

**DRAFT MINUTES**  
**TOWN OF APEX**  
**REGULAR TOWN COUNCIL MEETING**  
**TUESDAY, NOVEMBER 28, 2023**  
**6:00 PM**

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, November 28, 2023 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=NHRU1IsUzOc>

**[ATTENDANCE]**

Elected Body

Mayor Jacques K. Gilbert (presiding)  
Mayor Pro Tempore Audra Killingsworth  
Councilmember Ed Gray  
Councilmember Arno Zegerman  
Councilmember Terry Mahaffey  
Absent: Councilmember Brett Gantt

Town Staff

Interim Town Manager Shawn Purvis  
Assistant Town Manager Demetria John  
Assistant Town Manager Marty Stone  
Town Attorney Laurie Hohe  
Town Clerk Allen Coleman  
Deputy Town Clerk Ashley Gentry  
Planning Director Dianne Khin  
All other staff members will be identified appropriately below

**[SLIDE 1]**



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### [COMMENCEMENT]

**Mayor Gilbert** called the meeting to order, and welcomed all those in attendance and those watching on livestream. He then led everyone in observing a moment of silence.

**Mayor Gilbert** then led those in attendance in a recitation of the Pledge of Allegiance. He then reminded anyone who wished to speak during Public Forum to sign up with the Town Clerk.

### [CONSENT AGENDA]

**Mayor Gilbert** noted that there was a staff request to add a Consent Item 7 – Amendment to the 2023 Town Council Calendar. He also noted that there was a staff request for Consent Item 5 to be removed.

A **motion** was made by **Councilmember Zegerman**, seconded by **Mayor Pro Tempore Killingsworth**, to approve the Consent Agenda, with the removal of Consent Item 5, and the addition of Consent Item 7.

### **VOTE: UNANIMOUS (4-0)**

#### **CN1 Agreement - Amended and Restated Full Requirements Power Sales Agreement between North Carolina Eastern Municipal Power Agency and the Town of Apex (REF: CONT-2023-324 and OTHER-2023-117)**

Council voted to adopt an ordinance determining that it is in the best interests of the Town of Apex to Approve and Authorize the Execution and Delivery of the Amended and Restated Full Requirements Power Sales Agreement Between the Town of Apex and North Carolina Eastern Municipal Power Agency, and authorize the Mayor, Town Attorney, Town Clerk, and Finance Director to execute the necessary agreement and certification documents.

#### **CN2 Construction Contract Award - Pacos Construction Company, Inc - Bridge Preservation - Various Locations (REF: CONT-2023-325)**

Council voted to award construction contract with Pacos Construction Company, Inc for Bridge Preservation maintenance to seven (7) locations (listed below) and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

#### **CN3 Contract Multi-Year - Enpira, Inc - Technology and Software Support for Utility Data - November 30, 2023 through June 30, 2026 (REF: CONT-2023-326)**

Council voted to approve a Master Services Agreement (MSA), effective November 30, 2023 through June 30, 2026, with Enpira, Inc for technology and software support for utility data and authorize the Interim Town Manager, or their designee, to execute the agreement on behalf of the Town.

#### **CN4 Contract Multi-Year - Microsoft Corporation - Enterprise Enrollment - November 1, 2023 through November 30, 2026 (REF: CONT-2023-327)**

Council voted to approve a multi-year contract, effective November 1, 2023 through November 20, 2026, with Microsoft Corporation enterprise enrollment for volume licensing, and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

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### **CN5 Resolution - Accepting American Rescue Grant Funds from NC Division of Water Infrastructure (DWI) and Capital Project Ordinance Amendment 2024-8**

Council voted to adopt a Resolution accepting American Rescue Plan (ARP) grant funds from the NC Division of Water Infrastructure (DWI) to complete Asset Inventory and Assessment (AIA), and approve Capital Project Ordinance Amendment 2024-8, and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

### **CN6 Unified Development Ordinance (UDO) Amendments - October 24, 2023 - Statement (REF: OTHER-2023-118)**

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 24, 2023.

### **CN7 ADDED 2023 Town Council Meeting Calendar Amendment (REF: OTHER-2023-122)**

Council voted to amend the 2023 Town Council Meeting Calendar to revise the start time for the Town Council Organizational Meeting on Wednesday December 6, 2023 to start at 6:00 p.m., and add two closed session meetings related to the Town Manager recruitment process to be held on Tuesday, December 5, 2023 and Tuesday, December 19, 2023 both with start times of 5:00 p.m. and to be held at Apex Town Hall located at 73 Hunter Street in Apex, North Carolina.

## **[PRESENTATIONS]**

### **PR1 Recognition - Apex Friendship High School Students - Women's Tennis Double State Champions**

**Mayor Gilbert** there were champions in Town Hall tonight. He invited Julianne Izod and Caroline Izod up to be recognized for winning their second consecutive Women's Tennis Doubles State Championship. He then presented them with Letters of Honor, and they took a picture with him and the rest of Council.

**Ms. Izod** spoke about she was thankful that the Mayor and Council did this for them a second year in a row. She said she is proud to call Apex home, and that it is special to have won it with her little sister.

Her Sister commented about how she was lucky to be able to play with her older sister, and she was happy to win this with her sister in her senior year.

**Mayor Gilbert** noted that he has a tennis ball signed by the Izod sisters, and he would keep it in his office and treasure it.

### **~~PR2 - REMOVED - Western Wake Ministry Presentation~~**

This presentation will be moved to a future Council meeting date.

## **[REGULAR MEETING AGENDA]**

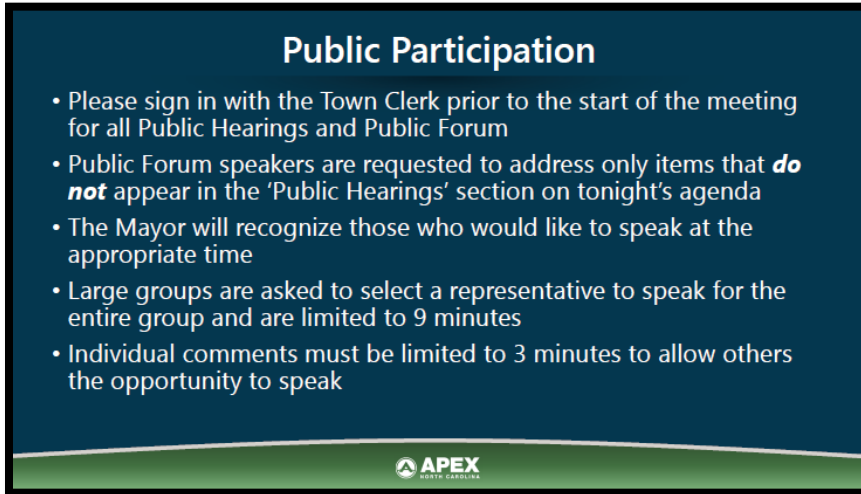
A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by **Councilmember Gray**, to approve the Regular Meeting Agenda as presented.

**VOTE: UNANIMOUS (4-0)**

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[PUBLIC FORUM] (NOTE: To view Public Forum and Public Hearing sign-up sheets, see **OTHER-2023-120**)

[SLIDE 2]



**Mayor Gilbert** said this was a time to present concerns or ideas. He said there quite a few people signed up to speak, so he asked speakers to respect the time limits and to watch for repetitive comments. He said he and Council would not be responding, but would be listening and taking notes, and that a member of the team would be reaching out to discuss their concerns.

First to speak was **Marvin Hymanson** of 2907 Sunflower Road:

"It's going to be a tough act to follow tennis champs, but I'll give them my three minutes. Good evening Mr. Mayor and Council Members, I am hopeful the Council will work to represent all residents of Apex, whether they voted for you, didn't vote for you, or didn't participate at all. I'd like to point out that the Suburban Living Apex magazine just ran an article on the Town Council's improvement plan, and provided a link to this year's budget entitled FY 25 Budget Priorities survey public input. The survey is very limiting. You must rank every item suggested by the town versus giving residents the opportunity to state how we want our tax dollars to be spent. For example, as a former cycling enthusiast, many roads are just not that safe for anything besides vehicles, especially one lane each way. I would like to know the progress being made on bike lanes and sidewalks in Apex. I would like to know how to make sure my tax dollars are spent on these improvements, I want to know that you are representing my interests that I'm sharing here tonight versus relying on a very limited survey. Thank for your time, and have a good evening. Happy Holidays."

**Mayor Gilbert** thanked Mr. Hymanson for his comments.

**Mayor Pro Tempore Killingsworth** said there was an email address where residents could share their budget priorities with the Council throughout the year. She asked if Interim Town Manager Purvis could share that.

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1       **Interim Town Manager Purvis** said the survey was to help them categorize things. He said  
2 they would be holding multiple Public Hearings for the budget to allow for input to be received. He  
3 said the email for budget input year-round was [annual.budget@apexnc.org](mailto:annual.budget@apexnc.org)

4  
5  
6 Next to speak was **Chuck Mattina** of 1328 Elk River Drive (To view Mr. Mattina's handout, please see  
7 **OTHER-2023-124**):

8 "I'm going to talk to you about fraud tonight. By definition, fraud is an intentional perversion of the  
9 truth, an act of deceiving or misrepresenting, or something that is not what it seems or is  
10 represented to be. The reason we are talking about fraud is that we have learned that the Board of  
11 Adjustment may reverse a decision after a Public Hearing, if the approval was obtained by fraud. We  
12 contend that there were two instances of gross misrepresentation - or fraud - committed during the  
13 variance hearing. One involves the assertion that NCDOT would not allow any connection off Holt  
14 Road, and the other is the UDO requires a connection to Elk River Drive no matter how the property  
15 is developed. So let's start with what Jason Barron said at the variance hearing. Attorney Barron said  
16 that his client would not have applied for a variance if there was any chance that NCDOT would  
17 grant a cu'-de-sac or a single driveway for 3 homes off of Holt Road. During the variance meeting,  
18 Vice Chair Johnson asked, do we know beyond doubt that NCDOT would not permit a curb cut on  
19 Holt Road. Mr. Adams, an expert for the applicant, said correct, Town staff asked, we have asked,  
20 and NCDOT said in no uncertain terms, that no driveway access from Holt Road would be allowed.  
21 But upon questioning by Mr. Kuhn, the attorney for Courtyard on Holt, Mr. Adams refuted his own  
22 testimony, saying that the DOT would likely not permit a driveway, but I don't know whether they  
23 would do that here or not. Mr. Kuhn said you didn't ask NCDOT about a driveway, and Mr. Adams  
24 said no, I did not. Board Member Taylor asked, if staff is presenting that NCDOT won't make the  
25 driveway connection, who on staff talked with NCDOT because we haven't seen that. Traffic  
26 Engineering Manager Russell Dalton said he had email correspondence with NCDOT and that he  
27 could enter it into evidence if the Board would like. Mr. Barron said the applicant entered it into  
28 evidence in the staff report. Chair Carmac said they had the report, but not the correspondence  
29 between the town and the NCDOT. Ms. Taylor said she had a hard time making a decision based on  
30 testimony about conversations someone said they had with NCDOT when that was not entered into  
31 evidence. Russell Dalton's comments should have been stricken as they are not in the record. And in  
32 allowing Mr. Dalton's comments without objection, Town Attorney Hohe contributed to the fraud. As  
33 you know, we submitted a FOIA request for all information and correspondence related to the  
34 variance request, and here is a sample of some of that correspondence. In December 2022, Serge  
35 Grebenshikov, who is an Apex traffic engineer, wrote to Jeremy Warren who is NCDOT, and Russell  
36 Dalton, "we never said NCDOT will not grant access off Holt Road." Russell Dalton responded to  
37 Jeremy Warren, it appears this project will have a public hearing on Monday in front of our Planning  
38 Board. Unless you say otherwise, I assume the applicant could explore the possibility of right-in-  
39 right-out access instead of a cul-de-sac. Jeremy Warren responded, you are correct, they could  
40 apply for either. Fast forward to March 2023, the property owner wrote to Jeremy Warren of  
41 NCDOT, I'm the owner of the property at 1305 Holt Road. We are going to request a variance to  
42 connect the property to Elk River Road. I just want to understand the alternative options for me if I

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1 am forced to connect to Holt Road. Currently, there is one driveway connecting the property to Holt  
2 Road. Can I connect 2 or 3 lots using a shared driveway or a right-in-right-out connection? Can I  
3 build a cul-de-sac and connect that to Holt Road? This will also require one right-in-right-out  
4 connection. We didn't see a reply to that property owner in our FOIA request, Russell Dalton wrote  
5 back to Jeremy Warren, the original rezoning case was denied. They have come back with an  
6 exempt subdivision for 3 lots and need a variance to allow the extension of Elk River Drive as a cul-  
7 de-sac in excess of 600 feet, which would avoid the requirement for connectivity to Holt Road. If the  
8 Department does not permit the connectivity to Holt Road, the applicant can provide that  
9 information in writing to the Board of Adjustment as justification for the variance. Russell Dalton,  
10 again, contributed to fraud by asking NCDOT to basically disallow any potential connection to Holt  
11 Road so the applicant could make a case for the variance. The second act of fraud was in the  
12 misrepresentation of the UDO, which began with Jason Barron's variance request submitted on  
13 March 30, 2023. In it, he said the owner is required by UDO section 7.2.1.A.2.c.ii to connect with the  
14 Elk River stub street. You know, the thing is, Jason Barron said it and it became fact, and it was never  
15 challenged by the Town Attorney. What that UDO section specifically says, and I quote, "stub street  
16 connections shall be provided to all existing and planned stub streets on adjacent properties." The  
17 specific section cited by Jason Barron deals with the connection of one stub street to another stub  
18 street. For example, Gilwood Drive in Middleton was a stub street. When Courtyard on Holt was  
19 built, we connected to Gilwood through a stub street. This is exactly the intention of the UDO  
20 standard because it creates real interconnectivity between two developments. But the Preserve on  
21 Holt is not building a stub street, let's be clear about that. This is not what their variance is about.  
22 They want to extend the cul-de-sac, which is entirely different. The UDO standard does not apply,  
23 but in misrepresenting the standard, Jason Barron technically committed fraud. I want to play it a  
24 little further. Ms. Shapiro, a Morningstar attorney, said the heart of this request is a required  
25 connection to the Elk River Drive stub street required connection, and the town's UDO requirement  
26 related to the maximum length of the cul-de-sac. She went on to say that the NCDOT will not permit  
27 access from the subject property directly to Holt - which we now know is not true. She said that the  
28 result is that the only vehicular connection that can be provided to the property is by the extension  
29 of Elk River Drive into the site terminating into a cul-de-sac on the subject property. But she also said  
30 that if the Board does not approve this variance, the applicant will have no alternative but to seek  
31 inverse compensation action against the town, seeking compensation. Vice Chair Johnson asked for  
32 clarity if there would be no use of the property if it could not connect to Elk River Drive, and Mr.  
33 Adams said he didn't think that was accurate. He said that the DOT said for a single residence, you  
34 do not have to have a driveway permit. So, the applicant own expert just clearly contradicted what  
35 Ms. Shapiro claimed. Mr. Kuhn asked Mr. Roach, another expert for the applicant, if the stub street  
36 had to be extended, and Mr. Roach said, probably not. Mr. Kuhn asked if 1305 Holt Road could be  
37 developed as a single-family home on that lot with no subdivision, and Mr. Roach confirmed that is  
38 his understanding. Mr. Kuhn asked if that were the case, DOT could not reject the driveway, and Mr.  
39 Roach agreed. Clearly, the property can be developed without connecting to Elk River Drive, but Mr.  
40 Barron and Ms. Shapiro engaged in fraud by misrepresenting the UDO. Again, Town Attorney  
41 Hohe's silence on the issue contributed to the fraud. So in summary, there was gross  
42 misrepresentations of the NCDOT and the UDO, both of which influenced the Board's decision and  
43 neither of which were corrected by the Town Attorney. We're asking the Town Council to compel the



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Board of Adjustment to formally review the variance decision. If the Board has any ethical or moral compass, they should reverse the decision since approval was obtained by fraud. Thank you."

**Mayor Gilbert** thanked Mr. Mettina for his comments.

Next to speak was **Donald Perlmutter** of 1362 Elk River Drive:

"You have just heard in detail a recounting by my colleague Chuck Mettina of the numerous discrepancies and contradictions between official public testimony at the July Board of Adjustment quasi-judicial hearing, and private communications by those same parties. It's clear from this recounting that the Board based their decision to grant the applicant's request for variance on false and misleading information. An unjust decision has been rendered that injures the interests and safety of many residents of Courtyards on Holt. Do we have to just accept and live with this? I'd say the answer is no. To that end, we were able to obtain the training manual for the Apex Board of Adjustment quasi-judicial hearings. I will now identify for you the points in this document that are relevant to our argument that this decision cannot stand. The first one, under quasi-judicial rules, "boards should make factual findings to support its decision, and those findings should be based on the competent evidence in the record." There was no competent evidence in the record that NCDOT prohibited access to Preserves at Holt by Holt Road. The second, under standards of evidence, "the burden of proof for each standard is met if it's supported by competent, material, and substantial evidence. At not time was the Board provided with written documentation that NCDOT would expressly prohibit access to Preserves on Holt via Holt Road. In fact, in private communications as revealed by FOIA, we have learned that NCDOT's language on this subject was not prohibitive at all. And third point, under evidence notes on hearsay, "decisions should not be made based on hearsay testimony." It's our contention that the statement by Russell Dalton, Apex Traffic Engineer, at the July hearing, that NCDOT would not allow access to the proposed development from Holt Road was hearsay, in that he could not provide email documentation from NCDOT to substantiate his statement. In fact, the FOIA materials reveal that the email he referenced to support his statement did not even exist. Board of Adjustment accepted this hearsay as fact, and it contributed to their decision to grant the variance. Now that we've demonstrated that the Board of Adjustment violated its own rules of procedure, what's to be done? The answer lies in my final offering from the procedural manual for the Board of Adjustment, under reversal of decision. "The board may reverse decision after public hearing in the following situations: approval was obtained by fraud, and use for which approval was given is detrimental to public health or safety, or constituted a nuisance. The critical word here is safety. From the beginning, the compelling reason for our opposition to this variance has been the concern for the safety of our more fragile residents. We're asking Town Council to set in motion a process which forces Board of Adjustment to revisit this erroneous decision."

**Mayor Gilbert** thanked Mr. Perlmutter for his comments.

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Next to speak was **James Jesserer** of 1366 Elk River Drive:

"I bet you're fed up listening to me. And tonight, with the voice I have, it will get worse. Tonight, the residents and voters of Courtyards on Holt have presented the results of our FOIA request on 1305 Holt Road. We've shared emails of Apex town officials pertaining to us and the NCDOT opinion on allowing Holt Road access to the proposed development, which specifically contradicts some of their sworn testimony, or the testimony of expert witnesses of the July BOA. The fraudulent testimony informed, motivated, and directed the final BOA decision on 1305 Holt Road. I will remind you of Dr. Taylor's presentation just 2 weeks ago where shared, "we were not given all information to make a ruling. We were given information that proved to be false. As a result of Dr. Taylor's presentation and our FOIA request, we have, however, shared the truth reflected in the emails from town employees Russell Dalton, June Cowles, Serge Grebenshikov, versus their testimony, and the testimony of the applicant's sworn experts. The only town voice we did not hear in our FOIA request is perhaps the town's most powerful employee. Sorry Mayor, that's not your voice. And Town Council, that's not your voice either. The voice we did not hear, and apparently the most powerful person in Apex, is Town Attorney Hohe. We asked in our FOIA for all correspondences on 1305 Holt Road, including those of Ms. Hohe. Yet we received only 2 completely non-consequential email communications from Ms. Hohe, one to our attorney, and one to Jason Barron informing him that his client's application was approved by the BOA. Why? In Ms. Hohe's letter to Chuck Mettina, Ms. Hohe made it clear that her conversations, communications were protected by attorney-client privilege. And I quote, the BOA was her client. And therefore, Ms. Hohe was under no requirement to share those communications regardless of any FOIA request. Per UNC School of Government Dr. Jim Joyce, the Town Attorney can assume attorney-client privilege, however, only for legal advice. Additionally, there can be no conflict or potential conflict between the governing board. In this case, the Town Council and the BOA. Ms. Hohe knew that the BOA was acting in conflict with the Town Council. And yet, Ms. Hohe stated that she represented the BOA. How exactly is that possible? Ms. Hohe should have been protecting the expressed interest of the Apex Town Council and their January decision, yet Ms. Hohe failed to even inform the BOA members of the January decision on 1305 Holt Road. Ms. Hohe, how did you think you could serve both Town Council and BOA, when the groups were across purposes? Ms. Hohe should have recused herself on this BOA decision and appointed another attorney to advise the BOA because the Town Council should have been her exclusive legal responsibility in this matter. Instead, Ms. Hohe failed both of her clients, and is now hiding both of her failures behind attorney-client privilege. Why not disclose now, Ms. Hohe? The BOA decision has been rendered. It's past the time to see that the Courtyards on Holt can appeal to the NC Superior Court. What are you hiding Ms. Hohe? We are left to wonder. Did you orchestrate this BOA decision as an end-around the January Town Council decision to avoid the town being sued by the applicant and their legal firm Morningstar, who publicly threatened to sue the town? In her presentation to Town Council two weeks ago, Dr. Taylor asked if Ms. Hohe "was more concerned with pacifying the applicant out of fear the town would be sued?" Does Ms. Hohe help guide the town planners in their responses? Did she directly discuss the issue with Morningstar? Lots of questions, and thanks to you hiding behind attorney-client privilege we have no answers. Again, per Dr. Joyce, determination to disclose attorney-client communication is, and I quote, in the first place left to the attorney's ethics and professional judgement. By your failure to disclose Ms. Hohe, you're



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1 sending a clear message to the Mayor, the Town Council, and the Town of Apex. Two weeks ago we  
2 asked for an independent investigation into the July decision on 1305 Holt Road. The Town Council  
3 declined that request, and might have gotten hung up on the word investigation. Therefore, we the  
4 residents of Courtyards on Holt, are asking for an independent review, under the guidance of Mayor  
5 Gilbert, of the July Board of Adjustment decision on 1305 Holt Road, and that Apex not approve any  
6 further actions on 1305 Holt Road until the review is completed. An Apex BOA decision based on  
7 fraudulent information can be rendered null and void by the BOA Board itself, which is perhaps  
8 informing Ms. Hohe's advice to Town Council, and her attempt to sweep this under the rug. We ask  
9 you to confront the BOA with the fraudulent information that informed, motivated, and directed the  
10 BOA decision, so that the BOA can reverse their July decision on this variance given to the applicant  
11 on 1305 Holt Road. And in closed Session, which we know you'll be in, I suggest that the Town  
12 Council summon the courage displayed by Dr. Taylor at this very same podium two weeks ago, and I  
13 suggest you take your legal counsel from another resource besides the Town Attorney, who it  
14 appears, at least on this issue, to have pulled the strings of the Town Council like an amateur  
15 puppeteer. Thank you."

16  
17 Next to speak was **Beth Bland** of 3724 Friendship Road:

18 "I wanted to come tonight to make sure the Town Council is aware that the efforts that were being  
19 made to help control the traffic on Friendship Road, things like the Fix Friendship Road petition that  
20 was written by Elizabeth Stitt, and then we have attended numerous Town of Holly Springs Council  
21 Meetings also, and we have met with the developer of Friendship Innovation Park, and it's made a  
22 difference. So the developer told us he heard our concerns during our meeting, and they made a  
23 change to their plan with the traffic analysis that was done, and they specifically changed what was  
24 for Friendship Road and Old US 1, they moved it from Phase 3, which is the end of their project,  
25 which would be 7-10 years out, to Phase 1, and they're also doing a fee-in-lieu of over \$133,000. So  
26 let's hope that that will help us a lot with trying to get us off of Friendship Road onto Old US 1 and  
27 vice versa. The road itself is just crumbling, as far as the trucks that are going through, it's getting  
28 worse and worse. There were blue lights on Friendship Bridge last night, I don't know really know  
29 what it was, I don't know if it was a car accident, I don't know if it was a bicyclist, but at least this is  
30 something, and hopefully it can be something that can happen sooner than later as far as getting a  
31 signal at that intersection. Definitely the Town of Holly Springs was instrumental in having the  
32 developer meet with us, so I just want to make sure you are aware of what their part of that was, and  
33 hope that you can continue a relationship with the Town of Holly Springs and the Town of Apex with  
34 all of the new building that's going on that US 1 corridor that's going to happen. There's one other  
35 comment that I need to make, and Councilmember Mahaffey, so you ran for your position with trees  
36 on your sign, and it was a lot about the canopy, etc. So back to the Force Main, I'm having a hard  
37 time understanding, with all of the trees that are going to come down for this Force Main to come  
38 through our properties, why you aren't on board with trying to look at moving it to the other side of  
39 the road. And I had another comment for Councilmember Gantt, but he's not here tonight so I'll save  
40 that for next time. Thank you."

41  
42 **Mayor Gilbert** thanked Ms. Bland for her comments.

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2 Next to speak was **Elizabeth Stitt** of 3113 Friendship Road:

3 "Mayor, Town Council, good evening. As Beth previously shared, we've been working with Holly  
4 Springs. Holly Springs actually connected us with Matthew Nofo at DOT, and had some really good  
5 conversation with him about what is happening with our intersection and the traffic. That connection  
6 is huge, because now he understands our concerns. He was very appreciative of those concerns.  
7 And as many times as I've come before the Council and the town knows what we're trying to do, I  
8 would like to town to think through what other connections Apex can help us make, because if  
9 you're staff doesn't have time to advocate for the road, we absolutely will. So, we're going to  
10 maintain those relationships with DOT, we have established relationships with CAMPO, and we're  
11 going to continue to advocate there, we're going to continue to show up at Holly Springs Town  
12 Council meetings and working with them. There is another development that Holly Springs just  
13 approved within a half-mile of the Friendship Innovation Park. It also contains a fee-in-lieu for our  
14 intersection. I don't know what the dollar amount is, but what they're doing on their side of the  
15 bridge is huge and significant. We have not been able to get to the bottom of how much traffic is  
16 coming our way. Normally, a TIA has the total average daily trips. For some reason, they chose not to  
17 include that in the TIA. So, we've requested that information. We've asked the Town of Apex, Russell  
18 and Serge, if they could help get the information. Nobody has been willing to help us get that  
19 information. So that would be something very meaningful if Apex Transportation could reach out to  
20 Holly Springs Transportation and see how much traffic is coming. So, they are building over 1,500,  
21 between the two developments, homes right at that intersection, and they have unlimited  
22 commercial square feet. So just envision how much traffic that's coming on our road. I think they  
23 aren't disclosing it because they don't want us to know how much, but they wouldn't be all of a  
24 sudden dropping all this money, fee-in-lieu, if we weren't onto something. Developers don't do that.  
25 So, I believe there's much more, and I would like you to direct the staff to get more involved with  
26 Holly Springs on this particular intersection. I would love to have a neighborhood conversation,  
27 where Apex does some research and comes back to us and say, okay here's what our vision is.  
28 Because according to CAMPO, they have a vision, according to DOT they have a different vision,  
29 Holly Springs has a third, and Apex apparently has a fourth. Which version is actually going to  
30 happen? My understanding is that it's in your jurisdiction, and so ultimately, we need you to take  
31 some leadership. Thank you."

32 **Mayor Gilbert** thanked Ms. Stitt for her comments.

33

34 Next to speak was **Ivania Gutierrez**:

35 "Good Afternoon, my name is Ivania Gutierrez, the Executive Director of a new non-profit  
36 organization with a 501c. Paula is one of my Board Members, she is translating for some people who  
37 do not speak English. So I'm going to divide my 9 minutes into 3 parts, connecting community story,  
38 what is our story and our experience working with a community, what is the connecting community  
39 and what is the ask we are going to do, and announcements. So, I'm not new at serving the  
40 community, I've been working for 3 years in different initiatives with a group called Zumba camp. We  
41 have been doing a lot of awareness for different causes, for different non-profits, and in this

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1 experience, we have realized that there's so many things good in the community happening. There's  
2 so many non-profits that are doing a great job in the community, but people don't know where to go  
3 when they need something. A single mom doesn't know where to go when she needs diapers. And  
4 there is an amazing non-profits called NC Diapers that is working for those single moms. So, in that  
5 experience, we realized also that there is a concept called social determinants of health that is very  
6 well-known by the North Carolina Health Department, so that's why this organization is not going to  
7 focus on one area. This is going to be an approach that is going to be looking at different non-profits  
8 in different areas. Like education, health, social support, housing, transportation, so that's why this  
9 organization is going to bring non-profit from different areas, and it's going to bring the people who  
10 might be interested in those non-profits, and we're going to create spaces that are fun, where  
11 people are going to feel included, and they're not going to feel stigmatized. So we're going to be  
12 doing fun events, one of the things we are going to be doing, this Sunday we have a soccer class  
13 where 20 families of Apex are going to come, and the kids are going to be coached by a bilingual  
14 coach, and the families are going to find out about different organizations. So the Town of Apex is  
15 invited to go, to tell the families what is available from the town for them. So that's what connecting  
16 community is. I'm a mom of 2 teenagers, and for the young populations, I see that there's not many  
17 things to do in the town, like my daughter always asks me to go shopping, I would like to see more  
18 live spaces where young people are doing more things for the community, for example, increasing  
19 the visibility of the transportation, the kids can do that. They can do TikToks, they can do wonderful  
20 things, explaining to the world the resources in the Town of Apex by doing that. My ask is a meeting  
21 with the transportation department to see how my organization can help to increase the visibility of  
22 the transportation, and maybe bring those young people in the town to increase the visibility. So, my  
23 organization can help increase the visibility of the services you are providing, making them more  
24 efficient. So, that's one of the asks. And then I teach a program every Friday called Siclo Danca,  
25 which is for people with wheelchairs. I have two of them, Dan, who is over there with the caregivers.  
26 This program is a movement program not only for the people in wheelchairs, but also for the  
27 caregivers. It's very inclusive and represents all the barriers that sometimes have that doesn't have  
28 to relate to transportation but also with a language barrier sometimes. These families have so many  
29 things that that's going to allow them to try. So the other ask is to meet with a person in charge of  
30 inclusion, I would like that Apex take the lead of disability, I think that is the population that is not  
31 seen, people that they know about, about the different barriers that these families have, and I would  
32 like to help the Town of Apex to take the lead of inclusion. Inclusion for this program, we can bring  
33 all the non-profits that are doing a great job for different kinds of disability, and we can take the lead  
34 and say we are an inclusive town. So, Connecting Community can help with that as well, so I am  
35 requesting a meeting with the person in charge of DEI, I had a meeting with Linda Jones and I would  
36 like to keep collaborating with her, and help the town to take the lead on that. That's basically what I  
37 wanted to say. Coming up, I have two big events planned for women and young populations, we are  
38 going to bring different non-profits that are assisting with awareness of domestic violence, single  
39 moms, different populations. We are calling all the single moms, we are going to take it from the  
40 offer, all the different non-profits that are working for the women groups in this event, and then  
41 we're going to bring an inclusive space for them. So, that's coming up, and then I'm going to use the  
42 North Carolina Museum, so Town of Apex is invited already to present things over there in that  
43 coming up event, and then for other people I want to do the same, bring all the wonderful non-  
44 profits, mental health, leadership classes for the young generations and do a second round of a big

## DRAFT MINUTES

event for them. So, that's basically what is Connecting Community, and we are happy to collaborate with the Town of Apex, as a mom, a resident of Apex, I am proud of this town. Thank for listening and thank you everybody."

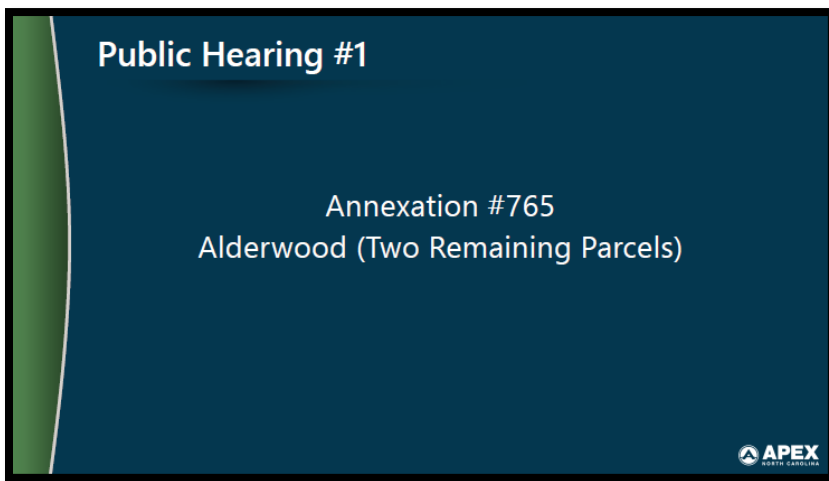
**Mayor Gilbert** thanked Ms. Gutierrez for all she does for the community. He then closed Public Forum with no sign ups remaining.

### [PUBLIC HEARING]

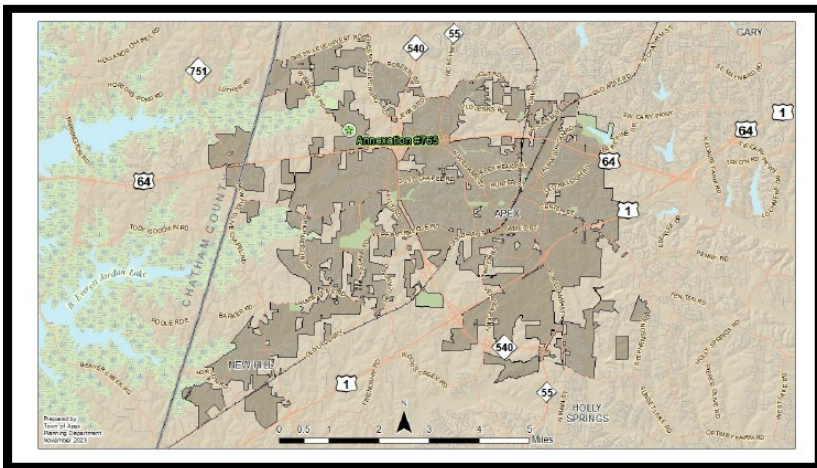
#### **PH1 Annexation No. 765 - Alderwood - Two Remaining Parcels - 5.226 acres (REF: (ORD-2023-114))**

**Dianne Khin**, Planning Director, gave the following presentation on Annexation No. 765 - Alderwood - Two Remaining Parcels.

#### [SLIDE 3]



#### [SLIDE 4]



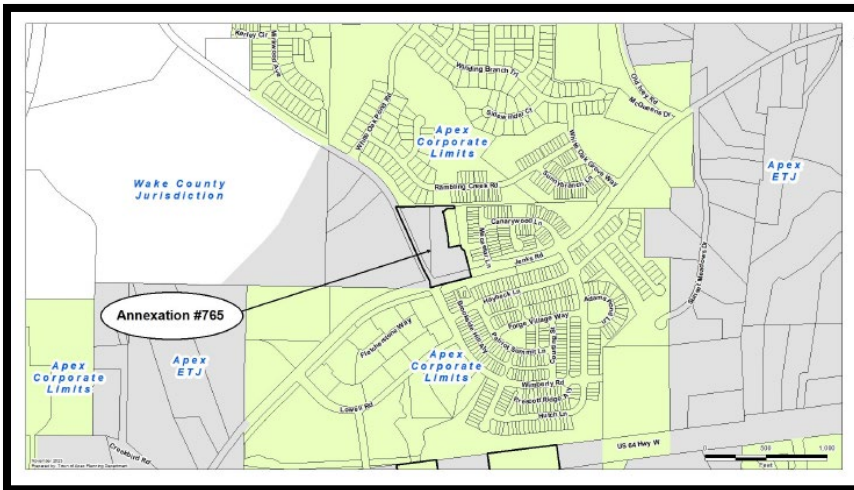


## DRAFT MINUTES

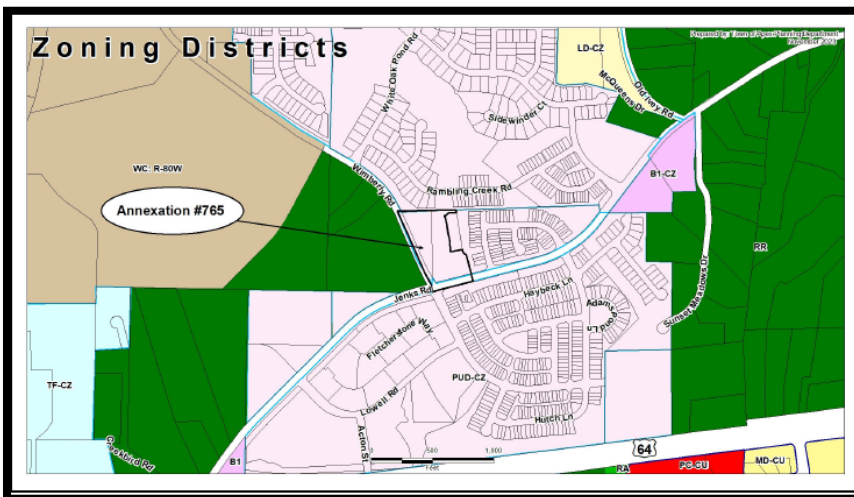
1 [SLIDE 5]



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3 [SLIDE 6]



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5 [SLIDE 7]



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8 **Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he  
9 closed public hearing and moved discussion back to Council.

## DRAFT MINUTES

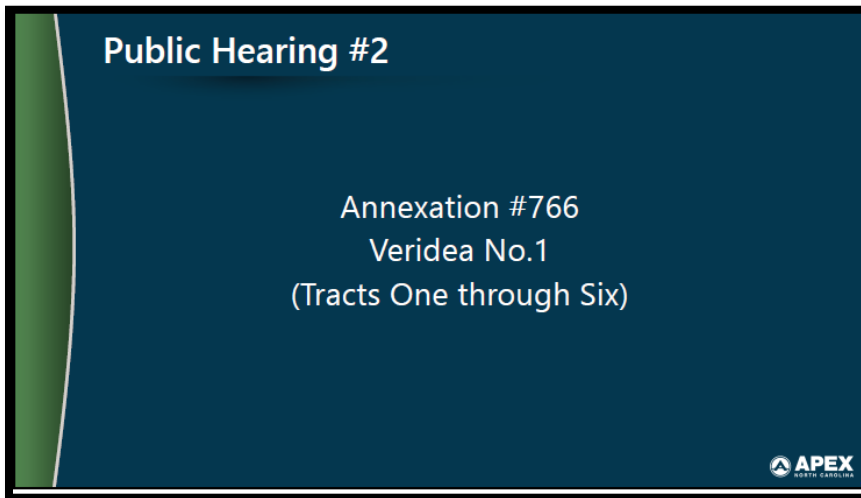
A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by **Councilmember Zegerman**, to approve Annexation No. 765 - Alderwood - Two Remaining Parcels.

**VOTE: UNANIMOUS (4-0)**

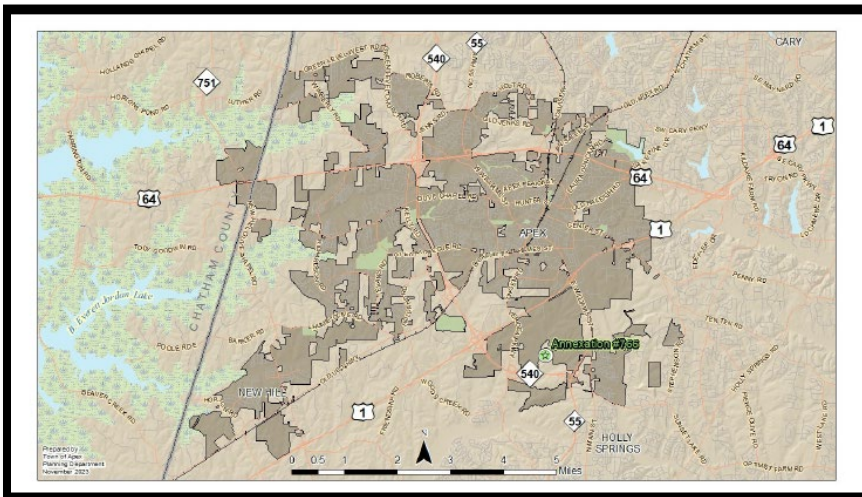
**PH2 Annexation No. 766 - Veridea No. 1 (Tracts One through Six) - 111.02 acres (REF: ORD-2023-115)**

**Director Khin** gave the following presentation regarding Annexation No. 766 - Veridea No. 1 (Tracts One through Six)

**[SLIDE 8]**



**[SLIDE 9]**







## DRAFT MINUTES

**Councilmember Zegerman** asked if this is a clean up because the properties were not previously included.

**Director Khin** said they were not owned or annexed at the time of the rezoning.

**Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he closed public hearing and moved discussion back to Council.

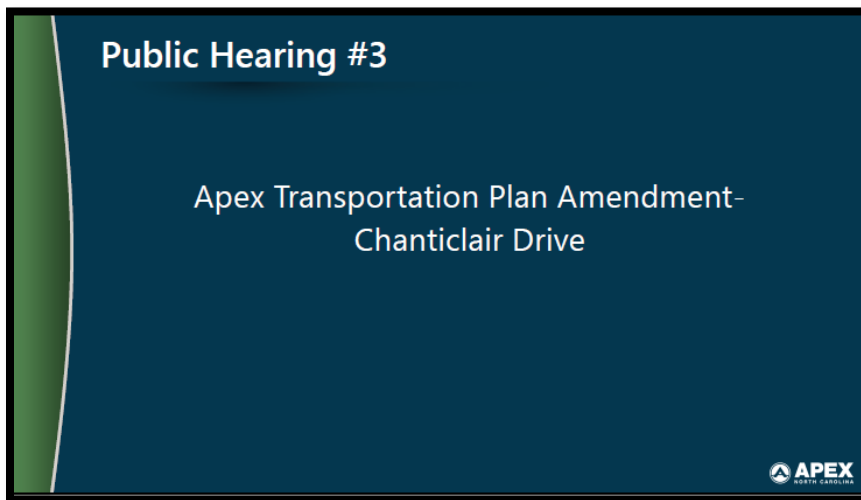
A **motion** was made by **Councilmember Gray**, seconded by **Mayor Pro Tempore Killingsworth**, to approve Annexation No. 766 - Veridea No. 1 (Tracts One through Six).

**VOTE: UNANIMOUS (4-0)**

### **PH3 Apex Transportation Plan Amendment - Chantclair Drive**

**Shannon Cox**, Long-Range Planning Manager, gave the following presentation regarding the Apex Transportation Plan Amendment - Chantclair Drive.

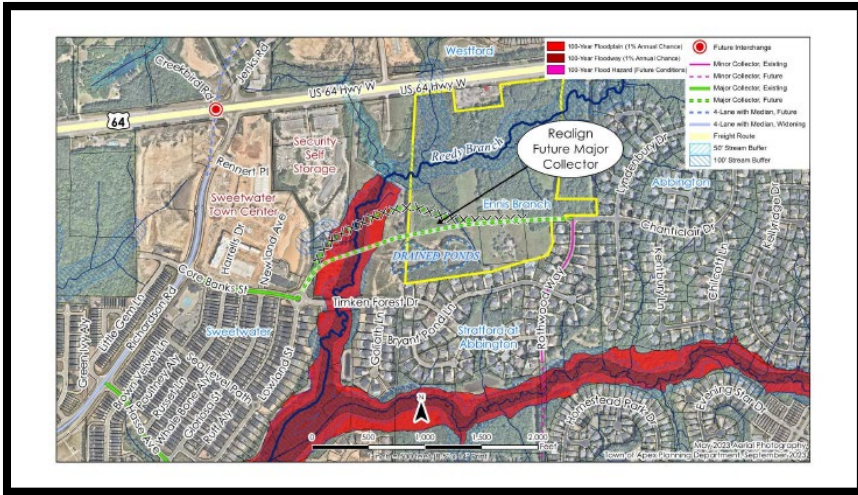
**[SLIDE 13]**



[SLIDE 14]



[SLIDE 15]



**Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he closed public hearing and moved discussion back to Council.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Gray**, to approve the Apex Transportation Plan Amendment – Chanticleir Drive.

**VOTE: UNANIMOUS (4-0)**

**PH4 Annexation No. 768 - 9613 Horton Road - 17.41 acres (REF: ORD-2023-116)**

*Shelly Mayo, Planner II, Planning Department*

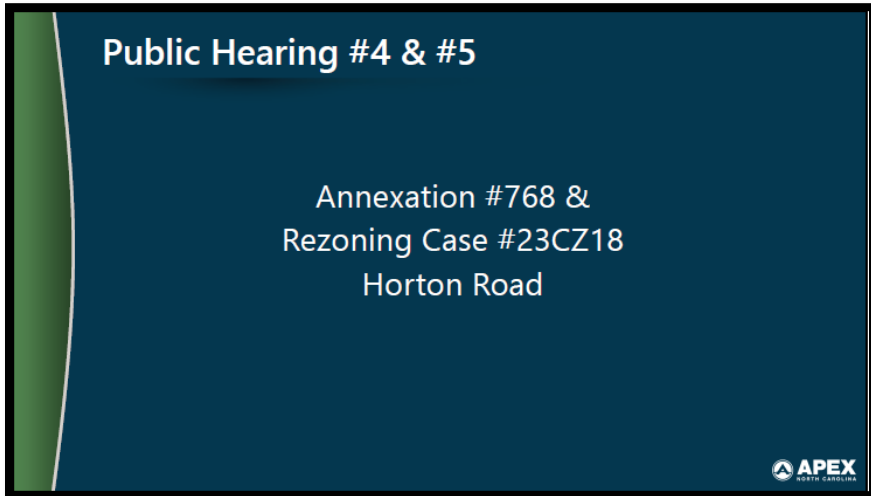
**AND**

**PH5 Rezoning Case No. 23CZ18 - 9551 and 9613 Horton Road (REF: ORD-2023-117)**

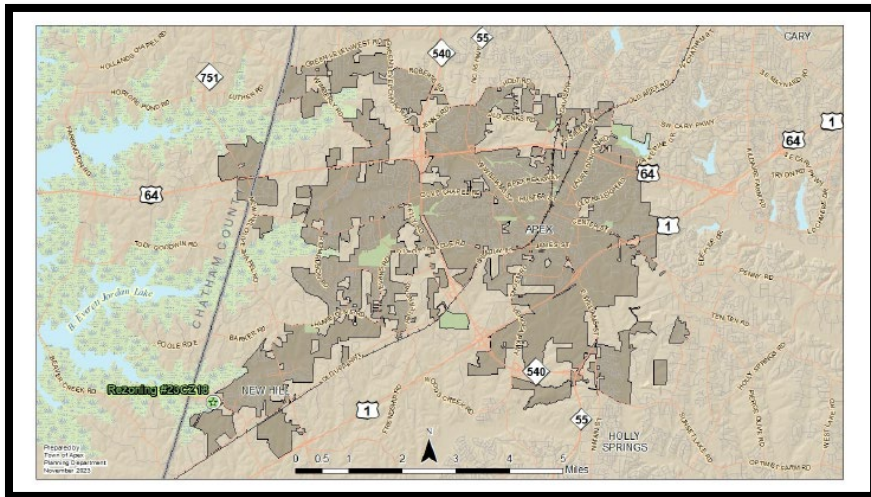
**Shelly Mayo**, Planner II, gave the following presentation regarding Annexation No. 768 and Rezoning No. 23CZ18.



1 [SLIDE 16]



2  
3 [SLIDE 17]

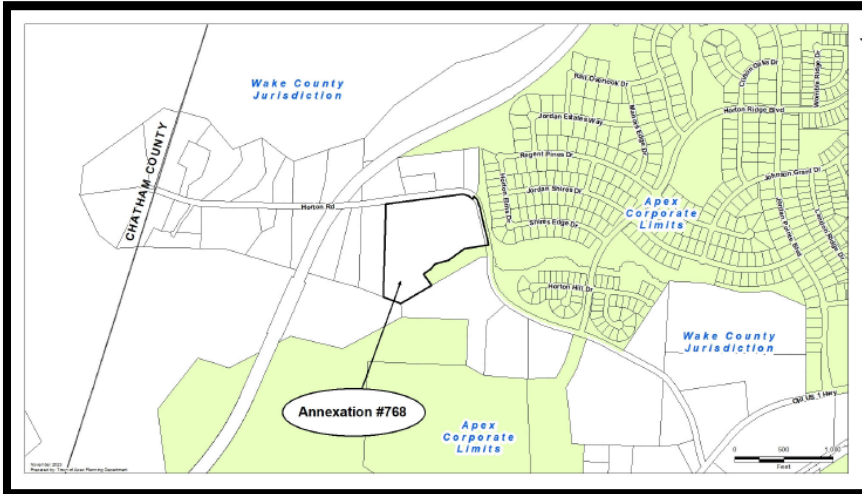


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5  
6 [SLIDE 18]

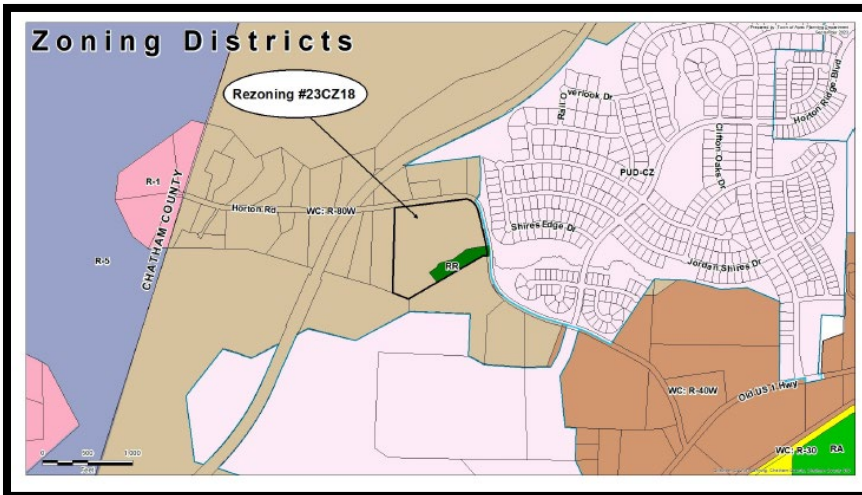


# DRAFT MINUTES

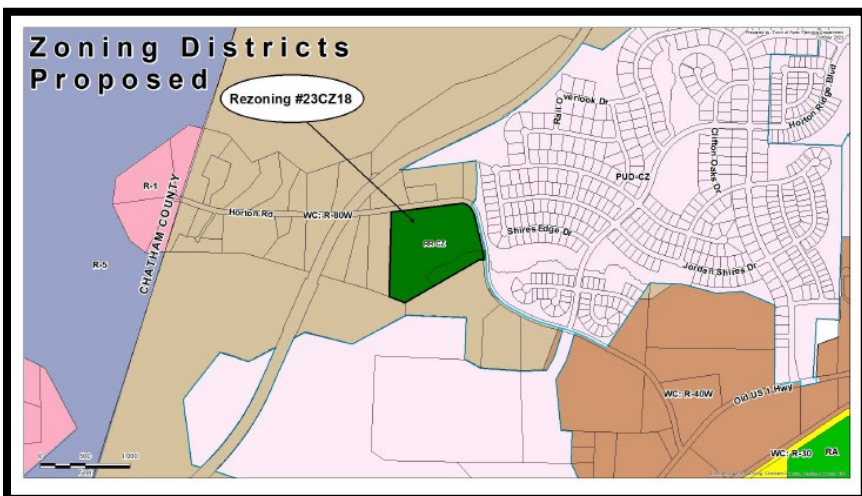
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3 [SLIDE 20]



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5 [SLIDE 21]



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3 [SLIDE 23]





## DRAFT MINUTES

**Councilmember Zegerman** asked if this was the first rezoning in a series, and properties to its west would come in with the same zoning.

**Ms. Mayo** said it was possible, but she said staff may not recommend that because of proximity to army land. She said it would have to be on a case-by-case basis.

**Councilmember Zegerman** asked if that would have already been incorporated into the 2045 Land Use Map.

**Ms. Mayo** the last update was when they added the Rural Residential Density Designation. She said the 1 unit per 5 acres is much lower than what Wake County allows. She said the Rural Transition was added in order to address places that need something in between. She said she would think properties would likely come in south of this if that was proposed, but she could not be sure.

**Councilmember Zegerman** asked if the buffer between army corps land was supposed to be 450 feet.

**Ms. Mayo** said that was not a UDO requirement, but was a wildlife and game lands recommendation. She said that was a recommendation for hunting safety. She said this development got as close to that recommendation as possible to make the subdivision work.

**Councilmember Zegerman** asked why a 400-foot buffer would be enough in this scenario.

**Ms. Mayo** said this was a smaller parcel than a lot of their others. She said when staff looked at the situation and the other things this property would offer, they felt it would be sufficient.

**Patrick Kiernan**, of Jones and Cnossen Engineering, on behalf of the applicant, gave some comments regarding this development. She said the property owners have lived in Apex for a long time, and have been good stewards of the community. He said they worked with the town to put the Jordan Point Sewer Pump Station on this property, providing critical infrastructure to the town. He said they feel the requested change is reasonable based on the 2045 Land Use Map. He said this would preserve the character and provide a good density transition in this area. He said they are proposing a variable buffer along the western and southern portions of the property. He showed where the 400-foot buffer would be, and said it would be along a pond as well as a physical barrier. He offered to answer any questions.

**Councilmember Mahaffey** asked if there was a grading plan for the property, and if it was known how many stages it would have.

**Mr. Kiernan** said they are not near development. He said their intent is to follow the UDO, which would allow up to 50% of the lots to be graded. He said they don't plan on doing anything that would be unnecessary to putting in the infrastructure.

**Councilmember Mahaffey** asked if he would describe the topography as challenging.

**Mr. Kiernan** said no, it was relatively flat, and they do not anticipate any issues.

**Councilmember Mahaffey** said he would like to see more old-style developments, which put in infrastructure and graded lots individually. He said what they are proposing isn't quite stage grading but is a step towards it. He said the term for this within the town would need to be created at some point in the future.

**Mr. Kiernan** said that is essentially the intent here. He said there may need to be certain lots that are gone about differently, but he anticipates it going this way for most of them.

**Councilmember Gray** said this is continuing the legacy of the applicant in the care it is taking in regards to the buffers. He thanked the applicant for their considerations.

## DRAFT MINUTES

1       **Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he  
2 closed public hearing and moved discussion back to Council.

3  
4       **Councilmember Zegerman** said he also appreciated the staged buffers and taking care of  
5 the neighbors. He said his main concern was that this proposal does not honor the density that is  
6 outlined in the Land Use Map. He said the units would end up being denser because of the buffers  
7 and topography on the property. He said this is inconsistent with the plan and with what residents  
8 have said they wanted in this area. He said this would set a precedent for density in this area and  
9 would make it harder for them to uphold the land use plans, and would cause more density to get  
10 close to army corps lands and the Jordan Lake water supply. He said this is similar to the Castleberry  
11 development as well. He said he appreciates the efforts on this, but he cannot be in support of this at  
12 this point.

13       **Councilmember Gray** said he thinks the concern about the domino effect is valid, but that  
14 Council are the people who control the dominoes. He said he thinks these things are best done with  
15 a case-by-case analysis. He said he likes the use of creating these buffers, and this process was done  
16 with consideration and care for neighbors. He said he would like to see a set of conditions for  
17 controlling the dominoes in this area and keeping this approach. He said this project gives good  
18 things in the conditions, and had creative steps by the applicant. He said he feels very good about  
19 supporting this, and hoped it would be a model for other developments down the road.

20       **Councilmember Zegerman** said he agreed that they are in control of the dominoes falling  
21 over, but he said this is the first domino they would knock over. He said if they don't do this, they  
22 wouldn't put themselves in a position to potentially deny a similar request to this in the area in the  
23 future.

24       **Councilmember Gray** said he thinks that is a fair statement. He said they are still in control of  
25 the dominoes and would have to make a case-by-case analysis of each one. He said he does not see  
26 this as the thing that would trigger everything else down the road. He said all he can do is look at  
27 what is in front of them right now, and can't look at what may come down the road. He said they get  
28 a lot out of this rezoning. He said he doesn't see it as setting precedent, but if it is, he likes the  
29 precedent that is being set with regard to the conditions.

30       **Councilmember Mahaffey** said he was between them. He said this was not the first domino,  
31 and was the third or fourth to make a denser zoning in this scenario. He said they have not been  
32 clear with developers on what the criteria is to get denser zoning in critical areas. He said if they  
33 keep approving them without saying anything like that, the 1 per 5 acres designation is essentially  
34 just a 1 per 1-acre designation anyways. He said he thinks they need to articulate what specifically  
35 the conditions are that can allow to get the upgrade in density, if that's why they like these rezonings.  
36 He said he doesn't like continuing to do these kinds of rezonings "ad-hoc." He said he does like the  
37 conditions on this, but would like the grading to be a little more explicit. He said setting a precedent  
38 of individually grading lots is one he would like to set, and something he thinks would be worthy of a  
39 density upgrade. He added he wished it also included a solar panel system. He said he also thought  
40 they may could add a UDO requirement regarding buffers to army corps land so it didn't have to be  
41 a condition every time. He said he may would be in favor of tabling this for now and seeing if they  
42 could tweak some of the language. He also added he thinks they should have two meetings for  
43 every rezoning.

## DRAFT MINUTES

1 **Mayor Pro Tempore Killingsworth** said she thinks a lot of the conditions are great. She said  
2 she is in favor of having 1 unite per 1 acre in this area. She said she is loving some of the EAB  
3 suggestions as well. She said she does not have a problem with this one.

4 **Councilmember Zegerman** said he doesn't want to take away from the conditions offered,  
5 he thinks they are great. He said this is more of a question of principle, and the precedent this may  
6 set for them and future Councils.

7 **Councilmember Mahaffey** said they need to update to 2045 Land Use Map to reflect some  
8 properties that have the rural transitions designation sooner rather than later. He said he feels like  
9 the floodgates have opened with this kind of designation.

10 **Councilmember Zegerman** asked what the next planned date was for updating the Land  
11 Use Map.

12 **Director Khin** said there is no timeline for it, but it is on the list of things to do. She said if  
13 they changed the Land Use Map to this designation, there may be less leverage for Council during  
14 the rezoning process. She said it may be difficult to determine which areas they would to keep as  
15 rural versus changing to rural transition. She said it would be easier to make those determinations  
16 within the context rezoning.

17 **Councilmember Zegerman** said that's fair, but he agrees with Councilmember Mahaffey that  
18 they need some predictability and standards for these scenarios. He said it would be fairer.

19 **Mayor Gilbert** asked Mr. Kiernan if he would like to move forward tonight, in light of  
20 Councilmember Mahaffey's suggestion to possibly table this item.

21 **Mr. Kiernan** said yes, they would like to move forward.

22 **Councilmember Mahaffey** said he was not there yet.

23 **Mr. Kiernan** said they would be willing to add a condition for one solar rooftop, but they  
24 would like to call for a vote tonight.

25 **Councilmember Mahaffey** asked if they could commit to individually grading the lots  
26 beyond the stage grading measures that are currently included.

27 **Mr. Kiernan** said he was not sure how that could be written to be enforceable.

28 **Ms. Mayo** said that if they put in a condition for individual zoning at this point, before they  
29 have created a zoning plan, they would need to come back to Council for a change in conditions if  
30 they had to do more grading for certain lots depending on circumstances.

31 **Director Khin** said doing individual lots is very difficult in areas with difficult topography and  
32 geographic features such as streams. She said they would not be able to craft a zoning condition  
33 that would be both valuable and enforceable for any project for this, as they would not have enough  
34 information.

35 **Councilmember Zegerman** asked how Salem Village Phase I was done, because those lots  
36 were done individually or two at a time.

37 **Ms. Mayo** said that was a very different setup at the time. She said that project was  
38 developed under an old set of constraints with a different UDO. She said to her recollection, that  
39 project graded 5-6 or more lots at a time. She said they look as good as they do now because they  
40 have had 10-15 years to grow back in.

41 **Councilmember Zegerman** said if individual grading is not feasible, maybe they can take a  
42 cue from the past with how those were done. He said they may could be graded in pods.

## DRAFT MINUTES

**Ms. Mayo** said they could not make a condition for tonight, and that in her opinion, that would require having a more detailed grading plan up-front from the applicant. She said they do not have a topographical survey at this point so it would be more difficult to determine.

**Director Khin** added that Salem Village was done on much easier topography such as farm fields.

**Mayor Gilbert** said he appreciated all of the input, and that it was time for a vote.

A **motion** was made by **Councilmember Gray**, seconded by **Mayor Pro Tempore Killingsworth**, to approve Annexation No. 768 - 9613 Horton Road and Rezoning No. 23CZ18 - 9551 and 9613 Horton Road, with the additional condition of a minimum 4kW Solar PV System being installed on 1 single-family home within the development. (Clerk's Note: See *OTHER-2023-121* for the complete additional zoning condition.)

**VOTE: 2-2, Councilmember Mahaffey and Councilmember Zegerman dissenting**

**Mayor Gilbert** thanked staff and the applicant for working together on this rezoning, and thanked the property owners for all they have done for the community over the years.

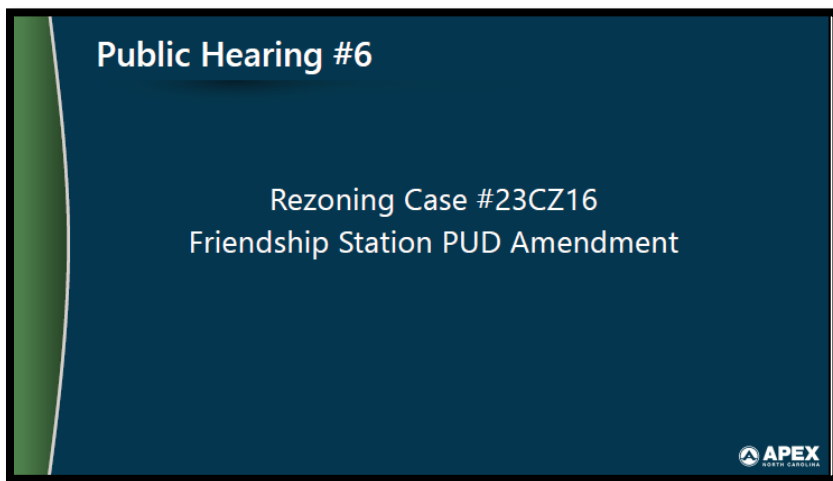
Pursuant to Town of Apex Charter, **Mayor Gilbert** voted in the affirmative in order to break the tie.

**Motion Passed, 3-2.**

### **PH6 Rezoning Case No. 23CZ16 - Friendship Station PUD Amendment**

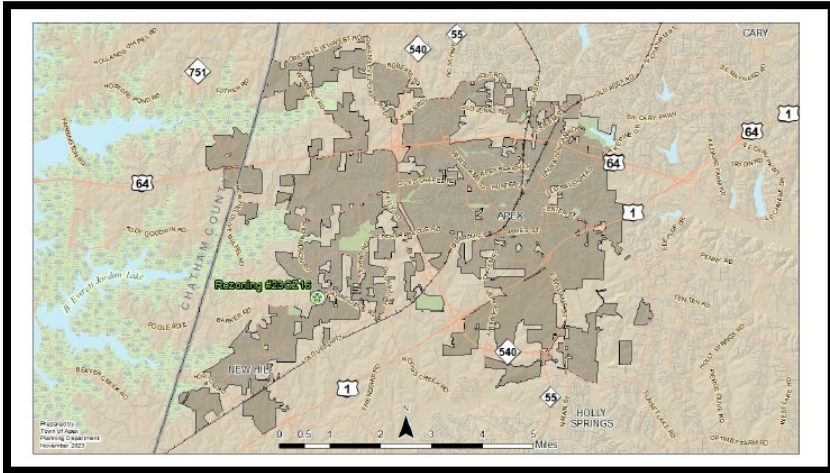
**Amanda Bunce**, Current Planning Manager, gave the following presentation regarding Rezoning No. 23CZ16 - Friendship Station PUD Amendment.

**[SLIDE 25]**





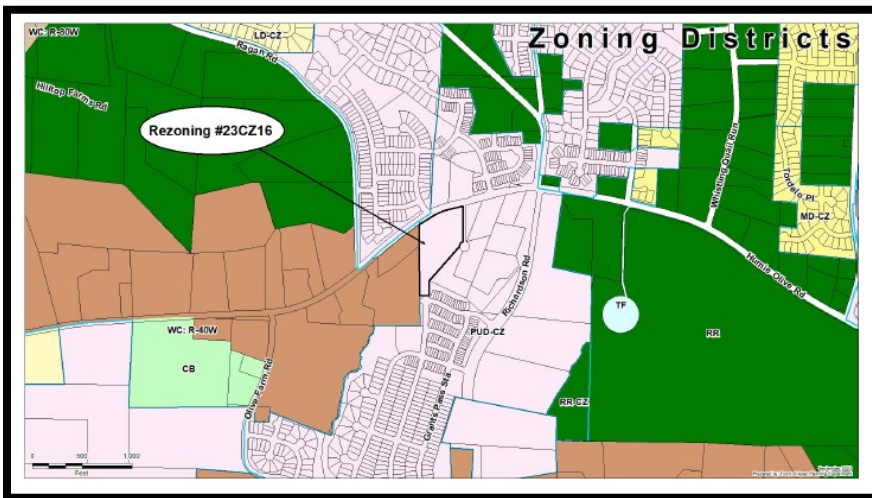
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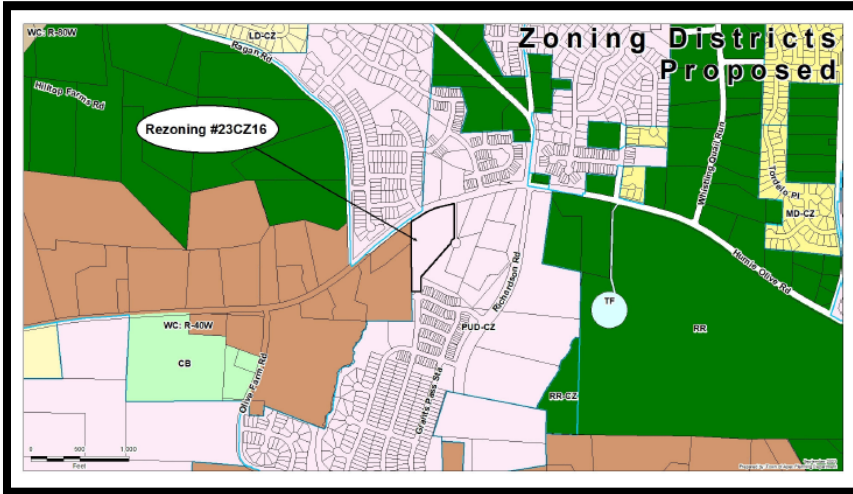
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5 [SLIDE 28]



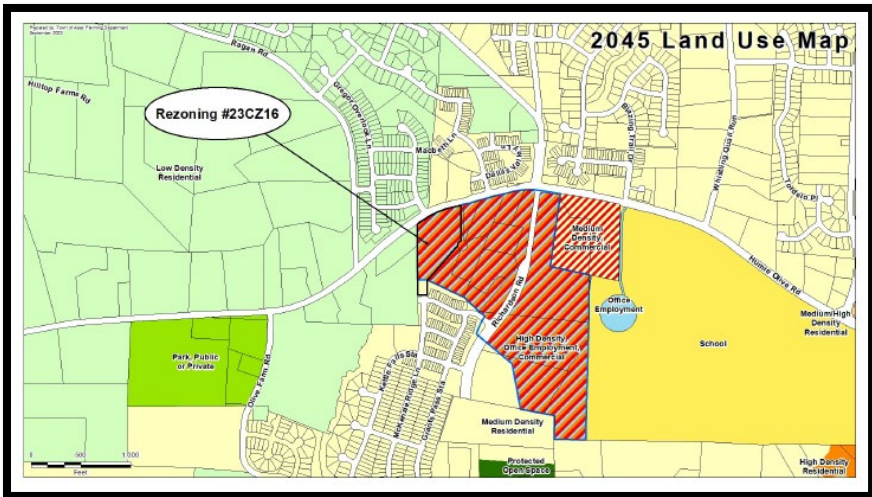
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## DRAFT MINUTES

1 [SLIDE 29]



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3 [SLIDE 30]



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7 [SLIDE 31]



8  
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## DRAFT MINUTES

in January. He said there was a Work Session on November 30, and a tree lighting event on December 1<sup>st</sup>, then the Christmas Parade on December 2<sup>nd</sup>.

**Mayor Gilbert** said he wanted to commend Electric Utilities for installing new light poles on Tingen Road.

### [CLOSED SESSION]

**Town Attorney Hohe** asked if a closed session item could be added to discuss the handling of the matter of Town of Apex v. CJS Assemblage.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Mahaffey**, to enter into Closed Session for Consent Items 1 and 2, pursuant to **NCGS § 143-318.11(a)(5)** and **NCGS § 143-318.11(a)(3)**.

### VOTE: UNANIMOUS (4-0)

Council entered into closed session at **7:37p.m.**

#### **CS1 Steve Adams, Real Estate and Utilities Acquisition Specialist**

##### **NCGS § 143-318.11(a)(5)**

"To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease."

#### **CS2 ADDED - Town of Apex v. CJS Assemblage**

##### **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."*

Council returned to open session at **8:27p.m.**

### [ADJOURNMENT]

**Mayor Gilbert** adjourned the meeting at **8:28p.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 \_\_\_\_\_.