



## | REGULAR TOWN COUNCIL MEETING

July 27, 2021 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

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

### Town Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier

Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey

Town Manager: Catherine Crosby | Assistant Town Managers: Shawn Purvis and Marty Stone

Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

In attendance were Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members Audra M. Killingsworth, Brett D. Gantt, Terry Mahaffey, and Cheryl F. Stallings. Also in attendance were Town Manager Catherine Crosby, Assistant Town Managers Shawn Purvis and Marty Stone, Town Clerk Donna B. Hosch (remotely), and Town Attorney Laurie L. Hohe.

### COMMENCEMENT

Mayor Gilbert called the meeting to order and presented a statement of diversity and inclusion related to religion. Mayor Gilbert gave the Invocation and then led the Pledge of Allegiance.

Mayor Gilbert thanked and recognized Staff for their work on the Pig Fest. Mayor Gilbert recognized Catherine Crosby, Town Manager, and welcomed her to her first Council meeting.

### PRESENTATIONS

PR1 Dennis Jernigan, Deputy Chief Engineer for Highway Operations of the North Carolina Turnpike Authority

Presentation from Dennis Jernigan, Deputy Chief Engineer for Highway Operations of the North Carolina Turnpike Authority, on the Complete 540 project.

Mr. Jernigan provided Council with an update on the status of the 540 project and briefly explained the portions of the project that will affect the Town. He stated that additional information and resources could be found at [ncdot.gov/complete540](http://ncdot.gov/complete540). The project is targeted to be completed in 2023. Council thanked Mr. Jernigan for his presentation.

## CONSENT AGENDA

- CN1 Donna B. Hosch, Town Clerk  
Minutes of the May 21, 2021 and June 8, 2021 Regular Council Meetings
- CN2 Donna Hosch, Town Clerk  
Apex Tax Reports dated 05/09/2021 and 06/04/2021
- CN3 Donna Hosch, Town Clerk  
Codification of Supplement 7 of the Town's Code of Ordinances and codification of the July 27, 2021 revision of the Unified Development Ordinance (UDO).
- CN4 Jacques K. Gilbert, Mayor  
Reappointment of Kurt Pfeifer and Linda Barrett and to appoint David Yokum to the Transit Advisory Committee
- CN5 Shelly Mayo, Planner II  
Statement of the Town Council and Ordinance for Rezoning Case #21CZ03 Willow Hills PUD Amendment. Toll Southeast LP Company, Inc., petitioner, for the properties located at: 3417 Olive Chapel Rd.; 0 Willow Hills Dr.; 1400, 1406, 1411, 1412, 1418, 1419, 1425, 1426 Sierra Glen Cir.; and 0, 3400, 3406, 3407, 3413, 3414, 3420, 3426, 3432, 3438 Snowbed Ridge Dr.
- CN6 Lauren Staudenmaier, Planner II  
Statement of the Town Council for Rezoning Case #21CZ10, AMH Development, LLC/Daniel & Denise Schardt and Barbara Jo W Timberlake, Trustee of Barbara Jo W Timberlake Family Trust, petitioner, for the properties located at 2300 and 2324 Kelly Road.
- CN7 Amanda Bunce, Current Planning Manager  
Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendments of June 22, 2021.
- CN8 Dianne Khin, Director of Planning and Community Development  
Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for August 10, 2021 on the Question of Annexation - Apex Town Council's intent to annex KOBRA, LLC (Reams Grove Master Subdivision) property containing 18.894 acres located at 7500 Green Level Church Road, Annexation #710 into the Town's corporate limits.
- CN9 Dianne Khin, Director of Planning and Community Development  
Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, Resolution Setting Date of Public Hearing for August 10, 2021 on the

Question of Annexation – Apex Town Council’s intent to annex Apex Properties & Rentals, LLC and Eura Tunstall properties containing 5.3821 acres located at 1533 and 1537 Old Ivey Road, Annexation #714 into the Town’s corporate limits.

CN10 Russell Dalton, Traffic Engineering Manager

3<sup>rd</sup> Supplemental Agreement for \$200,000 in additional funding reimbursement from NCDOT to the Town of Apex for the construction of U-5537 Lake Pine Drive Improvements and authorization for the Town Manager to execute the Agreement.

CN11 Liz Loftin, Senior Planner

Resolution correcting the Ordinances for Rezoning Cases #17CZ04 and #18CZ02, Friendship Station PUD, petitioners for the property located at 0, 3113, 3136, 3136, 3148, and 3232 Olive Farm Rd.; 0, 0, 8004, 8025, 8109, 8105, 8129, 8132, 8021, and 8116 Humie Olive Rd; 0, 0, 2804, 2816, 2908 and 2916 Richardson Rd.; 2705 and 2712 Butterfinger lane, 0 Macintosh Wood Drive; and parts of 2800 Richardson Road.

CN12 Steve Adams, Easement Acquisition Specialist

Abandonment of a portion of a public utility easement on Lot 57 in the development known as Pinnacle Park.

CN13 Russell Dalton, Traffic Engineering Manager

Budget Ordinance Amendment No. 1 and Capital Project Ordinance Amendment 2022-01 to allocate developer fees paid toward the installation of traffic signals at three locations (Green Level Church Road at Jenks Road, US 64 at Jenks Road, and US 64 at the U-turn west of Jenks Road) into a Capital Project to provide for the installations.

CN14 Michael Deaton, PE, Water Resources Director

Multi-year Master Agreements for On-Call Professional Services for multiple firms.

CN15 Michael Deaton, PE, Water Resources Director

Set a Public Hearing concerning proposed amendments to Chapters 5, 12, and 20 of the Town Code of Ordinances. The Public Hearing will be held on Tuesday, August 10, 2021 at 6:00 p.m. at the Apex Town Hall.

CN16 Mitch McKinney, Deputy Chief of Police

2021-2022 School Resource Officer (SRO) contract between Wake County Public Schools and the Town of Apex.

CN17 Steve Adams Real Estate & Public Utilities

Abandonment of a portion of a public utility easement on Lots 265, 266, 267, and 268 on Adams Pond Road in the development known as Westford 3A

CN18 Mary Beth Manville, Human Resources Director

One (1) new full-time position, Executive Assistant to Town Administration, Grade 22, to the Administration Department and corresponding Budget Amendment 2.

CN19 Mary Beth Manville, Human Resources Director

Updates to the Town's Position Classification list.

CN20 Jose F. Martinez, III

Interlocal agreement between the Town of Holly Springs and the Town of Apex for Yard Waste Transfer/Removal.

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Mahaffey made the motion; Mayor Pro Tem Dozier seconded the motion.

The motion carried by a 5-0 vote.

#### REGULAR MEETING AGENDA

Mayor Gilbert stated there was a request from staff to add a Closed Session to consult with the Town Attorney pursuant to G.S. 143-318.11(a)(3) to consult with the Town Attorney to discuss the handling of the matter of Wake County Board of Education v. Town of Apex.

Mayor Gilbert called for a motion to adopt the Regular Agenda. Council Member

Gantt made the motion with the requested change; Council

Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

#### PUBLIC FORUM

There were no Public Forum comments.

#### PUBLIC HEARINGS

PH1 Shannon Cox, Long Range Planning Manager

Amendment to the Bicycle and Pedestrian System Plan map south of Humie Olive Road.

Staff oriented Council to the amendment. Planning staff supported the recommendations which were reviewed and supported by other departments. The Parks and Recreation Advisory Commission unanimously recommended approval as well as the Planning Board.

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

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

The motion carried by a 5-0 vote.

PH2 Shelly Mayo, Planner II

Rezoning Application #21CZ16 Heelan PUD Amendment. The applicant, Jason Barron, seeks to rezone approximately 142.42 acres from Planned Unit Development - Conditional Zoning (PUD-CZ #19CZ21) to Planned Unit Development - Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8824 & 8829 New Hope Farm Road, 3108 & 3120 Olive Farm Road, and 0 Humie Olive Road.

Staff oriented Council to the amendments. A neighborhood meeting was held. The applicant requested four changes which were detailed. The Planning Board and Planning Staff recommended approval.

Staff explained why there was not a need to amend the UDO related to one of the requested conditions. Staff responded to questions about the size of the front porches and questions related to buffers.

Mayor Gilbert declared the Public Hearing open.

Neil Gosh, attorney with the Morningstar Law Group representing the applicant, talked about the requested changes to several conditions which spoke to affordability and attractiveness to the public. He showed depictions of three floor plans to clarify the latter. Council thanked Mr. Gosh for the diversity being offered.

Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion. Mayor Pro Tem Dozier made the motion to approve the application; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

PH3 Shelly Mayo, Planner II

2045 Land Use Map amendment and Rezoning Application #21CZ09 Alderwood PUD. The applicant, Jessie Hardesty for McAdams Co., sought to amend the 2045 Land Use Map from Mixed Use: Commercial Services, Office Employment, and High Density Residential to Mixed Use: Commercial Services, Office Employment, and Medium/High Density Residential and rezone approximately 15.3 acres from Rural Residential (RR) to Planned Unit Development – Conditional Zoning (PUD-CZ). The proposed rezoning is located at 1533 Wimberly Road and 7912, 8000 and 8016 Jenks Road.

Staff oriented Council to the amendment and to the site. A neighborhood meeting was held on March 24, 2021. A letter of impact from Wake County Public School System was received; the letter indicated that there would be sufficient capacity for future students. The Environmental Advisory Board suggested zoning conditions which were added to the PUD. The Parks and Recreation Advisory Commission recommended a fee in lieu for the project.

Staff summarized the roads involved with the project in regards to access. Responding to Council, staff stated that no traffic signals were required. The Planning Board recommended approval with an additional condition. Planning Staff recommend approval with the proposed conditions and the proposed PUD.

Jason Barron, an attorney with Morningstar Law Group representing the applicant, further detailed the project. Mr. Barron spoke about affordability and the changes that have occurred to the plan based on recommendations. Mr. Barron addressed the concerns that had been brought forth by Council in regards to RCA, the tree canopy, sidewalks, and a park space.

Council thanked the applicants for their collaboration and communication with the neighbors, which Mr. Barron stated they will continue to do. Council also stated other measures that the applicant has taken in regard to the project.

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

Mayor Gilbert called for a motion. Mayor Pro Tem Dozier made the motion to approve the amendment and rezoning application; Council Member Gantt seconded the motion.

Mayor Gilbert called for a five-minute break while staff revised wording for inclusion in the motion.

Mayor Pro Tem Dozier amended her motion in effort to protect the tree canopy accepting \$3,000 to a non-profit organization with a mission towards tree preservation related to that work; Council Member Gantt seconded the amendment.

The motion carried by a 5-0 vote.

PH4 Amanda Bunce, Current Planning Manager

Amendment to the Unified Development Ordinance (UDO) requested by Tutu School Apex related to the Personal Service use in storefront locations downtown.

Staff oriented Council to the amendment. Planning staff recommended approval as did the Planning Board. Staff responded to Council question related to uses.

Laura O'Brien, owner of Tutu School Apex, explained the school's operation and its benefit to the children. She spoke about yearly enrollment and stated that the school operates all year, seven days a week. Ms. O'Brien detailed why she wished to open in Apex, there being a demand from the Apex community. Responding to Council, Ms. O'Brien explained the retail aspect of her business, which is open to the public.

Mayor Gilbert declared the Public Hearing open.

Alexis Jenssen, President of the ADBA, stated that this business aligns with the interest of the ADBA. She discussed the types of businesses which are critical to downtown and the ADBA's desire to work with the UDO. She read a letter from the Board of directors of the ADBA.

Tim Brent, representing Opulent Investment Company, owners of the Highland Building, briefly shared the businesses that have leased a space within the Highland Building. He stated that the Tutu School was the first business that sought space within the property and he has hopes that Council will approve the UDO amendment so that the Tutu School will be able to lease the space in the Highland Building.

Staff clarified that the change would apply to all of the downtown business district. Council expressed concern about downtown being opened up to more franchise businesses and that it may take away the feel of small businesses in the downtown area. During discussion Council determined that the UDO ensured a 10% space limit for franchise businesses.

Council questioned who the letter read by Ms. Jensen was from. Ms. Jensen stated the letter she read was from the board of directors.

Council spoke a bit about the decisions made in 2018 and reiterated the 10% limit. If the downtown plan is executed correctly, then the market should take care of itself. He did not think the previous decision was permanent but incremental.

Council discussed that it appeared as if the UDO was being amended for one building, and it could set a precedent on how similar matters are handled in the future.

Responding to Council, Ms. O'Brien, stated that there was not any other space in the building that would be appropriate and that she would be taking the smallest space available.

Mr. Brent stated that they have turned away several tenants in order to be good neighbors. He stated that the UDO doesn't match the spirit of this use in this particular situation. He stated that they do not want special treatment, but the plan of the building aligns with the downtown plan. Mayor Gilbert stated he supported Mr. Brent and that sometimes changes need to be made to be successful, while he also respected the thoughts of his colleagues.



Staff explained that a compromise could be written into the UDO to include the personal service with a retail piece. Staff stated that additional time would be needed to clarify the definition. Council asked that the ADBA be a part of any additional discussion that may take place.

Council asked Ms. O'Brien how this would affect her business plan. She stated that she has been seeking space in Apex for two and a half years. There are some constraints; but as long as a plan is in place, she believed the franchiser will be flexible and will work with her.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to continue to the August 24, 2021 Regular Meeting; Council Member Stallings seconded the motion. Mayor Pro Tem Dozier and Council Members Stallings, Killingsworth, and Mahaffey voted in the affirmative; Council Member Gantt voted against.

The motion carried by a 4-1 vote.

#### OLD BUSINESS

There were no Old Business items.

#### UNFINISHED BUSINESS

UB1 Lauren Staudenmaier, Planner II  
Rezoning Application #21CZ05 Friendship Storage has been withdrawn by the applicant, Terco Properties; the applicant had originally applied to rezone approximately 9.09 acres located at 0 Friendship Road and 2109 Old US 1 Highway (PINs 0730193547 & 0730197850) from Rural Residential (RR) to Tech/Flex-Conditional Zoning (TF-CZ).

Staff stated that the application was withdrawn by the applicant and no further action was necessary.

UB2 Shannon Cox, Long Range Planning Manager  
Amendment to the Thoroughfare and Collector Street Plan map in the vicinity of Green Level West Road.

AND

UB3 Shelly Mayo, Planner II

Rezoning Application #21CZ04 Williams Farm PUD. The Public Hearing was held on June 22, 2021 and the vote continued to July 27, 2021. The applicant, Jessie Hardesty from the McAdams Co, sought to rezone approximately 61.919 acres from Rural Residential (RR) to Planned Unit Development – Conditional Zoning (PUD-CZ). The proposed rezoning is located at 4525 Green Level West Road.

Staff briefly reviewed and reoriented Council to the amendment and site. The request was related to Unfinished Business item three. The school system has entered into contract with the property owners to hopefully close by the end of the year. The applicant agreed to all the conditions proposed by the Environmental Advisory Board and all the Land Use requirements. The Planning Board and Planning Staff recommended approval. Staff reviewed the school impact letter and how it will impact the Town.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the amendment and rezoning application; Mayor Pro Tem Dozier seconded the motion.

The motion carried by a 5-0 vote.

#### NEW BUSINESS

NB1 Colleen Merays, Downtown & Small Business Development Coordinator

Special Event Permit requests and Town Sponsorship requests for 100 People Who Give – PhilanthroParty on Saturday, September 25, 2021.

Staff thanked Council Member Gantt and the Apex Sunrise Rotary Club, and Grant Wilson, the head of the Rotary Club for all their help with Peak Fest. Council stated this was a fundraiser for charity; and staff stated that approximately \$30,000 was raised to go back into the community.

Staff explained the request, the purpose of the organization, what the event would entail, and the specifics of the fundraiser. Staff explained that the food trucks tend to enhance and compliment the downtown area and restaurants, and they do not appear to be a deterrent.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the request; Mayor Pro Tem Dozier seconded the motion.

The motion carried by a 5-0 vote.

NB2 Colleen Merays, Downtown & Small Business Development Coordinator  
Ordinances modifying Town Code Section 14-14 as to the Parking Lot and Patio at The Depot, 220 N Salem Street closed for a Special Event during 100 People Who Give – PhilanthroParty on September 25, 2021.

Staff stated the amendment would allow the sale of alcohol on Town property. This ordinance would cover the entire space, as opposed to the area currently identified in the ordinance.

Mayor Gilbert called for a motion. Council Member Gantt made the motion;

Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

NB3 Laurie Hohe, Town Attorney

Amendments to the Town Code of Ethics for Town Council, Planning Board, and Board of Adjustment members.

Staff explained the amendments that were made. The updates were needed due to the updates to Chapter 160D, and the language was updated and is now gender neutral.

Council provided comments in reference to Section 5 of the document. There may be perception that there is some unfairness in the process in that the developers can meet with Council and those opposed may not know what to do. Section 5 discusses transparency and that there should be a discussion about adding a clause that requires Council and the Planning Board to disclose these meetings or contact to the public.

Council stated that measures have been taken and are continuing to be made to ensure transparency. All developers do not reach out to all Council Members, but sometimes applicant representatives have reached out to certain members. In those particular situations where limited contact is made, then that contact or meeting should be disclosed as well. She stated that we need to ensure people understand processes and procedures, and how to ensure their voices are heard and are properly imbedded within a process. Council stated he assumed all Council Members had been contacted and that they need to be sure to communicate with each other about these types of conversations.

Staff recommended that a sentence be added to clarify that having a meeting with a Council Member does not provide grounds for recusal. Council asked if Council or Staff could do more to communicate and educate with the community. Staff stated that the UDO requirements for notification currently exceed state requirements for neighboring properties.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to approve the amendments; Mayor Pro Tem Dozier seconded the motion.

The motion carried by a 5-0 vote.

#### UPDATES BY TOWN MANAGER

Town Manager Crosby stated that she is excited to join the Apex Team. She provided Council with a few updates. The new Housing Program Manager has started working remotely and will join us in person next month. The new Housing Specialist will join us next week. Our new Chief of Police will start on Monday. Town Manager Crosby and the Chief will be out in the community at the end of August and the beginning of September to introduce themselves and visit the neighborhoods. She expressed that we are excited about the Electric Building and the Community Center being finished by the end of August or beginning of September. She acknowledged the Police department win at Peak Fest. Town Manger Crosby thanked Council and stated that she is looking forward to working with everyone.

#### CLOSED SESSION

- CS1 Steve Adams, Easement Acquisition Specialist  
Pursuant to NCGS 143-318(a)(5) to give staff direction concerning the Town's negotiating position to acquire real property.
- CS2 Laurie Hohe, Town Attorney  
Pursuant to NCGS 143-318.11(a)(3) to consult with the Town Attorney to discuss the handling of the matter of Wake County Board of Education v. Town of Apex.

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

The motion carried by a 5-0 vote.

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

WORK SESSION

There was no Work Session.

ADJOURNMENT

With no further business, Mayor Gilbert adjourned the meeting.

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Donna B. Hosch, MMC, Town Clerk and  
Tesa Silver, CMC, Deputy Town Clerk

ATTEST:

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Jacques K. Gilbert, Mayor