DOT is they took her money and once they
6 took her money, they put it into this record, they added it to the maps, they paid for the
7 signage. The moment to take it back has passed. For lawyers, we would call this being moot,
8 it's a wrong capable of repetition but evading review, and so therefore there have not been
9 any challenges to the Court of Appeals or any trials, and as best I can tell, Ms. Scott and
10 maybe one or two other people are the only people who have ever done this. So for those
11 reasons, I give that information to the court and I ask for mercy and grace, mercy in the sense
12 that we could spend a lot of money arguing about this, and Ms. Scott could probably hire me
13 to represent her, but I don't know who that would serve. What I would say is I've done all the
14 research. I brought the case law. I bring the answer and the answer is: once the sticker went
15 on the back of the sign, that's why law enforcement is allowed to use it as a means to ticket
16 and arrest people. Prior to the sticker being on the back of a sign or an area being
17 designated as a PVA, police officers can't use it as a point of arrest. As the Mayor, former law
18 enforcement would know, being able to arrest somebody in someone's private yard is a far
19 cry from a PVA. As a lawyer who practices criminal law, I don't really care for PVAs because it
20 allows law enforcement to just go into an area and they can arrest anybody in there for
21 whatever appears to be an issue. While at the same token, a person standing on their own
22 property could literally be engaging in many forms of shenanigans and there's nothing law
23 enforcement can do unless there is an imminent danger of immediate bodily harm. So, the
24 PVA, by its very nature, Ms. Scott has decided that she would give up her privacy and her
25 legal protection for the benefit of the kids of the school. If I knew nothing else about her, that
26 would be enough. For those reasons and all the other legal reasons and I brought the books
27 so that anybody who wanted to review the research, it is what it purports to be, and the local
28 municipalities can't undo it at this point because my understanding is they already put up all
29 the signs and they cashed her check, and the moment they cashed her check, she got what
30 she purported, and that's what the King case stands for. And I brought it as it, I'm old, so I
31 brought it printed out from the actual book stacks in the law library as opposed to the
32 electronic stuff that the young people do. So, I said I was old. So, for that, I thank you for your
33 time and your attention, and I hope that this helps kids have a safe place to park, it's in the
34 best interest of the children and everyone, and it would save a lot of money. Thank you very
35 much, by your leave."

36
37 **Mayor Gilbert** thanked the speaker and called up the next speaker.

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39 Next speaker was **Sheila Morrison of 2504** Finkle Grant Drive, New Hill:

1 "I'm here to show and voice support to Mrs. Scott and her efforts to use her Wake
2 County property to provide a needed service to the families and students at Apex Friendship
3 High School. This is the immediate situation before you for consideration, but the
4 implications are far-reaching for all of us who live in the ETJ of Apex. First of all, we ETJ
5 residents cannot vote for members of the Apex Town Council, but it seems that we are
6 subjected to the will of the Apex Town Council. We do not have any representation on the
7 Town Council. For those of us who live in the ETJ, we need to be both aware and wary of the
8 Apex Town Council's decisions, especially when it comes to decisions that impact or
9 potentially impact those of us who live and own property in the ETJ. Thank you."

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11 **Mayor Gilbert** thanked the speaker and called up the next speaker.

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13 Next speaker was **Fran Hudson** of 5524 Rex Road:
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15 "I actually went through the pros and cons of the data center. And my cons, I did my
16 little pros, and I was thinking, okay, where are my other pros? There have to be more pros,
17 there have to be more pros, so the speculative tax revenue is a pro, but we don't know
18 exactly what that's going to be because the developer doesn't know who's going to actually
19 be the end user of this. They also stated there could be up to 275 jobs. That's not a definite
20 either, so we don't know what that really is. It's a pro, but we don't know for sure. It also
21 benefits Apex, not the people in that area. Although some of them are annexed into the
22 town, not everybody is. So, this is negatively impacting people. So, our cons are, the people
23 don't want the data centers, it's close proximity to houses, there's a lot of unknowns, the
24 power impacts, water impacts, loss of farmland, environmental impacts, wildlife impacts,
25 game land impacts and then I had to go up the side because I continued. Property values, the
26 marketability of these properties is going to be impacted by this. The lithium battery risks, the
27 generator pollution, lifespan of facility. North Carolina General Statute 105-164.13(55a) pretty
28 much gave them tax exemptions from anything they want to buy. Looking at that is, it's crazy,
29 because the people don't get the same consideration, but this data center will. Possible
30 impacts and noise, which was covered in this meeting that we had last night. But I also
31 wanted to remind you, the UDO. The purpose of the UDO is to promote and protect the
32 public health, safety, peace, comfort, and general welfare of the citizens and residents of
33 Apex and its extraterritorial jurisdiction. It's the comprehensive unified set of regulations.
34 Regulations are to restrict, they are to control, they are to protect. That's the whole reason for
35 this UDO. I just printed out a couple pages of it. The specific purpose, some of those are: to
36 protect the small-town character. This does not protect small-town character at all. Also,
37 promote good planning practice. I don't know, this is something brand new, we've never
38 seen it, nobody's had it in this area. So, I don't believe that's really good planning because we
39 don't even have anything in the UDO that really covers them. So, I don't know how you can
40 say that's good planning. Also, to prevent adverse impacts on the environment. There are a

1 lot of things here that are environmental, and they're going to be impacted, and it's going to
2 impact the people in the end. And the efficient use of land and public services, the water use,
3 the electricity use is not a good efficient use of those public services. So, thank you."

4 **Mayor Gilbert** thanked the speaker and called up the next speaker.

5
6 Next speaker was **Mike Solo** of 2102 Char Lion Downs:

7 "Mayor, council members, staff, thank you for having me here today. I wanted to speak
8 to you about the proposed Haden Hall Greenway that came up in the Work Session. Now,
9 years ago, this would have been an excellent greenway. It was planned in 1999 before the
10 new development that we're seeing on North Salem Street, before the Peakway. When this
11 was proposed, this would have connected over 900 homes to Baucom Elementary and
12 allowed our kids to walk to school. Now, this dead-ends at a two-lane-each-direction, soon to
13 be four-lanes-each-direction road. Do we want kids trying to cross this? I'd like you guys to
14 reconsider this greenway and consider what we can do to bring this into the modern era and
15 make a new plan which works with the current development that we have. Thank you very
16 much."

17 **Mayor Gilbert** thanked the speaker and called up the next speaker.

18
19 Next speaker was **Barbara Collins** of 901 Norwood Lane:

20 "This is compiled by people who live in Iowa. So, they did a study and here's what the
21 study says: What is the percentage of energy being used by data centers in other states? And
22 here it is, Virginia, 39%. Oregon, 33%. Iowa, 18%. Nevada, 15%. Utah, 15%. Nebraska, 14%.
23 Arizona, right? So, where is North Carolina going to be on that list? And so, I want to also
24 read you what they wrote: They already consume 18% of the electricity in our state, and there
25 are more on the way. This is going to force construction of new power plants, and all that is
26 rate-based, meaning you and I are paying for the power plants and all the new transmission.
27 The data centers just pay a little share of it, even though the power is essentially for them
28 exclusively. Several counties and cities in Iowa are already preemptively creating ordinances
29 to allow small nuclear reactors. I have to say, it does make me chuckle that all these, never
30 mind name-calling, who clutch their pearls over the wind and solar are about to have a
31 nuclear power plant in their backyard. As someone in the electric generation industry, I can
32 only advise you to pay attention to, attend, and protest rate cases brought before the Iowa
33 Utilities Board over the next couple of years. We're about to get hit in the shorts with a
34 massive rate increase to pay for all of this new generation and transmission needed by the
35 data centers. So, we're not alone, right? We're not alone, and communities all over the
36 country are having to deal with this, and they're creating their own ordinances, right? Which I
37 understand we can't do in Apex. But here's what we can do: we can just say no, right? We
38 have a right to say no. We can just say no, right? Let's say no. If there are financial

1 implications, in my opinion, as I said last time before, it's worth it. It's worth it, and so if the
2 town has a chance to vote on this, what do you think they would say? It's worth it. It's worth it
3 not to do it, even if there are financial consequences down the line. And I truly believe that all
4 of you are with me on that. If you're not, don't clap. If you are, let's clap. Okay. So that's what I
5 want to tell you. We can just say no. I don't need to know your opinions. I just want you to
6 keep hearing it. Thank you."

7 **Mayor Gilbert** thanked the speaker and called up the next speaker.

8
9 Next speaker was **Alexis Kennedy** of 106 Buck Haven Court:

10
11 "Today I want to talk about my lovely neighborhood, Abbingdon. We have sent a
12 request in to have an investigation on the traffic that's going through my town or through my
13 neighborhood. We're right off 64, and so we're having cars cut through our neighborhood to
14 get to Kelly Ridge or Kelly Road because they don't want to go through the traffic. And so we
15 have no stop signs, and it's highlighted so you can see, for almost a full mile there's no stop
16 signs. And then for the other spot, it's .6 miles, no stop sign. So, you have cars that are just
17 cutting through, speeding. At the time that our kids are going off during the summertime we
18 have, I know a lot of us have the swimming competitions. So, during the summer, we've got
19 our kids on Kelly Ridge Road, like mine and Lansbrook, as you can see, and Lansbrook right
20 now only has one sidewalk. It's on the left-hand side if you're going westbound. So, the kids
21 have to cross over Lansbrook where Kelly Ridge meets, but there's no stop sign, and so I
22 constantly, in the two summers I've lived there, have watched near-kids get hit because you
23 have people who don't live in our neighborhood speeding because they don't want to sit in
24 traffic at 5:00, and it's causing a problem and so we did have an investigation, and I wanted
25 to thank our investigator because my neighbor Sarah said she was absolutely lovely, but all
26 she did was brighten up a walking sign over on Glenshire Court Road, which is further down,
27 the map didn't highlight it, but we got a highlighted walking sign, which doesn't really help
28 us when you have Amazon drivers, the tree guys, having almost a full stretch of mile that they
29 can go, and it goes downhill too, so then it's picking up speed. And I did see where they put
30 the traffic clocker, which is on my street, Buck Haven. But that's not the hot spot. The hot spot
31 actually is a little further down and actually at Lansbrook. And then when they miss Lansbrook
32 as they're cutting across, they speed down my cul-de-sac, which is Buck Haven, because they
33 missed my street because it's a very easy street to miss and then they speed through it and
34 flip around right in front of my house and I watch constant cars speeding through my cul-de-
35 sac because they missed Lansbrook and they're turning back around so they can get on
36 Lansbrook and drop down. So, I was told I really need to bug City Council to get that stop
37 sign, so, I'm coming here to bug you. Thank you."

38
39
40 **Mayor Gilbert** thanked the speaker and called up the last speaker.
41

1 Next speaker was **Dr. Raquel Weaver** of 2916 Patmos Island Lane:

2
3 "Good evening. I am Dr. Raquel Weaver and I live at 2916 Patmos Island Lane in Apex.
4 And I just want to bring to your attention the utility bill issue. I know I spoke with you, Mayor, a
5 couple of months ago. Just to follow up on that issue, I have not seen any correspondence or
6 anything about what the cause of that was. My bill was almost a three-fold increase, and I've
7 been here almost five years, and for four of those, my bill was pretty steady, pretty regular.
8 August 2025, I get a bill of over \$800. Okay. So, I just need to know what exactly happened.
9 What's the expectation for us to pay these exorbitant bills? Are we in fear of getting our
10 utilities turned off? I feel for the people that may not be able to pay their bill. Secondly, I
11 wanted to bring up the trash, recycling, and yard waste. Again, I've been here almost five
12 years since I purchased my home in 2021. The vendor constantly leaves trash on our roads.
13 Glass, it flies everywhere. It makes our beautiful, brand-new community look like a trash
14 dump. I've made several complaints, called, emailed, but how many complaints do I have to
15 make before this is addressed? I don't know how many other communities are being
16 impacted by this, but I know it's been an ongoing issue, and I just hope the town will take this
17 into consideration, not only with the utility bills but with this vendor that we are paying to
18 literally not do anything. The curbs, you come, the little suction comes and sucks up the
19 waste, but it's basically still waste left. So, what are we doing? What are we doing here? Taxes
20 going up. What's happening? So, I just want to bring that to your attention and hope that
21 these items are addressed. Thank you."

22
23 **Mayor Gilbert** closed Public Form and thanked all who came out to speak. He asked
24 for a 5-minute recess at **7:02 PM**.

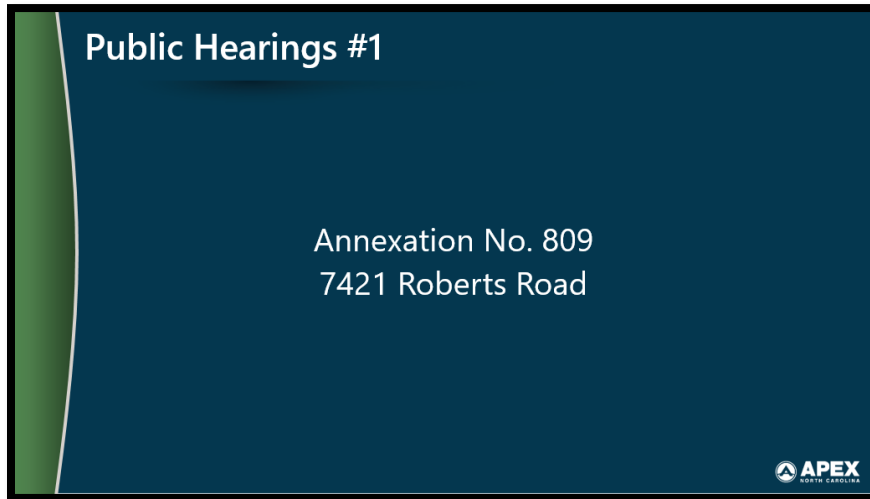
25
26 Council returned to open session at **7:08 PM**.

27
28 **[PUBLIC HEARINGS]**

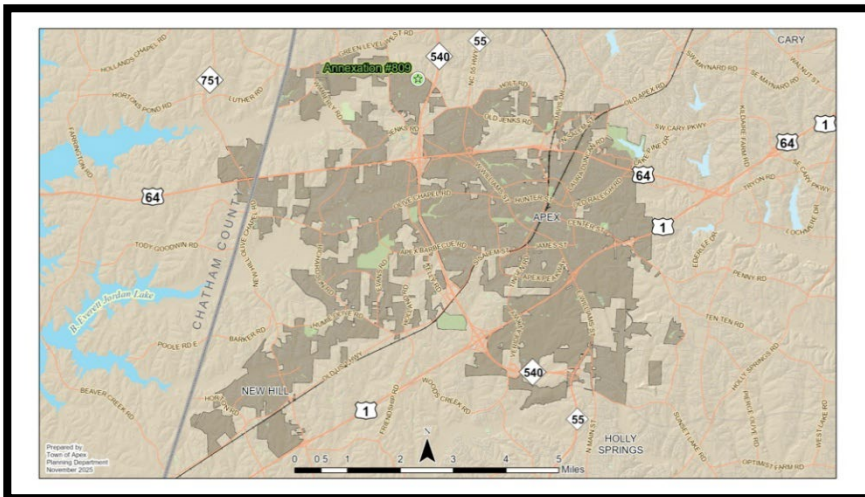
29
30 **PH1 Annexation No. 809 - 7421 Roberts Road - 1.25 acres (REF: ORD-2025-078)**

31
32 **Dianne Khin**, Director, Planning Department gave the following presentation on
33 Annexation No. 809 at 7421 Roberts Road that is in the far north of Apex's planning
34 jurisdiction.
35
36
37
38

1 [SLIDE 1]



2
3 [SLIDE 2]

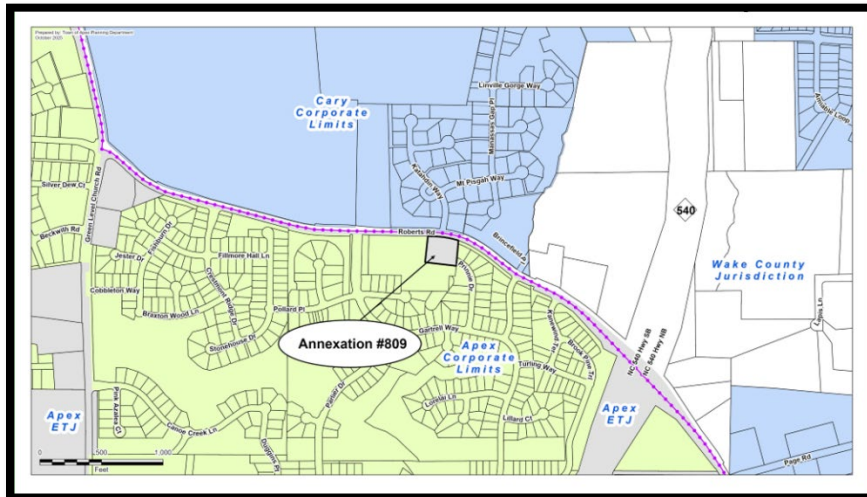


4

1 [SLIDE 3]

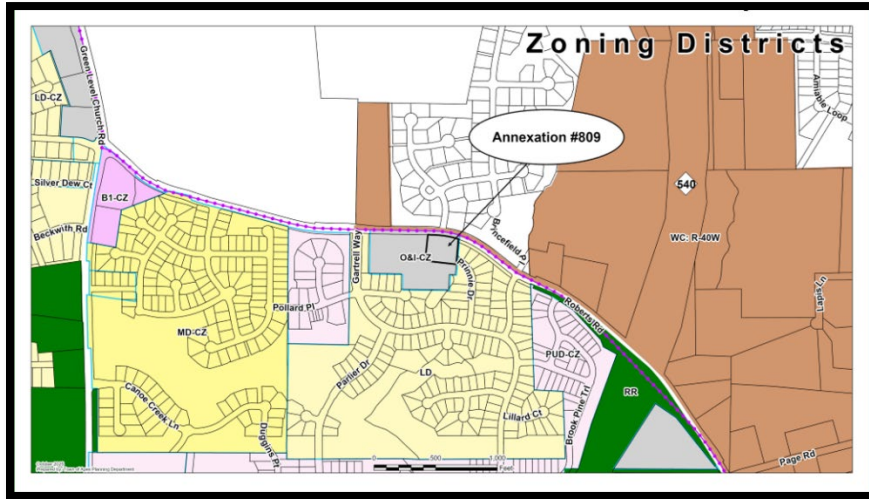


2
3 [SLIDE 4]



4

[SLIDE 5]



Mayor Gilbert asked if there were any questions, hearing none he opened up Public Hearing, and with no one signed up, he closed Public Hearing. He then brought the item back to Council for discussion and possible motion.

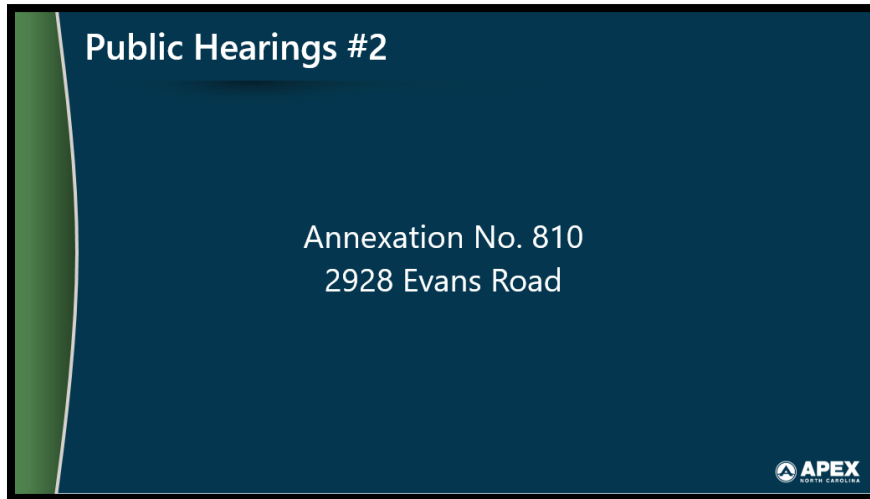
A **motion** was made by **Councilmember Killingsworth** and seconded by **Councilmember Gantt** to adopt Ordinance on the Question of Annexation - Apex Town Council's intent to annex 1.25 acres, located at 7421 Roberts Road (PIN 0733-15-9049), Annexation No. 809, into the Town Corporate limits.

VOTE: UNANIMOUS (5-0)

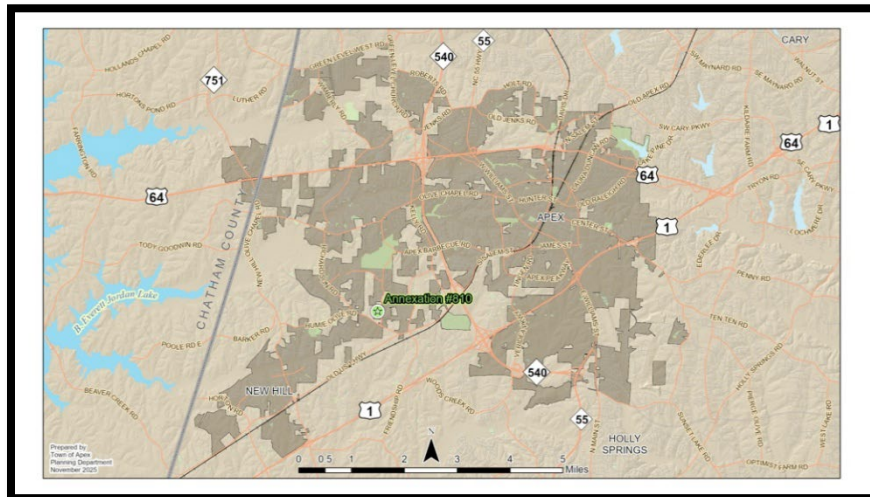
PH2 Annexation No. 810 - 2928 Evans Road - 1.31 acres (REF: ORD-2025-079)

Dianne Khin, Director, Planning Department gave the following presentation on Annexation No. 810, 2928 Evans Road:

1 [SLIDE 1]



2
3 [SLIDE 2]

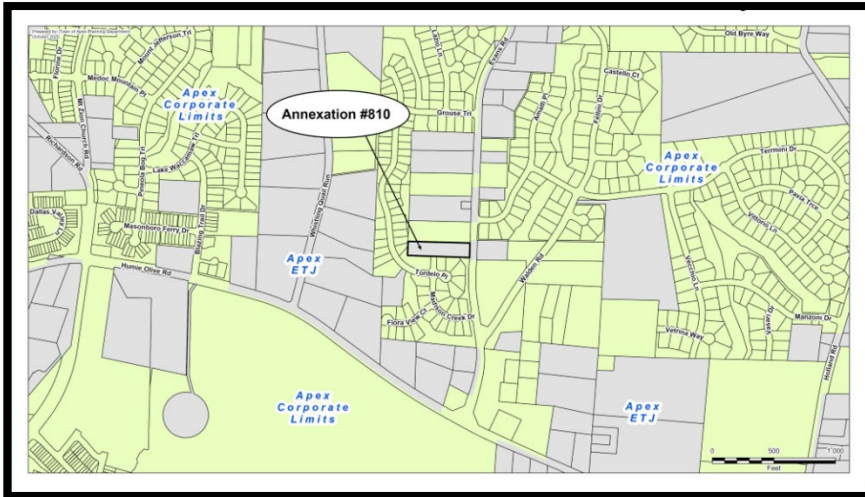


4
5 [SLIDE 3]

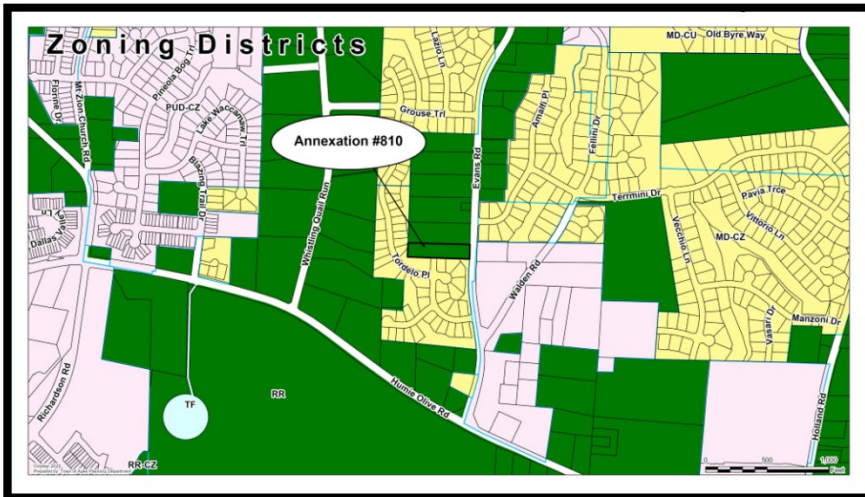


6

[SLIDE 4]



[SLIDE 5]



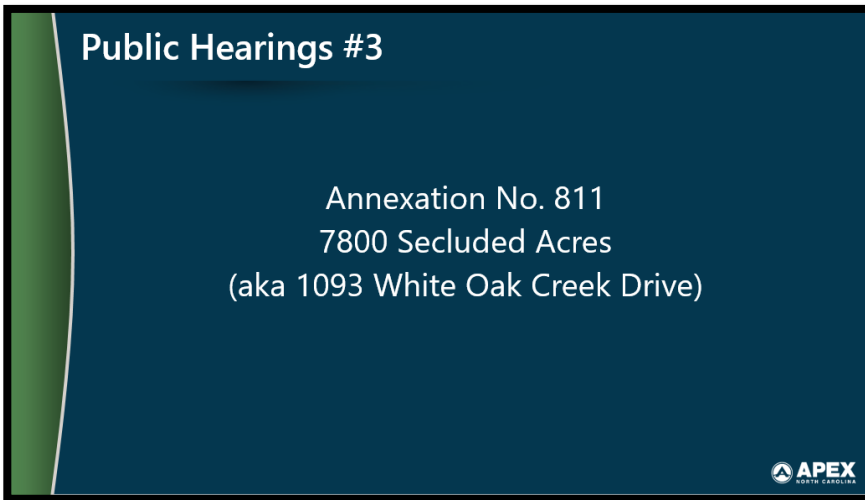
Mayor Gilbert asked if there were any questions, hearing none he opened up Public Hearing, with no one signed up, he closed Public Hearing. He then brought the item back to Council for discussion and possible motion.

A **motion** was made by **Councilmember Zegerman** and seconded by **Mayor Pro-Tempore Gray** to adopt Ordinance on the Question of Annexation on the Question of Annexation - Apex Town Council's intent to annex 1.31 acres, located at 2928 Evans Road (PIN 0721-71-5592), Annexation No. 810, into the Town Corporate limits.

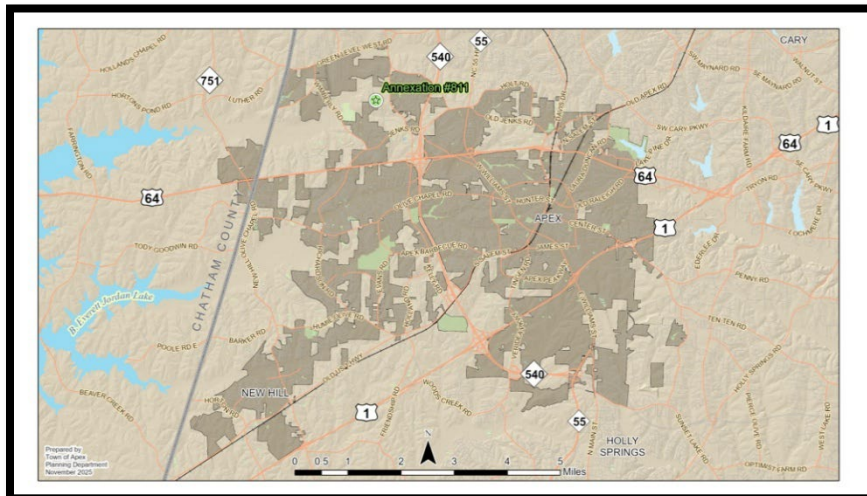
VOTE: UNANIMOUS (5-0)

PH3 Annexation No. 811 - 7800 Secluded Acres - 5.70 acres (REF: ORD-2025-080)

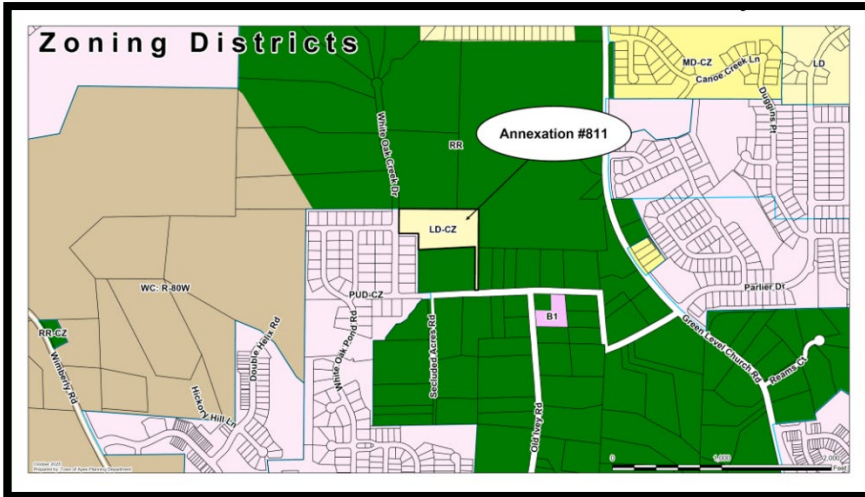
Dianne Khin, Director, Planning Department gave the following presentation:
[SLIDE 1]



[SLIDE 2]



[SLIDE 5]



Mayor Gilbert asked if there were any questions, hearing none he opened up Public Hearing, with no one signed up, he closed Public Hearing. He then brought the item back to Council for discussion and possible motion.

A **motion** was made by **Councilmember Killingsworth** and seconded by **Councilmember Zegerman** to adopt Ordinance on the Question of Annexation on the Question of Annexation on the Question of Annexation - Apex Town Council's intent to annex 5.70 acres, located at 7800 Secluded Acres (PIN 0723-72-6204), Annexation No. 811, into the Town Corporate limits.

VOTE: UNANIMOUS (5-0)

Mayor Gilbert asked for Town Manager Vosburg to give a recognition before moving to PH4.

Town Manager Vosburg said that he had neglected to give recognition for Apex Service Day and the food drive done by the Town to Brienne Gill with Community Engagement Department for all of her efforts and the big undertaking of the project.

PH4 Apex Transportation Plan Amendments - 24CZ20 Hopson Gateway

Shannon Cox, Long-Range Planning Manager, Planning Department gave the following presentation:

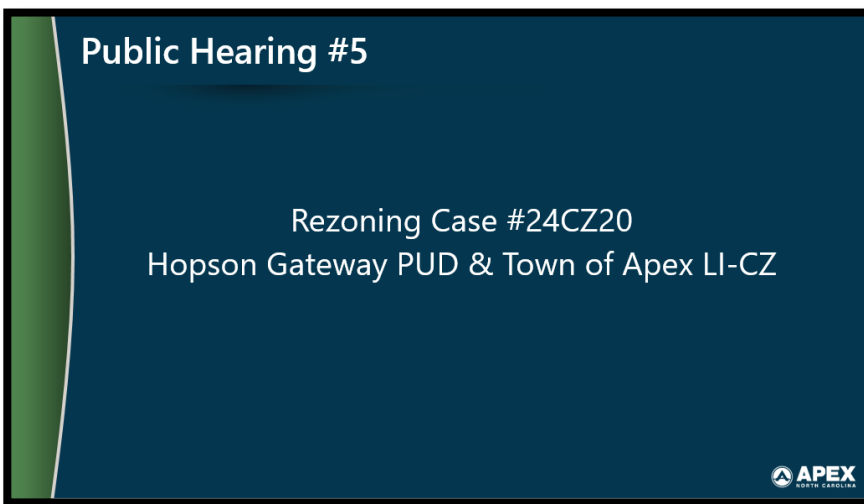
Mayor Gilbert opened up the Public Hearing and with no one signed up to speak the Public Hearing was closed. Mayor Gilbert moved the meeting on to Public Hearing 5

AND

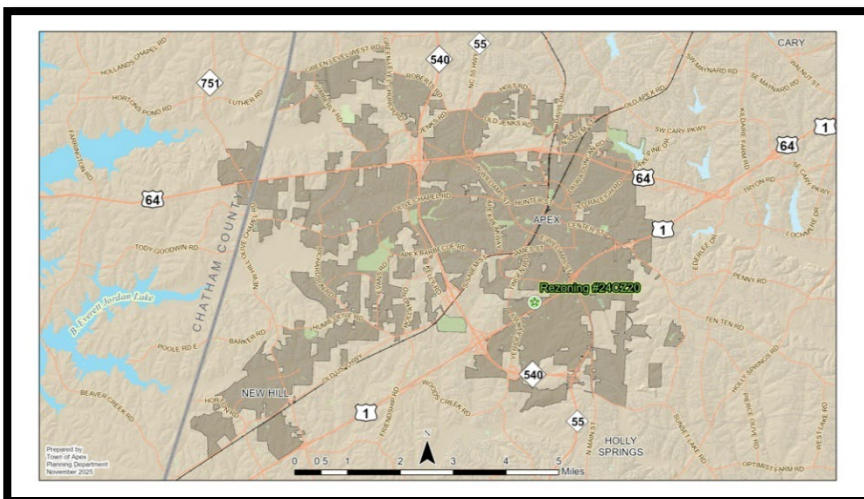
PH5 Rezoning Case No. 24CZ20 - Hopson Gateway PUD and Town of Apex LI-CZ

June Cowles, Senior Planner, Planning Department said that Acre Manager LLC, the applicant and the Town of Apex entered a land exchange agreement approved by Council on October 8, 2024 that reconfigured the properties . She gave the following presentation:

[SLIDE 1]



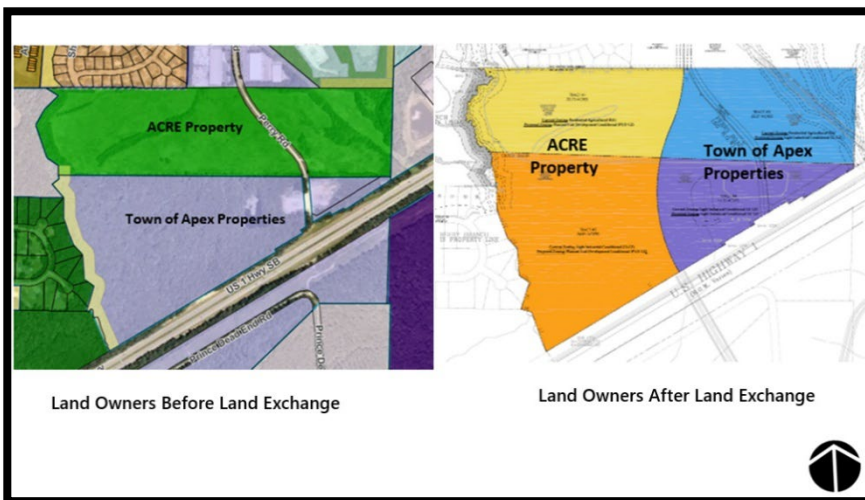
[SLIDE 2]



1 [SLIDE 3]

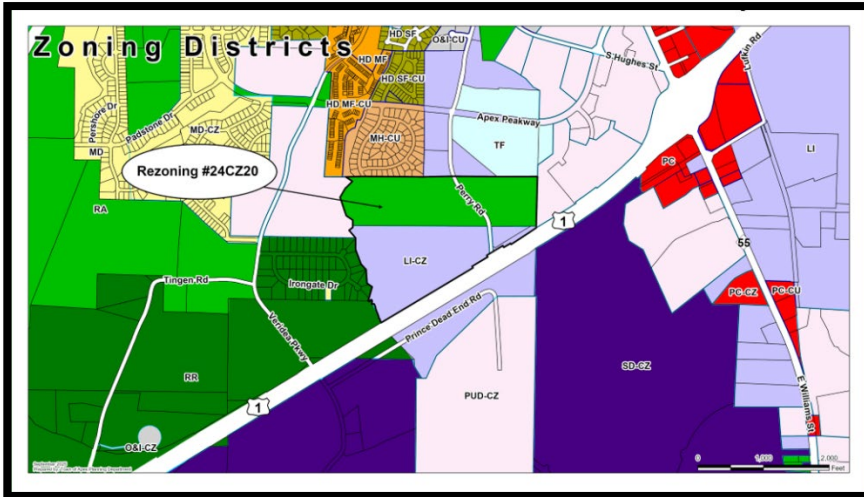


2
3 [SLIDE 4]

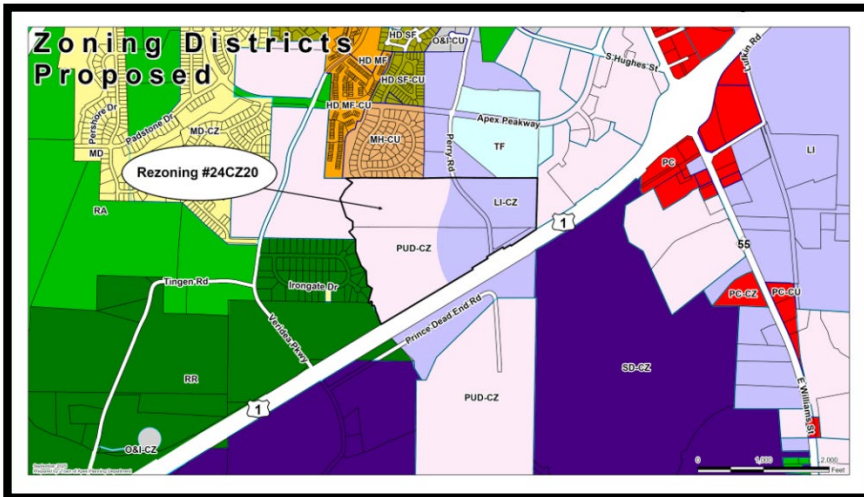


4

1 [SLIDE 5]

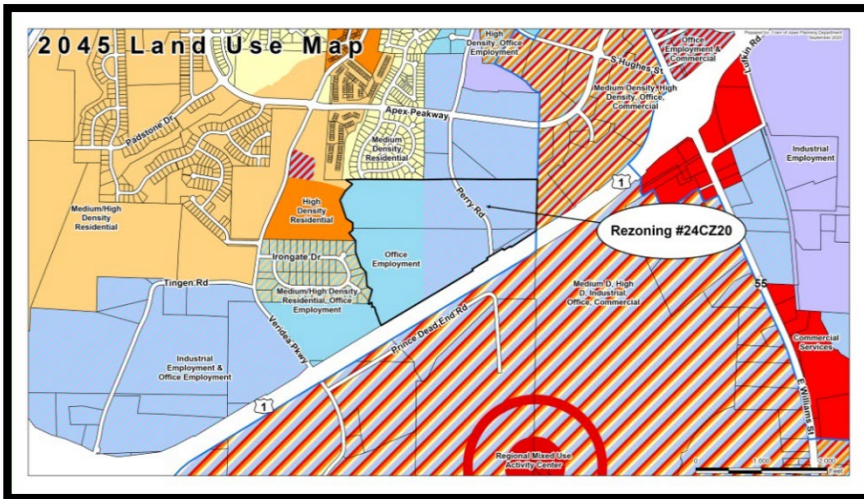


2
3 [SLIDE 6]

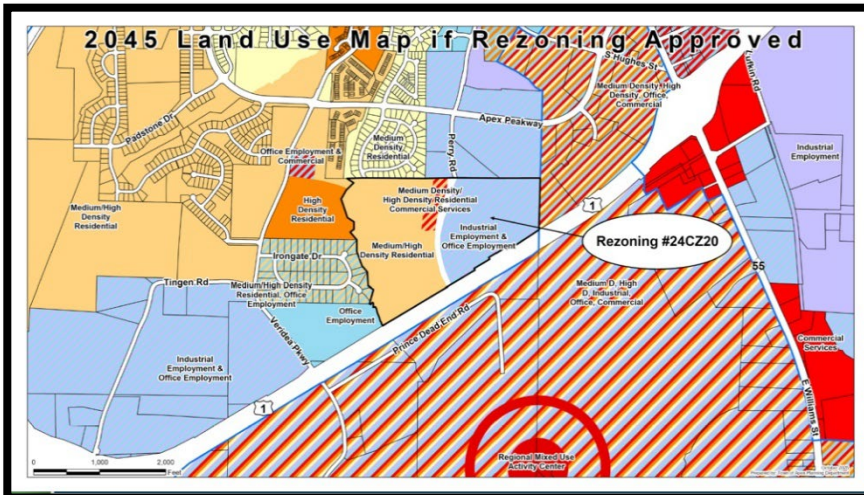


4

1 [SLIDE 7]



2
3 [SLIDE 8]



4

1 **[SLIDE 9]**



2
3 **Councilmember Gantt** asked if the treed areas on the map (in the top left of the map)
4 are streams.

5 **Ms. Cowles** said that they are streams but they do not require buffers.

6 **Councilmember Gantt** asked if there was not enough to require a buffer.

7 **Ms. Cowles** said that was correct.

8 **[SLIDE 10]**

Town of Apex Proposed Light Industrial-Conditional Zoning:

Proposed Uses:

- Yard waste transfer station (S)
- Utility, minor
- Government Services
- Chipping and mulching (S)
- Communication tower, commercial (S)
- Communication tower, public safety (S)
- Greenway
- Organics (food waste) drop off, recycling, recovery, processing, and/or composting (S)
- Composting facility (S)
- Recycling Center (S)
- Recycling Collection Station (S)

1 **[SLIDE 11]**

Town of Apex Proposed Light Industrial-Conditional Zoning:

Required buffers and screening:

- A 60' Type A buffer shall be provided along US Hwy 1, except for electric substations under the use "Utility, minor"; there is no buffer required along the boundary of the electric substation and associated lines coming into the substation.
- If the other permitted uses are visible through the electric substation or associated lines, those other permitted uses must be screened from US Hwy 1 through the planting of a line of evergreen trees/shrubs meeting a 10' Type A standard or by way of an 8' tall opaque fence in lieu of vegetation; the screening (vegetation or fence) can be located either on the highway side or development side of the electric substation and associated lines, as determined by the Planning Director after consultation with the Electric Utilities Director.

2
3 **[SLIDE 12]**

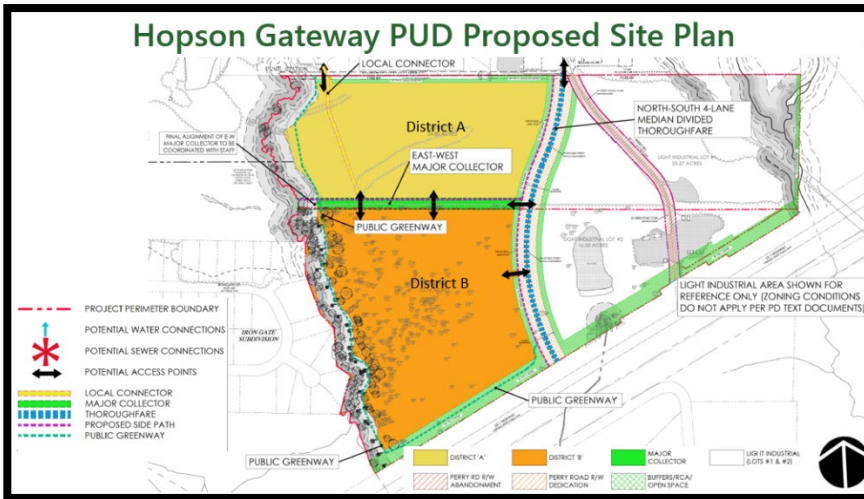
Town of Apex Proposed Light Industrial-Conditional Zoning:

All other standards of the UDO may be varied based on the financial and operational needs of the Town of Apex, but any changes to the site shall be required to be shown on a site plan for Technical Review Committee review and comment, and made available to the public on the Interactive Development Map or similar. Known variations include, but are not limited to:

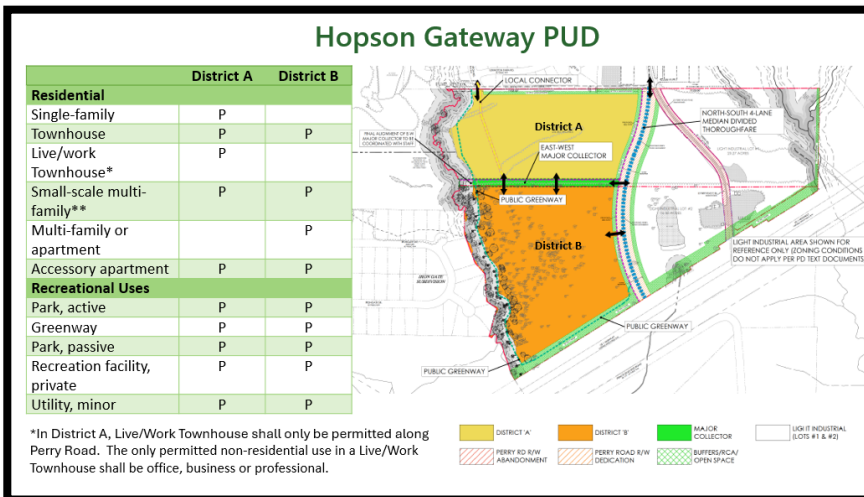
- a) The right-of-way, road improvements, and buffers typically required by the UDO shall not be required along the existing Perry Road section that is to be abandoned.
- b) Road improvements to the new/aligned Perry Road shall be the responsibility of ACRE, the developer of the parcel(s) west of the new/realigned Perry Road as set forth in the Hopson Gateway PUD.
- c) If a tree located within a buffer has a portion of the critical root zone extending outside of that buffer, the Town shall not be required to protect the critical root zone outside the buffer.
- d) A tree survey is only needed within the buffers immediately adjacent to the limits of disturbance.
- e) Outdoor storage is allowed as a stand-alone use; no building shall be required for any use with outdoor storage.
- f) Resource Conservation Area (RCA) within a perimeter buffer that is shown on a Minor or Major Site Plan may be relocated through a Site Plan revision to accommodate future development with adjoining properties.
- g) Existing lighting shall be considered legally established, non-conforming lighting and shall be allowed to remain until such time as the property is redeveloped in such a manner that the lighting is replaced.
- h) The yard waste pile associated with a "Yard waste transfer station" shall be limited to 30' in height, with a slope no greater than 2:1.

4

1 **[SLIDE 13]**

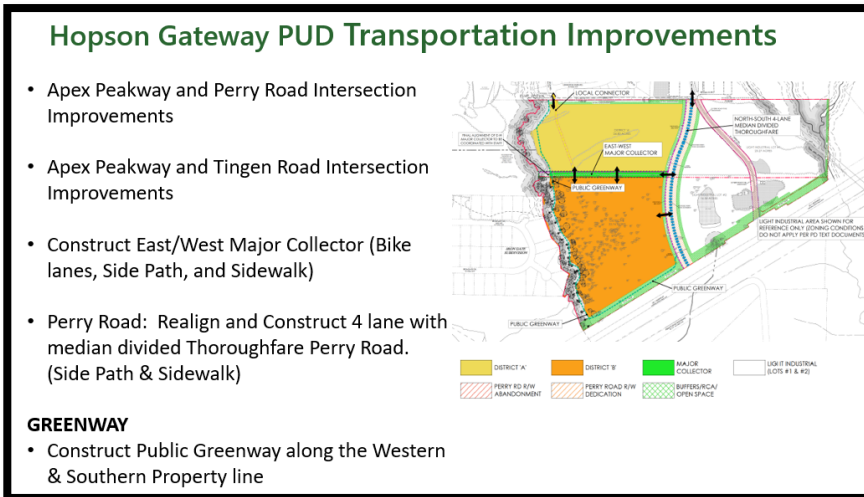


2
3 **[SLIDE 14]**

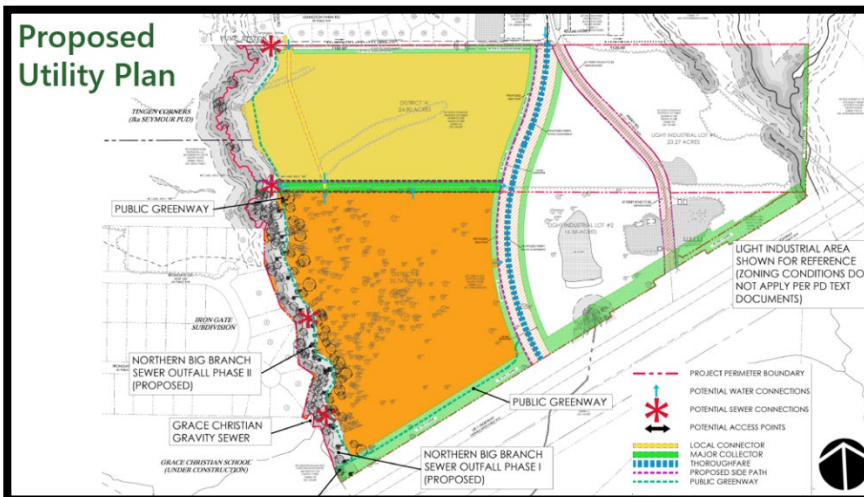


4

1 **[SLIDE 15]**



2
3 **[SLIDE 16]**




4

1 **[SLIDE 17]**

Hopson Gateway PUD Buffers and RCA

Location:	Proposed Buffer Size & Type:
Adjacent to PIN 0741243405 and existing lots in the Lexington subdivision.	20' Type B*
Adjacent to PIN 0741346113	40' Type A
Along the west side of Perry Road adjacent to District A and District B	30' Type B
Along both sides of the east/west collector street.	10' Type B
Along US-1	80' Type A
Along the eastern boundary of the Town of Apex Greenway and Utility Easement along the western property line.	0'

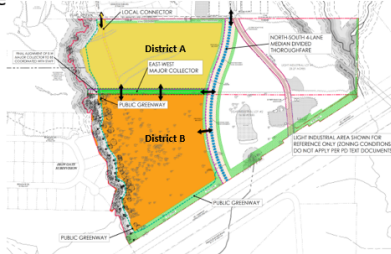


* There is a 20-foot Town of Apex sewer easement along the property line. The 20-foot Type B buffer may overlap with the easement, provided there is a planting area outside the easement with a minimum width of 10 feet.

2
3 **[SLIDE 18]**

Hopson Gateway PUD Affordable Housing

- Minimum 20% of total Apartment units in District B
- Households earning no more than 80% AMI for the Raleigh, NC MSA for a period of 30 years.
- Townhouse and/or small-scale multi-family units may be developed and constructed in District B before any apartment units are developed, provided sufficient land in District B is reserved to accommodate the future construction of 300 apartment units.



4

1 [SLIDE 19]

Townhouse Elevations



2
3 [SLIDE 20]

Small-Scale Multi-Family Elevations



4

1 [SLIDE 21]

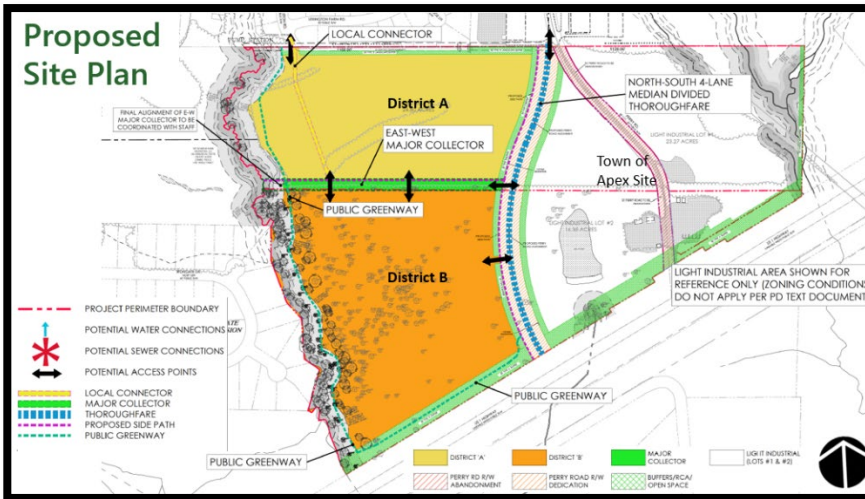


2
3 [SLIDE 22]

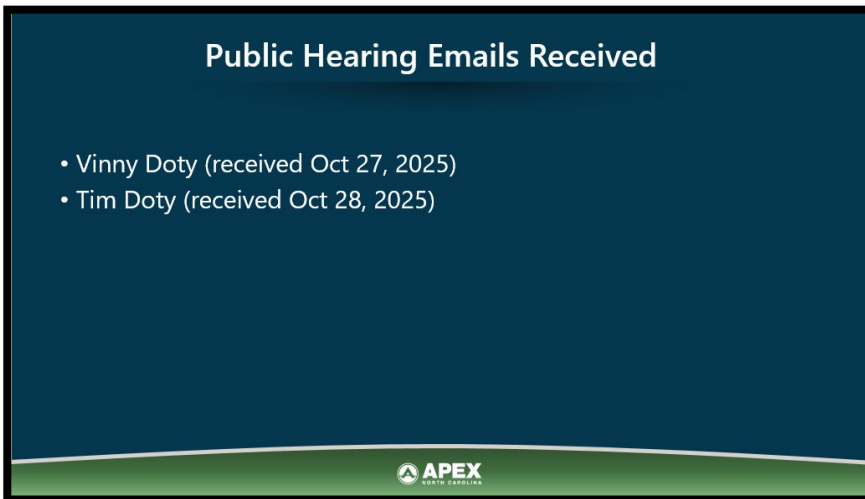


4

1 **[SLIDE 23]**



2
3 **[SLIDE 24]**



4
5 **Ms. Cowles** asked if there were any questions and said that the applicant is available
6 for any questions as well and gave a presentation.

7 **Councilmember Gantt** asked as the rezoning is written, if there is an existing
8 greenway on the southern end of Grace Christian School, would this rezoning result in the
9 developer connecting this greenway on the southern portion over to that greenway.

10 **Ms. Cowles** said that the applicant and Parks and Rec had discussions about this.

11 **Councilmember Zegerman** asked what the Transportation staff's opinion on the
12 connectivity of Perry Road given that the older part of Perry Road is not built to the same
13 standard as the newly constructed road, and the parking on Perry Road given the amount of
14 traffic using this intersection.

15 **Jessica McClure, Traffic Safety Engineer II**, said that they would work with NC DOT
16 for a parking ordinance to restrict the parking to open that area up to allow traffic to go
17 through there and it won't be the four-lane divided section until it redevelops.

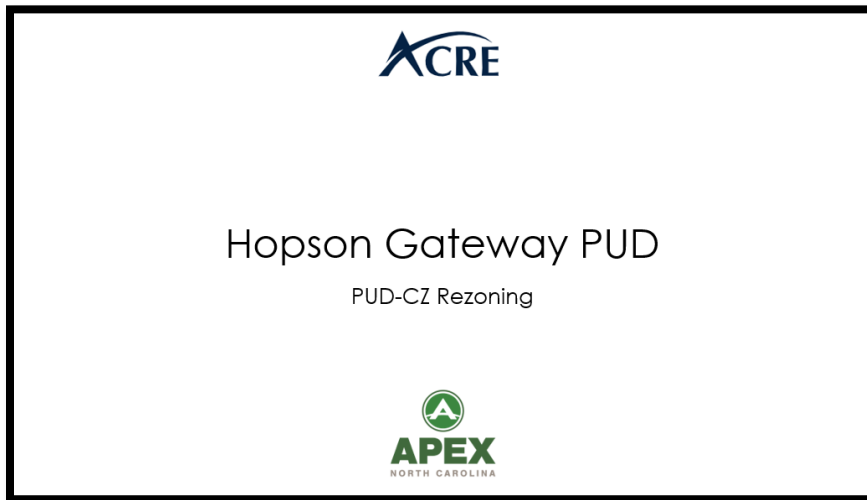
Councilmember Zegerman asked if that would be sufficient under these current conditions.

Ms. McClure said yes.

Mayor Gilbert called up Matthew Carpenter.

Matthew Carpenter with Parker Poe on behalf of the Developer, Acre Management introduced Jesse Keho with Acre Management, Jeff Roach with Peak Engineering and Design, Civil Engineer and Lyle Overcash with Kimly Horn, Transportation Engineer. He thanked staff and the Town of Apex for its collaboration for this project that was over two years long. He gave the following presentation:

[SLIDE 1]



[SLIDE 2]



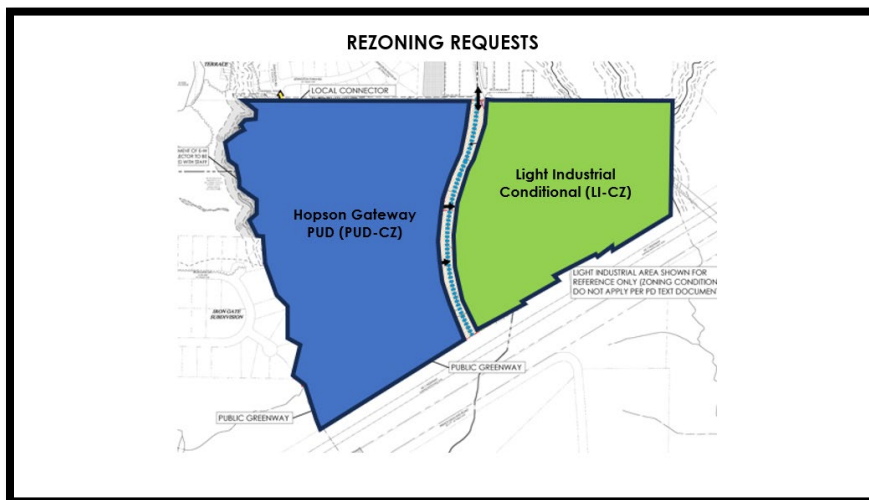
1 **[SLIDE 3]**



2
3 **[SLIDE 4]**

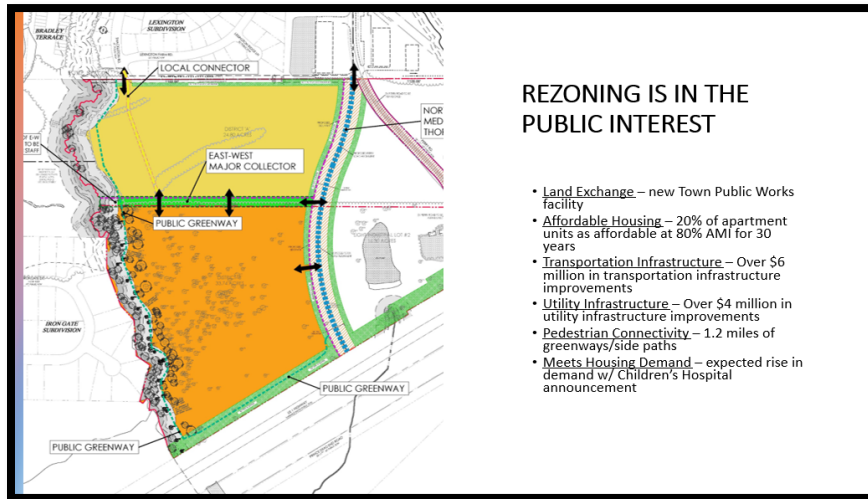


4
5 **[SLIDE 5]**



6

[SLIDE 9]



Mayor Gilbert asked if there were any questions for Mr. Carpenter.

Councilmember Gantt asked if the greenway that exists on Grace Christian would connect to this.

Mr. Carpenter said that the greenway would be built to the property line which will connect to Grace Christian and there has been discussion with staff if Grace Christian stopped short for some reason and asked if they could pick it up and be reimbursed for constructing the greenway, through Park Fees. He said this wasn't included in this condition because it would be an off-site connection and there would be questions about easements and ownership to commit to that but they are open if there is a gap.

Councilmember Gantt said that it seemed that the easements are there on the site-plan, he highly encouraged the connections. He also asked about the Type B buffer instead of Type A buffer.

Jeff Roach said that it was a Type B buffer because there is an existing utility line there and it will be a 40' wide buffer across the entire length.

Councilmember Gantt said there are single family homes that abut this that have a Type A buffer.

Mr. Roach said that on the Type B buffer there are more deciduous trees and hardwoods and smaller shrubs to fit in there and it is better looking once it grows in.

Councilmember Gantt asked if there would be townhomes in the northwestern corner, referencing the northern part with the creeks.

Mr. Roach said the idea is to bring Shackleton down where there aren't any wetlands or stream buffers in that area and he didn't think there would be much in the northwest corner because of the room with the road.

Councilmember Zegerman asked if there were any connectors directly connecting with Shackleton.

Mr. Roach said that it is part of the Transportation plan amendment, it is shown as a local connector street. He gave more details about the zoning commitment and discussion (referencing slide 9).

1 **Mr. Carpenter** also clarified a condition was added saying there would be no
2 construction traffic allowed on Shackleton.

3 **Mayor Gilbert** asked about access to sewer with Iron Gate.

4 **Mr. Roach** said that Iron Gate residents are getting sewer access with the construction
5 of Grace Christian. He gave more detail about this process and stubs for Grace Christian.

6
7 **Mayor Gilbert** asked if there were any other questions for the applicant and opened
8 Public Hearing. He called the first speaker.

9
10 First speaker was **Zack Highness** of 114 Lexington Farm Road:

11
12 "I would rather be in a million other places right now than here. I have to put up my
13 Christmas decorations to get ready for the lights. I'm going on vacation soon, but this is
14 important. There's two major things in this that make no sense. Environmentally, you're
15 tearing down 50 plus acres of trees. Environmentally, half of you ran on this of being
16 sustainability and environmental. There's no environmental saving this. Yes, the greenway
17 does help things, but the major road, the major easement they're planning right in the
18 middle, it's going to cross the creek. What's the point of the greenway if you're building a
19 bridge right on top of it? Secondly, I agree with what the Council members said with the 20ft
20 buffer. If you're going to give a 40ft buffer to the businesses at the very top, why is the
21 neighborhood not getting the exact same respect? A neighborhood that's been there since
22 the 90s. Another aspect of this that's extremely worrying to me is this neighborhood has
23 already seen a massive increase in property taxes over the last few years. Looking at the
24 examples of all the town houses, three-story tall town houses which have popped up all over
25 this town, they're all being sold for 500, 600, \$700,000. The average price of a house in
26 Lexington is 350K, which means on average, every house in that neighborhood's property
27 value is going to show up 50 to \$75,000. We already have a problem in this county of people
28 being afforded property taxes. Why are we trying to make it exponentially worse? I'm not a
29 person saying that we shouldn't construct houses, that this is a terrible idea. We need to
30 construct houses, but this property plan doesn't seem extremely thought out to the people
31 that already live there. I agree that the town houses need to be made. The road to Shackleton
32 connecting to the major thoroughfare, perfect. Why weren't we told about this? We only
33 knew about this Monday. We were told that we were going to have two meetings with these
34 developers. Most of the neighborhood only had one. We were never told of the September
35 meeting, and if we were, it was very terribly told. Probably just thrown in the mail and
36 expecting no one to show up. I am perfectly fine with this plan. It just needs to be thought
37 through a little bit more. Nobody was really told until the very last minute. There are a lot of
38 inconsistencies with their environmentalism. The bridge across US1 could take a decade and
39 the light that they're saying they're going to pay 10% of at the intersection of Apex Peakway
40 and Tingen needs to happen no matter what because there's already a massive traffic

1 problem there to begin with. There's just a lot of inconsistencies here that need to be looked
2 at.”

3
4 **Mayor Gilbert** thanked the speaker and called the next speaker.

5
6 Next speaker was **Phil Welch** of 1471 Big Leaf Loop:

7
8 “I speak today in support of rezoning case number 24CZ20, the rezoning for the
9 parcels at the southern end of Perry Road near US Route 1. This rezoning is requested by
10 Acre Management for their proposed Hopson Gateway community and the town of Apex. My
11 support is based on three findings. First of all, there was a review of the Acre Management
12 website, which was done by my friend Mary Wilson. Secondly, we had a conference call with
13 Matthew Carpenter and Acre Director of Development Jesse Keho, thank you Mary Danfor
14 for joining on that and finally, I took a tour of Acre Management’s water site at Pepper Hall
15 Community at Pepper Hall in Bluffton, South Carolina. Here’s what we found: Acre has the
16 resources and experience to build and manage mixed-income developments, it was founded
17 in 2011 as a vertically integrated real estate fund manager, they have deployed \$78 billion in
18 total capital, including \$4.4 billion in assets under their management. They’ve owned and
19 operated 38,000 multifamily housing units. They focus on workforce housing for households
20 up to 80% of AMI and they see the benefits of mixed-income multifamily developments with
21 no difference in sizes or finishes between the affordable and market-rate units. Let me say
22 that again, because that is really important, Acre Management sees the benefits of mixed-
23 income multifamily developments with no difference in sizes or finishes between the
24 affordable and market-rate units. Finally, their affordable units are sprinkled throughout the
25 multifamily buildings, which I believe is best practice. Secondly, the company enthusiastically
26 supports Apex’s objective to provide housing choices for essential workers. Hopson Gateway
27 is currently planned to be up to 220 for-sale townhomes and up to 400 rental apartments,
28 including as many as 80 rental apartments for households earning a maximum of 80% of AMI
29 for a period of 30 years, which is also best practice. Up to 80 rentals out of a total of 620
30 homes in this development is 13% affordable homes, which is, as far as I know, the highest
31 percentage offered yet in a mixed-income development in Apex. Acre will not be using tax
32 credits for the development, which should shorten the timeframe. When I asked how Acre
33 was able to do this, I was told that they operate out of discretionary funds, focusing on
34 portfolio performance versus individual deal metrics, which allow them more flexibility and
35 that’s an important difference. Finally, here are my observations on my tour of Acres’s new
36 Waterside Community: Last Friday, I met with Acre development director Brian Smith, the
37 Waterside property manager, and the regional director for the property management
38 company. When fully built out, Waterside will include 331 market-rate rental apartments, by
39 my rough calculations, renter households will need to earn at least 100% of the local AMI,
40 about \$100,000, to keep monthly housing expenses to no more than 30% of income. There
41 are no affordable income-restricted apartments there. Apartment sizes in configurations

1 ranged from 762 to 1,145 square feet and included one-bedroom, one-bath, two-bedroom,
2 one-bath, and two-bedroom, two-bath apartment homes. There are no specific workforce
3 apartments designated here which I mentioned, which is unusual for an Acre community.
4 However, Acre was a limited partner here focused on building to a design provided by the
5 general partner that they don't have the amount of control that they are going to have at the
6 Hopson Gateway. Acre did arrange property management with ZRS Management, which
7 manages about 98% of their investment properties. The construction appeared excellent
8 inside and out, including very attractive landscaping. All hosts were professional,
9 knowledgeable, and responsive to my questions. I mentioned the acre development
10 director, Brian Smith, he is involved in the design and will be overseeing the construction of
11 the Hopson Gateway. Based on our investigation into Acre Management, the proposed
12 Hopson Gateway community, and the existing Waterside community, I strongly support
13 approval of this rezoning. I look forward to following the development of Hopson Gateway
14 and the addition of up to 80 affordable housing choices to Apex's housing inventory. In the
15 remaining minute or so, I would point out that Apex has been most successful in increasing
16 affordable housing choices, which target households earning up to 80% of AMI. Apex also
17 needs to encourage the building of more housing choices for even lower-income
18 households, including those affordable to our essential workers. Great examples include
19 DHIC's Stone Glenn, Evergreen's updated plan for Abbey Spring, I would also point out, the
20 Maragold mixed-income rental apartment community in Cary, which I think some of you
21 know about, which will accommodate households earning up to 30% of AMI through market-
22 rate units, so that's a full mixed income community. Perhaps that may be an example to
23 investigate when planning the development of Apex's town-owned land at the corner of
24 Perry Road and South Hughes Street. Thank you."

25
26
27
28 **Mayor Gilbert** thanked the speaker and called the next speaker.

29
30 Next speaker was **Jackie Trickle** of 1208 Lexington Farm Road:

31
32 "I appreciate that they've added in that Shackleton Road would not be used for
33 construction traffic. The other issue, as per the presentation that was made and also
34 discussion with a Hopson representative and supporting the other gentleman, the 20-foot
35 buffer along Lexington Farm, I understood that was going to be in addition to the 20-foot
36 easement, but in the presentation, it said they could overlap. So, I wanted to make sure that
37 we are talking about at least 40 feet, but I agree out of respect for the neighbors that it should
38 be more. Forty feet with one of those being a sewer easement is probably not conducive to
39 good neighbors for the existing housing. That's it. Thank you."

40
41 **Mayor Gilbert** thanked the speaker and closed Public Hearing.

1
2 **Councilmember Mahaffey** asked Mr. Roach to clarify the buffer questions.

3 **Mr. Roach** said that the ordinance requires a minimum of 20' planting buffer and if a
4 public utility easement overlaps that area, the planting moves south which will result in two
5 distinct 20' areas which creates the total 40' separation.
6

7 **Mayor Gilbert** asked for discussion.

8 **Councilmember Killingsworth** said that this is good use of the land as far as the
9 exchange and for affordable housing goals, she supports this.

10 **Mayor Pro-Tempore Gray** said that when this rezoning started the affordable
11 housing target was 5% and the applicant met and exceeded the updated 10% goal and this is
12 a big step in changing the stigma on how people feel about affordable housing. He said
13 crediting the Planning Staff for focusing on workforce housing with NC Children's Hospital
14 being built nearby in the future and looking forward to this. He thanked Mr. Roach for
15 clarifying the 40' buffer. He is in full support of this rezoning.

16 **Councilmember Mahaffey** said that he appreciates the transportation infrastructure
17 improvement provided and the assorted number of improvements that are coming to the
18 area that were identified in the TIA.

19 **Councilmember Zegerman** said that he was concerned about the timing of the
20 project, especially in relation to the Seymour PUD. He said that he would feel more
21 comfortable if Seymour came first to have the east west connector go through to Tingen
22 Road and upgrades to the Tingen Road, Peakway intersection. He said that there is a lot to
23 like with this rezoning project, but the parking on Perry Street is a concern.

24 **Councilmember Gantt** said it can be hard to construct a neighborhood next to an
25 older existing neighborhood but the road, sewer, affordable housing and improving Apex's
26 land connection are all positives and outweigh some of the negatives that have been
27 discussed at this meeting tonight. He said he is in favor.
28

29 A **motion** was made by **Councilmember Gantt** and seconded by **Councilmember**
30 **Killingsworth** to amend the Apex Transportation Plan for consistency with the proposed
31 rezoning 24CZ20 Hopson Gateway Planned Unit Development (PUD)

32 **AND** to rezone approximately 58.54 acres from Residential Agricultural (RA) & Light
33 Industrial-Conditional Zoning (LI-CZ #24CZ08) to Planned Unit Development-Conditional
34 Zoning (PUD-CZ) at 0 Tingen Road (portion of) & 1341 Perry Road (portion of), with the
35 additional condition, "no construction traffic shall be permitted on Shackleton Road" (see
36 OTHER-2025-101)

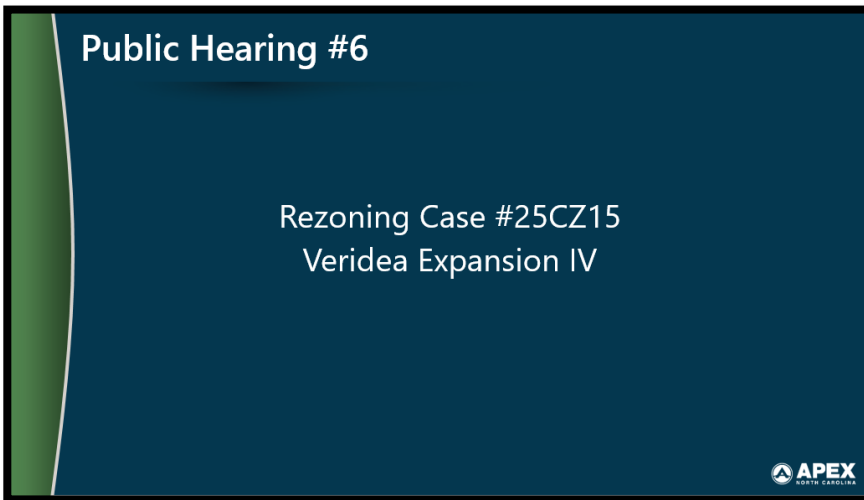
37 **AND** to rezone approximately 39.62 acres from Residential Agricultural (RA) & Light
38 Industrial-Conditional Zoning (LI-CZ #24CZ08) to Light Industrial-Conditional Zoning (LI-CZ)
39 at 0 Tingen Road (portion of), 1341 Perry Road (portion of), & 0 Perry Road.
40

41 **VOTE: UNANIMOUS (5-0)**

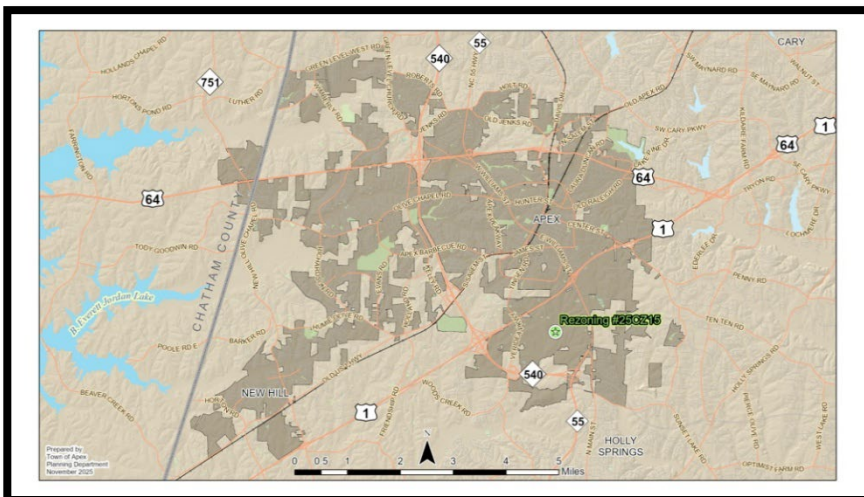
PH6 Rezoning Case No. 25CZ15 Veridea Expansion IV

Amanda Bunce, Assistant Director, Planning Department said Veridea is located between US1, Highway 55 and NC540 comprised of 10 acres totaling about 130 acres. She gave the following presentation:

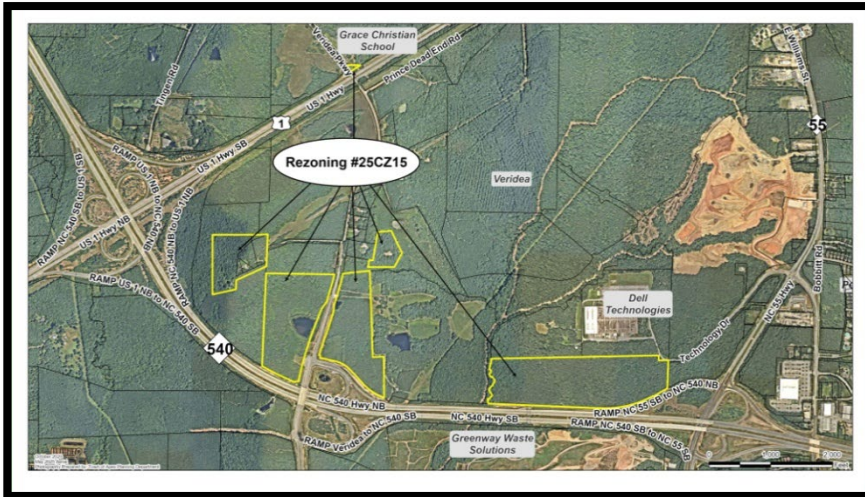
[SLIDE 1]



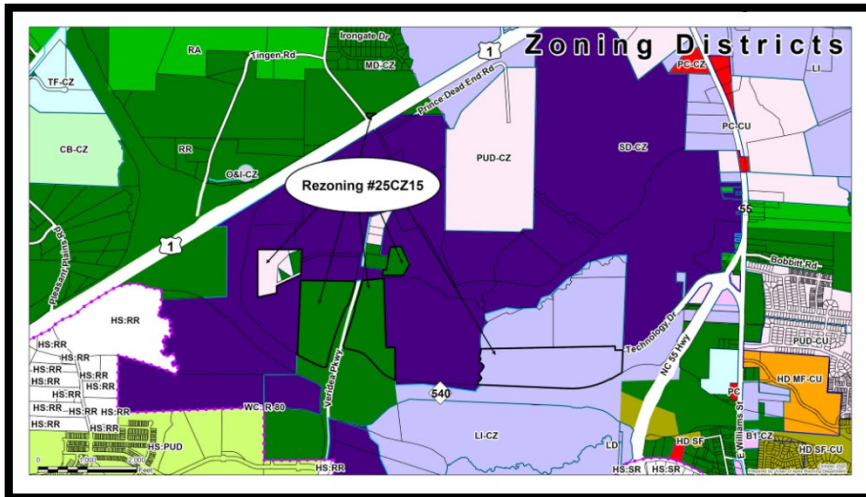
[SLIDE 2]



1 **[SLIDE 3]**

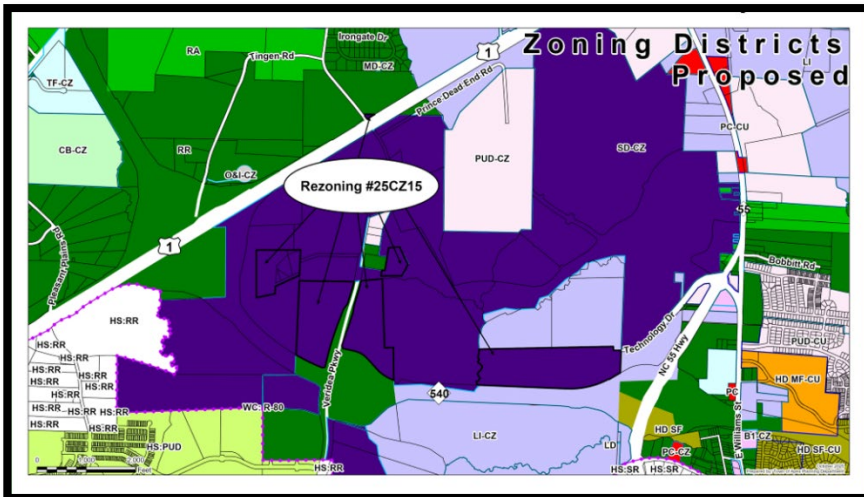


2
3 **[SLIDE 4]**

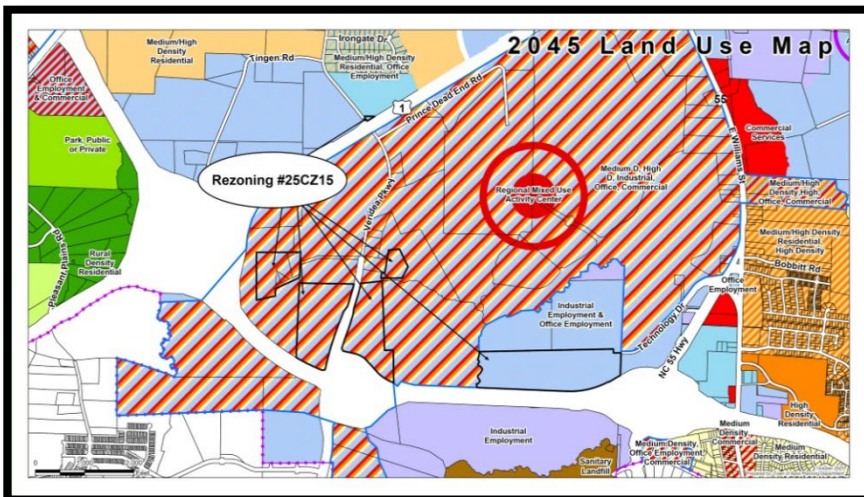


4

1 [SLIDE 5]

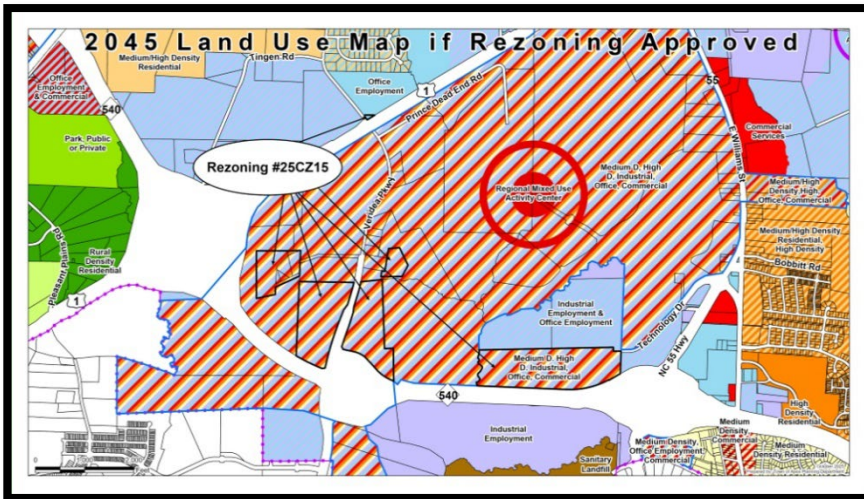


2
3 **[SLIDE 6]**

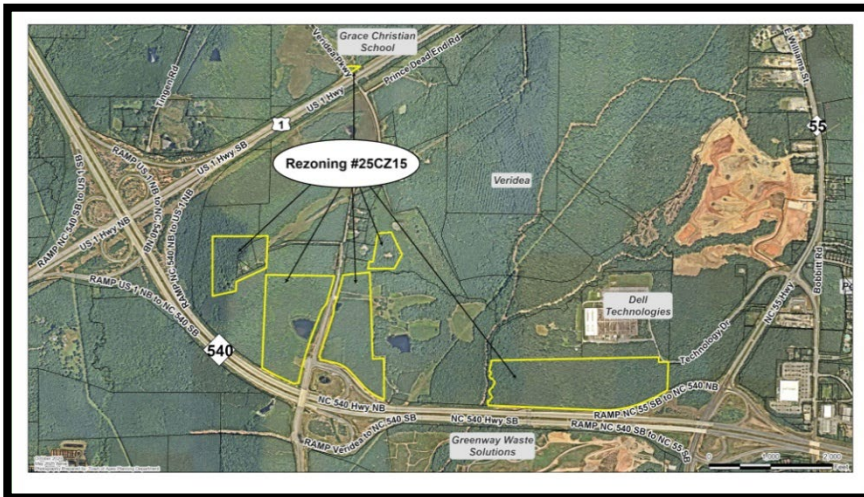


4

1 [SLIDE 7]



2
3 [SLIDE 8]



4
5 **Assistant Director Bunce** opened up for questions.
6 **Mayor Gilbert** asked if there were any questions, with no questions, he asked the
7 applicant to come up and speak.

8
9 **Leticia Shapiro** with Morning Star Law Group spoke on behalf of RXR Reality, the
10 applicant introduced Joe Graziozi with RXR Reality. She gave some highlights that RXR Reality
11 plans of bringing in the properties that are located between US1 east to 55 and north of 540,
12 making this consistent with the zoning throughout this area. She thanked the Council for their
13 time and asked for approval.

14 **Councilmember Gantt** asked for discussion of the little sliver north of US1 and to
15 confirm that the intentions are not to be used as a toehold to start the expansion of the
16 zoning north of US1.

17 **Ms. Shapiro** said that it isn't, that it is all clean up.

Mayor Gilbert opened Public Hearing and with no one signed up to speak Public Hearing was closed and asked if there was a motion.

A **motion** was made by **Councilmember Killingsworth** and seconded by **Mayor Pro-Tempore Gray** to approve Rezoning Application #25CZ15 Veridea Expansion IV. The applicant, Todd Rechler, RXR Realty seeks to rezone approximately 130.74 acres from Rural Residential (RR), Light Industrial (LI), & Planned Unit Development-Conditional Zoning (PUD-CZ #07CZ01) to Sustainable Development-Conditional Zoning (SD-CZ) for Veridea at 0, 0, 0, 3142, 3138, 3130, 0, & 3134 Veridea Pkwy; 0 Technology Dr (portion of); and 6300 King David Ct.

VOTE: UNANIMOUS (5-0)

PH7 Unified Development Ordinance (UDO) Amendments – November 2025
Bruce Venable, Planner II, Planning Department

Mayor Gilbert said that staff requested to continue PH7 and asked if there was a motion.

A **motion** was made by **Councilmember Killingsworth** and seconded by **Councilmember Zegerman** to move item PH7 Unified Development Ordinance (UDO) Amendments – November 2025 to the December 9th, 2025 Council meeting.

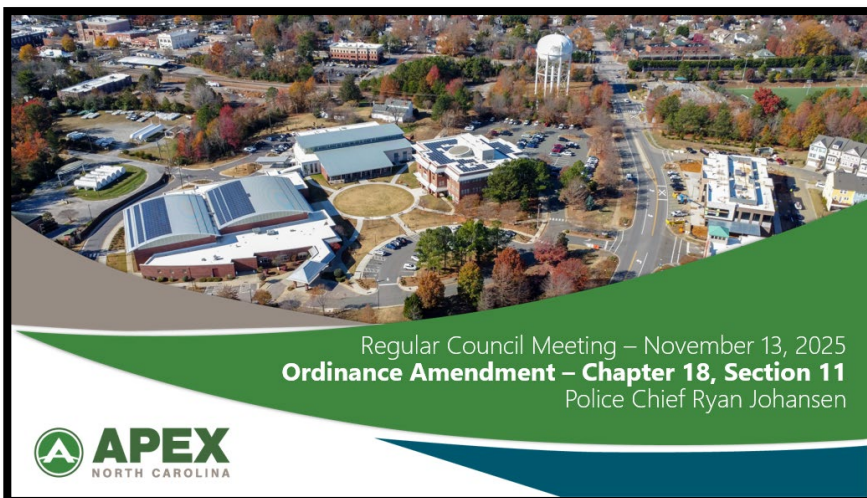
VOTE: UNANIMOUS (5-0)

[NEW BUSINESS]

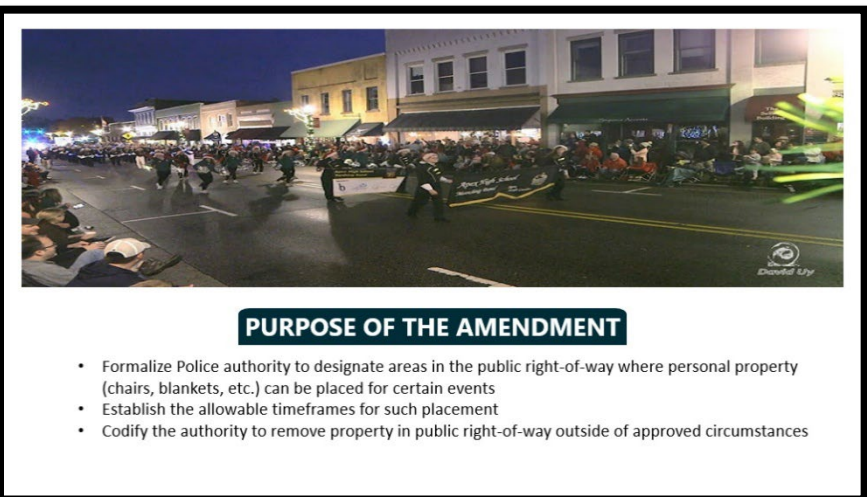
NB1 Ordinance Amendment - Chapter 18 - Streets and Sidewalks, Section 11 - Obstructions - Structures - Temporary Seating Placement in Right-of-Way (ROW) at Approved Special Events (REF: ORD-2025-082)

Ryan Johansen, Chief of Police, Apex Police Department

1 **[SLIDE 1]**



2
3 **[SLIDE 2]**



4

1 **[SLIDE 3]**

Amended Language 18:11

(d) Designation of Temporary Areas for Authorized Personal Property Placement.

(1) Notwithstanding subsection 18-11(a), **the Police Chief, or a duly authorized representative** of the Police Chief, is hereby authorized to **designate certain areas within the town's public rights-of-way where private parties may place authorized personal property** for a period not exceeding forty-eight (48) hours, under the conditions and limitations so designated by the Police Chief.

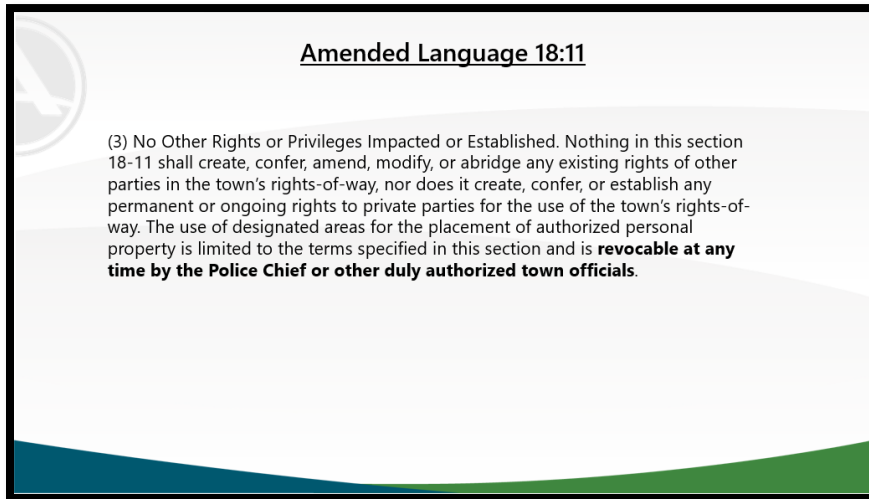
2
3 **[SLIDE 4]**

Amended Language 18:11

(2) Authorized personal property may only be placed in designated areas and for a period not exceeding forty-eight (48) consecutive hours, and shall be placed **no sooner than twenty-four (24) hours prior to the beginning of the special event and removed no later than twenty-four (24) hours after the conclusion of the special event**. At no time may any authorized private property remain in the designated area beyond this period unless authorized by law or the Police Chief. The placement of authorized personal property must not obstruct pedestrian or vehicular traffic, nor interfere with use of the right-of-way, including but not limited to utilities, town services, or public safety operations.

4

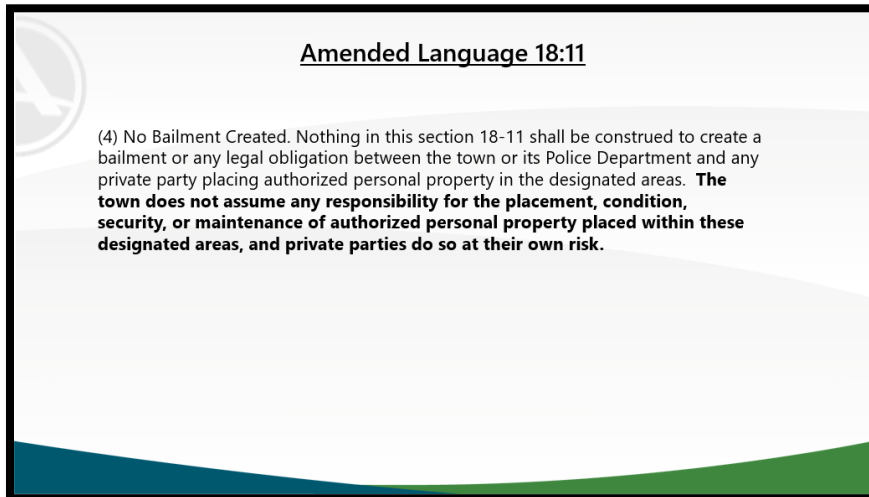
1 **[SLIDE 5]**



Amended Language 18:11

(3) No Other Rights or Privileges Impacted or Established. Nothing in this section 18-11 shall create, confer, amend, modify, or abridge any existing rights of other parties in the town's rights-of-way, nor does it create, confer, or establish any permanent or ongoing rights to private parties for the use of the town's rights-of-way. The use of designated areas for the placement of authorized personal property is limited to the terms specified in this section and is **revocable at any time by the Police Chief or other duly authorized town officials**.

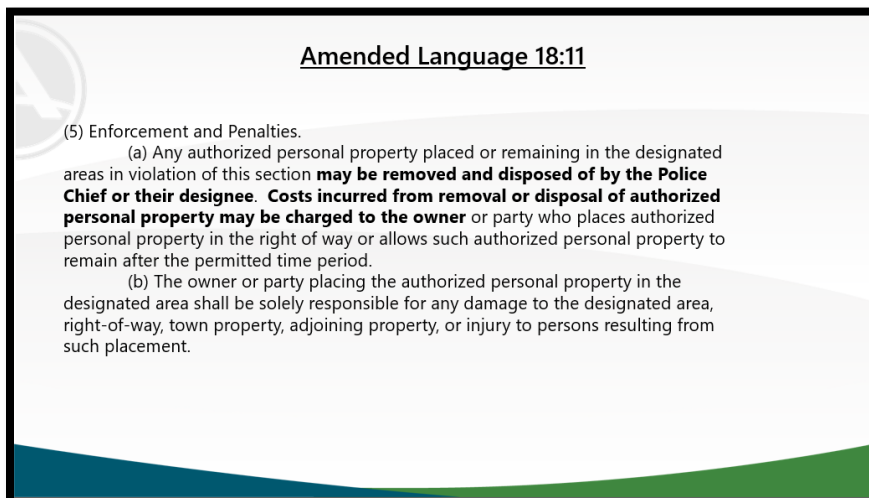
2
3 **[SLIDE 6]**



Amended Language 18:11

(4) No Bailment Created. Nothing in this section 18-11 shall be construed to create a bailment or any legal obligation between the town or its Police Department and any private party placing authorized personal property in the designated areas. **The town does not assume any responsibility for the placement, condition, security, or maintenance of authorized personal property placed within these designated areas, and private parties do so at their own risk.**

4
5 **[SLIDE 7]**



Amended Language 18:11

(5) Enforcement and Penalties.

(a) Any authorized personal property placed or remaining in the designated areas in violation of this section **may be removed and disposed of by the Police Chief or their designee. Costs incurred from removal or disposal of authorized personal property may be charged to the owner** or party who places authorized personal property in the right of way or allows such authorized personal property to remain after the permitted time period.

(b) The owner or party placing the authorized personal property in the designated area shall be solely responsible for any damage to the designated area, right-of-way, town property, adjoining property, or injury to persons resulting from such placement.

6

1 **[SLIDE 8]**



2
3 **Chief Johansen** asked if there were any questions.

4 **Councilmember Killingsworth** said that this was good to finally have this put into
5 language here in the ordinance because it has been an issue every year and now there is
6 clear guidance to residents.

7 **Councilmember Mahaffey** said that enforcement will be the key and asked if there
8 would be officers there the night before.

9 **Chief Johansen** said the intent will be to allow placement beginning at 10 p.m. the
10 night before, which was in collaboration with the downtown businesses for as little as
11 inconveniences with the roads being blocked. He said that it will be a little more difficult to
12 enforce this during the parade.

13 **Mayor Gilbert** thanked staff for the awareness up front and getting the information
14 out prior to the parade. He asked could they put out as many chairs as they wanted.

15 **Chief Johansen** said that as long as they are in the designated areas.

16 **Mayor Pro-Tempore Gray** thanked the Chief for taking the time to address this and
17 thanked legal as well, especially the language about moving a chair that is broken. He said
18 placing chairs is a tradition and looked forward to possibly revisiting this next year.

19
20 A **motion** was made by **Councilmember Killingsworth** and seconded by **Mayor Pro-**
21 **Tempore Gray** to adopt an amendment to Chapter 18 - Streets and Sidewalks, Section 11 -
22 Obstructions - Structures; vehicles of the Town of Apex Code of Ordinances to allow
23 individuals to place chairs or other temporary seating in temporarily designated areas of the
24 right-of-way (ROW), as determined by the Chief of Police, or their designee, no more than 24
25 hours prior to approved special events.

26
27 **VOTE: UNANIMOUS (5-0)**
28

29 **NB2 Student Parking at 8008 Humie Olive Road - Discussion and Possible Direction**

1
2 **Councilmember Gantt** gave an overview of the history of this item, which originated
3 at an August Council meeting as a possible request to change the UDO in regards to parking
4 at residential properties for schools. This included discussions of safety, aesthetics of the cars
5 parked, the need for students to meet parking demand and that the Council declined to
6 change the UDO. He said that since that meeting occurred there was an announcement
7 about the public vehicular area for this property and then opinions that this sort of public
8 access did not supersede the town ordinances. He said this had also been a commercial
9 parking lot, and those were prohibited in Apex. He said with this being his and
10 Councilmember Killingsworth's last meeting, he wanted to have it addressed and not passed
11 on to the next Council, by directing staff to approach this issue based on Council's decision.
12 He said his preferred approach and a possible vote on this on this before there is direction
13 about enforcement is a relinquishment of the ETJ with the argument that the school is a
14 County facility and the School Board and the Principal are the ones who have the authority to
15 prioritize parking passes in that facility and have the ability to do an assignment policy
16 depending on certain capacity in excess of where the parking was designed for. He said they
17 also own a site that may be a future library with a possibility of remote parking where the
18 students didn't have to cross the street. He said that there were public comments about the
19 legal basis of this kind of vehicular parking area. He said that his preference would be that the
20 County and their ordinances take this if they want to enforce it with the property owner. He
21 said he was in support of enforcement of Apex's ordinance if the ETJ relinquishment is not
22 the desired direction of the Council, but that vote could be taken first and they could move
23 from there. He welcomed comments or questions.

24 **Councilmember Killingsworth** said that there was discussion with Town Manager
25 Vosburg and Wake County Schools and asked if he would be willing to share some of that
26 discussion.

27 **Town Manager Vosburg** said that there have been ongoing discussions with the
28 school and Wake County Schools and this particular parking lot in question does not solve
29 the problem completely. He said that there aren't many solutions currently, but there have
30 been discussions with the neighboring church to explore bolstering their parking that they
31 offer. There was also discussion about the future library that was mentioned and that site has
32 been selected. He said that there had also been a meeting with the County staff related to
33 this and they are open to a longer term solution, they do have a little extra property than they
34 need for the future library that could be utilized for parking, and the School Board and
35 principal seem supportive of that option especially since it is on the same side of the school,
36 the issue is timing and sidewalk connection with property owners. He said that the other
37 option that was explored was property that the County or the Town owns property on the
38 southeast side of the school and potentially looking at pedestrian connection to
39 accommodate student parking, but they were not as supportive of this option because of a
40 security standpoint with low visibility for monitoring. There was discussion about how the
41 school prioritized issuing parking passes and this is attached to a district policy and the

1 district wasn't ready to select different types of students to prioritize. He said there was
2 discussion with the school about looking at maximizing the parking. He said that the school
3 said that the capacity of drivers had dropped and they anticipate it will be lower for next year,
4 but this may be for the short term. He said that they did talk about the utilization of town
5 parks that are vacant during the school day that could potentially be used, but the difficulty
6 becomes how to transport the kids from the park sites to the school and if kids would be
7 willing to do that since most have bus transportation available if they are within that set
8 distance already and are not utilizing the buses now, and also the dual enrollment at Wake
9 Tech and the shuttle would have to run all day. He said that it was a good dialogue but there
10 were no solutions currently.

11 **Councilmember Gantt** said that there is frustration with the County having all of the
12 power in the parking issue. He added some background and noted that Apex has previously
13 relinquished ETJ or annexation authority in at least one case involving a local bar that had
14 compliance issues and it occurred without significant difficulty, and that relinquishing ETJ is
15 not unprecedented.

16 **Councilmember Zegerman** asked if there was a vote on the preferred option.

17 **Mayor Gilbert** asked to see the paperwork that was dropped off earlier by Mr.
18 McDavid.

19 **Councilmember Mahaffey** said that he had never heard of PVA when it was
20 announced so there was research done on the legal implications to help understand what
21 this meant. He said that there were three opinions received from the Town, the League of
22 Municipalities, and NCDOT which administers the PVA program. He said that all three of
23 them say that a PVA program does not affect land use or parking, and they all say that the
24 purpose of the PVA is to allow jurisdiction on a property, meaning NCDOT can now enforce
25 their laws on your property. He said they specifically asked if the PVA preempted the Town's
26 land use requirements, and all 3 opinions agreed that it didn't. He asked Town Attorney Hohe
27 if she would summarize this more accurately.

28 **Town Attorney Hohe** said that if Council would like her to talk about the legal matter
29 in open session she would.

30 It was the consensus of the majority of Council that they would like her to, as they felt
31 this was in the public interest.

32 **Attorney Hohe** gave an overview of the explanation of the information received from
33 NCDOT as well as the League of Municipality the PVA fits within Chapter 20, motor vehicle
34 laws, of the General Statutes of North Carolina. The clear intention there of the PVA
35 designation is to allow enforcement of motor vehicle laws on the PVA property which is why
36 the stop sign could be installed and could be enforced on the subject property. She said the
37 question is if the PVA designation preempts the local zoning authority because no one is
38 suggesting or attempting to want to take away the PVA designation, as that is something that
39 NCDOT gives and it's not something that the town would have the authority to take away so
40 the PVA designation would remain. She said that the question is if the designation would
41 preempt Apex's zoning authority and in her opinion and other's opinion, it does not, that

1 State Legislature has clearly given matters of land use control to local governments, meaning
2 Counties and Cities, and there is a special chapter 160D in the General Statutes that outlines
3 how Apex may regulate those land uses, so the Town's opinion is that the zoning authority is
4 not preempted, which means the Town can still regulate use of land. She said that the land
5 use designation in this instance is rural residential, which does not allow the use of student
6 parking as an accessory use per Apex's UDO and that is where the conflict is, it's not with the
7 PVA, but with zoning. She said a zoning amendment or a change to the UDO would be the
8 way to move forward if this property owner wanted to continue using the property for
9 parking.

10 **Councilmember Killingsworth** asked to clarify that a change in the zoning would
11 allow for student parking and a commercial business to be used in this area.

12 **Town Attorney Hohe** said that she would have to defer to Planning staff as to what
13 zoning designation would be appropriate for parking for this location, but she did believe
14 there were existing designations that would allow for that.

15 **Councilmember Mahaffey** said a zoning petition would have to be submitted and it
16 would have to go through the process. He said the Town has to apply its rules fairly to
17 everyone.

18 **Councilmember Gantt** said that it seems unlikely that this landowner will prevail if it
19 comes to a judge deciding.

20 **Councilmember Mahaffey** said that the zoning in the County is identical to Apex's
21 zoning at this property, it would just be a matter of who does the enforcement. He said it is
22 Apex's situation and to deal with and asking the County to enforce this seems irresponsible.

23 **Councilmember Gantt** said that if the Town relinquishes the ETJ designation, it's no
24 longer Apex's rules that apply to this parcel.

25 **Councilmember Zegerman** said it's just like how Councilmember Gantt didn't want
26 to put this problem on a future Council. He said that Council is a Legislative body that set
27 laws and those laws should be applied fairly and equitably. He said that in this situation,
28 someone is in violation of the law, which is not unique or the first time, but the usual means to
29 a resolution have not worked in this case. He said they are at an inflection point now where
30 they either uphold the law or turn a blind eye and let the situation persist, which is a terrible
31 precedent to set. He said that as it has been mentioned, there are avenues that can be
32 petitioned either through rezoning or through a variance request, and the property owner
33 has been advised of those avenues and as of yet has chosen not to pursue any of these
34 avenues, so the only option is to start enforcing the laws that apply.

35 **Councilmember Mahaffey** said that they are essentially being asked to not enforce
36 the law and that can't be done, it should be the same for all cases.

37 **Councilmember Zegerman** reminded all that the reason that the UDO amendment
38 option wasn't pursued, which was one of the other options, was that the UDO is the blanket
39 law for everybody in the town and it would impact more than the one property being
40 discussed.

1 **Mayor Pro-Tempore Gray** asked Mr. McDavid for his thoughts on the King case, and
2 asked Mr. McDavid if he had been retained. He said he read through the case and did not
3 see the conclusions Mr. McDavid had presented earlier.

4 **Mr. McDavid** said that he was presented with a legal question and reviewed the
5 available materials. He said that he would never want his client to have a PVA on her property
6 because she just created an area where law enforcement can come onto her property
7 because of the State power that she has yielded. He said that King is on point because on
8 page 405 he talks about the contortions to say it doesn't say what it means, there are no
9 legislative notes, so it means what it means. He talked about the Town needing to have
10 NCDOT "duly erect" stop signs to have them be enforceable, and discussed the King case in
11 regards to a municipality fining for towing practice. He said the moment that she paid for the
12 PVA it's a safe area and the purpose of a PVA is a safe area for people to take a rest and to
13 stop. He said in the statute there were only three cases, two of which deal with horses and
14 animals and one deals with towing and what the case at hand is, it is an unfortunate situation
15 where Miss Annie is just one of the few people who knew to even ask and now she can't
16 prevent the police from coming on her property because the State put those signs up so she
17 can't kick the police off of her property. He said the land use doesn't change the access to the
18 land does.

19 **Councilmember Mahaffey** said that he agreed with what the PVA is but he didn't see
20 the support for his other points.

21 **Mr. McDavid** said she cannot stop law enforcement from coming onto the property. It
22 is designated as a safe parking area, and she also cannot charge. He said Miss Annie would
23 win at trial. He said the land use doesn't change, but the access does.

24 **Councilmember Mahaffey** said he agrees as to what the PVA is and what it does in
25 regards to law enforcement being allowed on the property.

26 **Mayor Pro-Tempore Gray** said that he disagrees as a lawyer, the Fourth Amendment
27 still doesn't allow law enforcement to go into the house, they are just talking about the area
28 designated as the PVA.

29 **Mr. McDavid** said from the PVA, anything that they see.

30 **Mayor Pro-Tempore Gray** said that those are exceptions to the Fourth Amendment
31 but this is not explicit authorization and if they saw or smelled something or any other
32 exceptions to the Fourth Amendment which are out there in order to take the next step. He
33 asked Mr. McDavid if he agreed that the jurisdiction hasn't been ceded completely to the
34 state when it comes to the issue of zoning authority still applying, considering NCDOT has
35 told the Town that they still have that authority.

36 **Mr. McDavid** said absolutely, Apex can zone it in a thousand different ways but stop
37 signs don't become duly erected until you get a DOT sticker and then you can't undo that
38 fact, it's called mootness.

39 **Mayor Pro-Tempore Gray** said it seemed like he was conflating the two issues, and
40 that position doesn't seem consistent with the ultimate holding in King, and certainly doesn't

1 seem consistent with the holding of Washington versus Hammond, which is the original
2 interpretation of what the state's authority is over the municipalities.

3 **Mr. McDavid** said King comes after Washington.

4 **Mayor Pro-Tempore Gray** asked if he conceded that King is citing Washington.

5 **Mr. McDavid** said but King took over, correct. He said on page 405 it talks about it,
6 and that there were no legislative notes describing anything the law was meant to stop.

7 **Mayor Pro Tempore Gray** said he thinks that's where the issue is being conflated.

8 **Mr. McDavid** said if a person makes the request, they get to be a PVA. He said the
9 Town does not have any say in that process.

10 **Mayor Pro Tempore Gray** asked if he would concede that the Town has not lost its
11 zoning authority even with that designated.

12 **Mr. McDavid** said that was correct, it was sandwiched on top. He said the problem is
13 if people park there the property owner cannot be fined because of it being a PVA.

14 **Councilmember Mahaffey** said that Mr. McDavid is the first person to articulate this
15 case, as no lawyer that he had talked to up to this point has explained why a PVA designation
16 allows parking.

17 **Mr. McDavid** said that the moment the Town tries to take a dollar from Miss Annie, as
18 the King case showed, the Town will have exceeded its authority because DOT said she could
19 do it.

20 **Mayor Pro Tempore Gray** said that's where he thinks he has conflated the issue.

21 **Councilmember Zegerman** said no one is asking for money, the PVA is not the issue,
22 it's that the underlying zoning does not allow for parking and the PVA doesn't make it a
23 different zoning with a different allowable use.

24 **Mr. McDavid** said that she could do it because DOT sent Miss Annie a letter and put
25 the signage up.

26 **Councilmember Mahaffey** said that the property could be a PVA, and DOT told the
27 Town she couldn't go against their zoning regulations.

28 **Mr. McDavid** said once DOT took her money, it is what it purports to be.

29 **Mayor Pro-Tempore Gray** said that this was gone from step two to step six without
30 going to two, three and four. He said that he understands Mr. McDavid isn't retained and
31 hasn't done all of the research.

32 **Mr. McDavid** said he has done the research, and could go to court tomorrow with the
33 argument that as soon as the Town tried to take a dollar from her, they couldn't. He said that
34 with the PVA Apex has lost the authority to fine Miss Annie. He said that is the power of the
35 purse, and that is what King says.

36 **Councilmember Mahaffey** asked Mr. McDavid if his position is that this is illegal, but
37 Apex can't fine her.

38 **Mr. McDavid** said yes, they can ask her not to do it but fining would be exceeding
39 authority.

40 **Mayor Pro-Tempore Gray** said that Council would continue this discussion. He said
41 that he appreciates that Mr. McDavid understands the difference between litigators and trial

1 lawyers, because there is a true difference. He said ultimately, he thought Mr. McDavid was
2 wrong on King and ultimately a judge could decide if need be.

3 **Mayor Gilbert** asked if he was recommending an administrative law judge.

4 **Mayor Pro-Tempore Gray** said at this point and with this being a municipality, the
5 Town would at least be entitled to superior court at this stage.

6 **Councilmember Gantt** said that this may apply to the County and enforcement.

7 **Councilmember Zegerman** said that whether the Town has an ability to fine or not,
8 they still have an ability to uphold the law, so something should be done by the Town.
9

10 A **motion** was made by **Councilmember Gantt** and seconded by **Mayor Pro-**
11 **Tempore Gray** to direct staff to coordinate with Wake County in the eventual agreement to
12 relinquish this property from the ETJ.
13

14 **VOTE: (1-4), with Mayor Pro Tempore Gray, Councilmember Killingsworth,**
15 **Councilmember Mahaffey, and Councilmember Zegerman dissenting.**
16
17
18

19 A **motion** was made by **Councilmember Gantt** and seconded by **Councilmember**
20 **Killingsworth** to direct staff, including the Town Manager, Planning Director and Town
21 Attorney to initiate the processes of enforcement of the zoning ordinance for 8008 Humie
22 Olive Road.
23

24 **Mayor Pro-Tempore Gray** clarified that there were no exceptions or attempt to
25 speed this through, so the town is following the procedures that are already set.

26 **Town Manager Vosburg** said that this is how he is taking this and that the process
27 will not be altered from what is normally done in this process.

28 **Councilmember Zegerman** said that taking in account to what has already been
29 done, like the violation letters that have already been sent.
30

31 **VOTE: UNANIMOUS (5-0)**
32

33 **Councilmember Mahaffey** asked Town Attorney Hohe for the legal research that was
34 referred to of the opinions released because it is in the public interest this discussion about
35 PVA to see what is being looked at, he asked Attorney Hohe if she could do that based on
36 what was said.

37 **Town Attorney Hohe** asked in what manner should be released.

38 **Councilmember Mahaffey** said a blog or a fashion that people could access the
39 documents.

40 **Councilmember Zegerman** said they could lift the protection of them from Public
41 Records Requests.

1 **Mayor Pro-Tempore Gray** asked if it could be added to the minutes.

2 **Councilmember Mahaffey** went over the documentation that should be released,
3 such as the correspondence with NCDOT and the League of Municipalities and memos from
4 legal staff.

5 **Town Attorney Hohe** said that the memo would be protected by attorney client
6 privilege, but if the client directs it to be released, then they may be released. She said that
7 she could attach them to the minutes.

8
9 A **motion** was made by **Councilmember Mahaffey** and seconded by
10 **Councilmember Zegerman** to direct Town Attorney Hohe to attach the relevant documents
11 to this item, including currently protected documents, to the meeting minutes.

12
13 **Councilmember Gantt** asked if it would not be advisable to release the memo in this
14 scenario.

15 **Councilmember Mahaffey** asked if there could be a modified version.

16 **Town Attorney Hohe** asked if she could think about it. She said communications
17 between staff and other agencies would already be public record.

18 **Councilmember Mahaffey** asked if she could create a new document summarizing
19 her position without it being legal advice.

20 **Town Attorney Hohe** said due to the nature of her relationship to the Town Council,
21 it would also classify as legal advice. She said she would have to think about it.

22 **Mayor Pro Tempore Gray** said attorney-client privilege is important to defend.

23
24 **Councilmember Mahaffey** withdrew his previous motion.

25
26 **Mr. McDavid** said that the CRAC describing the question, analysis, and conclusion
27 would protect attorney-client privilege.

28 **Mayor Pro-Tempore Gray** said that he was contemplating that but then he didn't
29 want to risk giving up privilege for all future opportunities. He said privilege should be
30 defended, even if there was not a real reason to do so.

31 **Mr. McDavid** said that if King is used as the question, then the CRAC is her opinion
32 based on King and it's not her opinion to Council on the overall question, just on what King
33 means and not in regards to this particular matter.

34 **Mayor Pro-Tempore Gray** said that it was still a little closer to the line than he would
35 feel comfortable with.

36 **Councilmember Gantt** said the public records are available if requested.

37 **Mayor Pro-Tempore Gray** said that as a thought that if there were a petition for
38 rezoning, he would look favorable on doing that.

39 **TJ Evans** asked Mayor Pro-Tempore Gray if he voted on the last motion.

40 **Mayor Pro-Tempore Gray** said he did, there were none in opposition.

[CLOSED SESSION]

A **motion** was made by **Mayor Pro-Tempore Gray**, seconded by **Councilmember Zegerman** to enter into closed session pursuant to NCGS §143-318.11(a)(6).

VOTE: UNANIMOUS (5-0)

Council entered closed session at 9:16 p.m.

CS1—Laurie Hohe, Town Attorney

~~NCGS §143-318.11(a)(3):~~

~~*“To consult with an attorney employed or retained by the public body in order to preserve the attorney client privilege between the attorney and the public body.”*~~

This item was removed based on the vote setting the Regular Meeting Agenda.

CS2 Mayor Pro-Tempore Edward Gray

NCGS §143-318.11(a)(6):

“To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.”

CS3 Mayor Pro-Tempore Edward Gray

NCGS §143-318.11(a)(6):

“To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.”

CS4 Mayor Pro-Tempore Edward Gray

NCGS §143-318.11(a)(6):

“To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a

complaint, charge, or grievance by or against an individual public officer or employee."

[ADJOURNMENT]

Council returned to open session at **9:43 p.m.**

Mayor Gilbert adjourned the meeting at **9:43 p.m.**

Jacques K. Gilbert
Mayor

Allen Coleman, CMC, NCCCC

Town Clerk to the Apex Town Council

Submitted for approval by Town Clerk Allen Coleman and approved on _____.