



## | REGULAR TOWN COUNCIL MEETING

June 08, 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

Interim Town Manager: Ralph Clark | 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 Interim Town Manager Ralph Clark, Assistant Town Managers Shawn Purvis and Marty Stone, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe.

### COMMENCEMENT

Mayor Gilbert called the meeting to order and presented a statement of diversity and inclusion related to region. Youth Pastor Asa Clark, Apex First Baptist Church, gave the Invocation. Mayor Gilbert then led the Pledge of Allegiance.

### PRESENTATIONS

PR1 Jacques K. Gilbert, Mayor

Presentation of Juneteenth Proclamation

All Council shared in the reading of the Proclamation. Mayor Gilbert called forward Pastor Asa Clark, Kalabria Gilbert Lemire, and Colleen Merays as the sponsors and organizers of the first Apex Juneteenth festival celebration. Mayor Gilbert and Mayor Pro Tem Dozier presented them the Proclamation. Mayor Gilbert detailed the activities, date, and location of the event.

PR2 Jacques K. Gilbert, Mayor

Presentation of Proclamation proclaiming June 2021 as LGBTQIA Month

All Council shared in the reading of the Proclamation. Mayor Gilbert called forward Council Member Killingsworth, Mr. and Mrs. Tony Coke, and Colleen Merays and stated it was his honor to recognize

this month this year and for many years to come. The Proclamation was presented to Council Member Killingsworth. Council Member Killingsworth detailed the activities that were scheduled to take place to honor Pride Month.

#### CONSENT AGENDA

- CN1 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 May 25, 2021.
- CN2 Liz Loftin, Senior Planner  
Statement of the Town Council and Ordinance for Rezoning Case #21CZ06, Jenks Road Office & Veterinary Hospital, Daniel Shultz, Peak 360, LLC, for the properties located at 7825 & 7809 Jenks Road.
- CN3 Eric Neumann, Electric Director  
Professional Service Agreements and authorization for the Interim Town Manager to execute same for on call electrical engineering support with McGill LLC, Utility Electrical Consultants PC, and Utility Engineering, LLC for a period of 5 years.
- CN4 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 June 22, 2021 on the Question of Annexation – Apex Town Council’s intent to annex Town of Apex (portion of Kings View Trail R-O-W) property containing 1.12 acres located along Kings View Trail at Recreation Drive and Old US 1 Highway, Annexation #712, into the Town’s corporate limits.
- CN5 Shelly Mayo, Planner II  
Set the Public Hearing for the June 22, 2021 Town Council meeting regarding Rezoning Application #21CZ03 Willow Hills PUD Amendment. The applicant, Toll Southeast LP Company, Inc., sought to rezone approximately 70.77 acres from Planned Unit Development – Conditional Zoning (PUD-CZ #18CZ28) to Planned Unit Development – Conditional Zoning (PUD-CZ). The rezoning is 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 Shelly Mayo, Planner II

Set the Public Hearing for the June 22, 2021 Town Council meeting regarding Rezoning Application #21CZ04 Williams Farm PUD. 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.

CN7 Lauren Staudenmaier, Planner I

Set Public Hearing for the June 22, 2021 Town Council meeting regarding Rezoning Application #21CZ10 Kelly Woods. The applicant, AMH Development, LLC, sought to rezone approximately 19.424 acres located at 2300 & 2324 Kelly Road (PINs 0731254251 & 0731259148) from Rural Residential (RR) and Rural Agricultural (RA) to Medium Density Residential-Conditional Zoning (MD-CZ).

CN8 Amanda Bunce, Current Planning Manager

Set the Public Hearing for the June 22, 2021 Town Council meeting regarding various amendments to the Unified Development Ordinance.

CN9 Michael Deaton, P.E., Director

Multi-year Master Service Agreements with multiple vendors.

CN10 Mary Beth Manville, Human Resources Director

Adoption of the FY22 Position Classification Plan and Pay Ranges.

CN11 Mary Beth Manville, Human Resources Director

Extending the Town of Apex (TOA) Emergency Sick Leave and Quarantine Leave to September 30, 2021.

CN12 Craig Setzer, Interim Parks, Recreation and Cultural Resources Director

Reappoint Renee Pfeifer as Chair and Alan Buck as Vice-Chair, and Michael Kanters and Lisa Esterrich as regular members on the Parks, Recreation, and Cultural Resources Commission.

CN13 Vance Holloman, Finance Director

Resolution authorizing the Wake County Revenue Director to collect taxes on behalf of the Town of Apex.

CN14 Megan Pendell, Sustainability Coordinator

Appointment of Bill Jensen as a new member on the Environmental Advisory Board.

CN15 Mayor Jacques K. Gilbert

Appointment of Assistant Town Manager Shawn Purvis as Interim Town Manager from June 18 until July 11.

CN16 Mary Beth Manville, Human Resources Director

Personnel Policy Updates to include the new Volunteer/Community Involvement Leave and increase the Tuition Reimbursement Policy amount to \$1,250.00.

CN17 Steve Adams, Real Estate & Public Utilities

Abandonment of electric utility easement.

CN18 Colleen Merays, Downtown and Small Business Development Coordinator

Amend the approved date of (June 5, 2021 & Rain Date of June 12, 2021) for the American Legion Spring Car show to add an additional Rain Date of (Saturday, June 19, 2021).

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Mahaffey made the motion; Council Member Killingsworth 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 preserve the attorney-client privilege.

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

Member Gantt made the motion with the add-on Closed Session;

Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

#### PUBLIC FORUM

Elizabeth Stitt from the Friendship community stated there were neighborhood meetings regarding future development expectations of the neighborhood. She was not against the newly proposed project but wanted a collaborative development. She stated their goals and detailed what they have done related to their and the Town's expectations.

Jason Eggers, on behalf of eight of his neighbors, spoke about Peak of the Vine bar. They have become frustrated. He spoke about the loud noise coming from the establishment which started two

years ago. In 2019, he asked the owner to keep the noise down via text message. Other neighbors have called and tried to address the issue with the owner. Complaints were made to the Police Department, and Peak of the Vine was fined. It quieted down a bit, but now it's back at previous noise levels.

He and the neighbors have met with Planning and were told that they could not do any enforcement which was also stated by Police. Mr. Eggers wanted to know how the Town could enforce the requirements of the permit. He did not believe this is a retail establishment but a bar. He asked for Council's help with this. Mr. Eggers understood there would be a certain amount of noise at some point during the year, but it's unacceptable when it affects their quality of life. He reiterated this is a bar and not a retail establishment.

Miles and Owen Sherman spoke about the animal population in Apex. People are not watching where they're going, trees are being cut down, and people are running over animals with their cars. People must be more careful. Mentioned were the dead animals on the road that they have seen. People should consider eating less meat. Killing and hunting animals for money is unfair. We should give animals a good place to live - like the zoo. Fish are not being given a chance to live or lay their eggs. The two young men also talked about animals drying up in the sun.

Gabriel Currillo, Kelly West HOA, talked about public health and wellbeing. He spoke about diet, exercise, and child obesity. Greenways provide significant health advantages. Mr. Currillo was advocating for expedited completion of Phases 1 and 2 of the Beaver Creek greenway. He asked what is the delay and stated inaction should not continue. Mr. Currillo supported actions to fast track completion. The path to the school has become crowded with people, cars, etc.

Miss Unity stated she was not giving up the fight. She was holding the Town accountable for false media reporting. The new Town Manager promised accountability to everyone in the community. Miss Unity talked about the Town giving their power to the media. She talked about the Police survey related to racism and asked for names of who said what.

Tim Brent stated he was an investment company working on two projects in Apex, and he detailed the projects. He spoke about his agreeing to pay for roads in their property negotiations, and he was told what they would be responsible for in relation to this. He really enjoyed working with staff through the process. Mr. Brent talked about the total statement funds being higher than what they were originally told they would be.

#### PUBLIC HEARINGS

PH1 Dianne Khin, Director of Planning and Community Development

Ordinance on the Question of Annexation – Apex Town Council’s intent to annex HARP-BARR, LLC, Memphis & Maddox, LLC, Sweet Willie, LLC, William Douglas and Jean S. Poe, and Lennar Carolinas, LLC properties containing 157.234 acres located at 6401 Apex Barbecue Road and 1216 & 1330 South Salem Street, Annexation #706, into the Town’s corporate limits.

Staff oriented Council to the site, stating staff recommended approval.

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

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

The motion carried by a 5-0 vote.

PH2 Lauren Staudenmaier, Planner I

*Continued from the May 25, 2021 Town Council meeting.*

Rezoning Application #21CZ05 Friendship Storage. The applicant, Terco Properties, sought to rezone approximately 9.08 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 provided a brief summary of the property which was detailed at the previous meeting. The applicant has since added three new conditions. The new property owner has been added along with the other two authorizations asked for by Council at the last meeting.

Jason Barron, Morningstar Law Group, representing the applicant, talked about the situations which were in question stating that they have been corrected. He talked about the disallowance of buildings and an allowance of a driveway. Their intention was to provide a mixed-use environment. Mr. Barron spoke about the advantages of a self storage use. His client felt the use would fit into the community.

Responding to Council, Mr. Barron answered questions about the demand for a self storage facility. He stated he did not have a solid answer to demand but pointed out where other such facilities are located. Council spoke about her experience in talking to her constituents and spoke about reasons why she was not in support of the request.

Mayor Gilbert declared the Public Hearing open.

Elizabeth Stitt stated her two previous concerns had been resolved. The third concern was if a storage facility was appropriate for the area, the neighborhood, and if it would provide the right kind of services and jobs. She did not think this was the right project for this location. Ms. Stitt stated there was a community meeting over the weekend which resulted in 45 signed letters against the project [incorporated by reference]. They wanted development to reflect the vibrant character of the community that doesn't have to be hidden by vegetation. This project doesn't align with the future realignment of the road.

Staff stated received were emails from Paul Miller and Vicious Fishes, which were read for the record. The emails talked about the 22-acre development and the storage facility being detrimental to the environment and the area.

Mr. Barron stated the Town will still be able to execute its plan for Friendship Road.

Mayor Gilbert declared the Public Hearing closed.

Discussion among Council ensued as to viewpoints for uses for the area.

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

Council stated this was a unique moment and that he concurred with the other Council Members. There was the potential for uses that could serve the community better. The request may meet the rules but not the spirit of the area. He wondered if Council could approve the request without the use in question. Mr. Barron stated his client believed in the site and was willing to strike the self storage use.

Council conversation ensued about uses. Consensus was to deal only with what needed to be dealt with on this night. Staff clarified what would happen if the request was denied along with uses included in both Tech Flex and B1.

After further Council discussion about uses, Mr. Barron offered to table the request, to have another neighborhood meeting, and then to come back before Council at a later date.

Council Member Gantt amended his motion to state that this request would be continued to the July 27<sup>th</sup> Regular Meeting; Council Member Dozier seconded the motion.

The motion carried by a 5-0 vote.

PH3 Amanda Bunce, Current Planning Manager

*This item was withdrawn by the applicant so that it may be resubmitted as a conditional rezoning. Once resubmitted, this item will go through the full rezoning process again.*

Public hearing and possible motion to approve a 2045 Land Use Map amendment and Rezoning Application #21RZ07 Herbert Street. The applicant, Lane Raw Land, LLC, seeks to amend the 2045 Land Use Map from Medium Density Residential to Office Employment/Commercial Services and rezone approximately 0.27 acres located at 0 Herbert Street (PIN 0741397109) from Medium Density Residential (MD) to Neighborhood Business (B1).

PH4 Jenna Shouse, Long Range Planner II

Amendments to the Unified Development Ordinance to establish electric vehicle parking requirements.



Staff provided Council background on the requirements and the processes that had taken place related to them. The Planning Board recommended approval that included draft recommendations. The development community reviewed the information. The revised amendments were presented to the Environmental Advisory Board; they recommended approval. Staff outlined why they recommended installing certain numbers of EV charging stations.

Council stated there were questions related to the legality of these stations and requirements vs. incentives.

Council suggested going into Closed Session to discuss issues related to this matter.

Mayor Gilbert declared the Public Hearing open.

Mike Solo encouraged Council to adopt more of these EV-ready spaces and look to the future in the number that would be available. He stated we would need stricter requirements than what were in the Town's proposal.

Mayor Gilbert declared the Public Hearing closed.

Council Member Dozier made a motion to go into Closed Session to consult with the Town Attorney; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

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

Responding to Council, staff answered questions related to categories, uses, and requirements.

Council thanked staff for the work put in on this and stated that this was our being proactive for future needs. Council stated he wished to revisit this in a year or so to discuss how this is working.

Council stated it might be nice to track where all of the spaces might be. There could be a map for those visiting the Town showing where the various spaces would be located.

Council stated it would be useful to have some sort of incentive structure.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to approve the request with the amendment of two EV-rated spaces being required for commercial use if there are between 51-99 motor vehicle spaces required; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

PH5 Michael Deaton, Water Resources Director

To receive citizen input on the proposed Stormwater Utility Fee set to go in effect on January 1, 2022.

Staff stated this was a required public hearing to implement these fees. Recapped were the steps taken up until now. General Statutes allow these fees by following the stated process. Staff presented what we are proposing and outlined the next steps. Council stated it appreciated the tier structure.

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

#### OLD BUSINESS

There were no Old Business items for consideration.

#### UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

#### NEW BUSINESS

NB1 Tom Colwell, Chair of Apex Public Art Committee  
Unity Mural project and location

Mr. Colwell spoke about a new project they are thinking about doing – a mural – and how this idea began. The project could be done with a student equity group. He explained how the project would proceed working with the students and the Police Department. It would take about six months to move forward after Council approval. Mr. Colwell stated the proposed location for the mural was 103 E. Chatham Street, 205 Sanders Street being the alternate location. Mr. Colwell answered Council questions related to budget.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to approve the mural and its location; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

NB2 Colleen Merays, Downtown & Small Business Development Coordinator

Special Event Permit requests and Town Sponsorship requests for Apex Juneteenth Celebration and Apex Pride Month Celebration.

Staff stated these projects would be fully sponsored by the Town. She spoke a bit about both celebrations, Council Member Killingsworth expounding on the Pride celebration. Staff stated the expectation for staff spending was approximately \$3,600 for the two events. There will be food vendors and colorful, vibrant banners. Staff encouraged all to really go out and celebrate these events.

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

The motion carried by a 5-0 vote.

NB3 Shawn Purvis, Assistant Town Manager

FY2021-2022 Annual Budget Ordinance and FY2021-2022 Fee Schedule.

Staff stated that there was nothing new to report on the Ordinance. There had been only two minor changes to the information.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to adopt the Ordinance and Fee Schedule; Council Member Mahaffey seconded the motion.

The motion carried by a 5-0 vote.

Staff, responding to Council, explained from where separate budget funding would come for a few, separate projects.

NB4 Shawn Purvis, Assistant Town Manager

FY2021-2022/2024-2025 Capital Improvement Plan and associated capital project ordinances.

Staff explained the process for moving through the Plan.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to adopt the Plan and approve the Ordinances; Council Member Dozier seconded the motion.

The motion carried by a 5-0 vote.

NB5 Audra Killingsworth, Council Member

Non-Discrimination Ordinance

Council went over what was agreed to and discussed in the previous meeting related to this Ordinance and how this was not to punish people but help people to understand non-discrimination.

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

Council stated he was proud and excited this was being adopted and that it would send a message to visitors that Apex is a welcoming place, free of discrimination. This will be a boom for economic development in Apex, because companies are looking for towns that share their values. These companies are looking for areas that are safe and welcoming.

Staff clarified for Council the language related to age, stating that the language relates to Federal law.

The motion carried by a 5-0 vote.

(Applause from audience)

NB6 Mayor Jacques K. Gilbert

Cancellation of the regularly scheduled July 13 Town Council Meeting

Mayor Gilbert stated this would give our staff a break, as was done last year. Staff has worked diligently this year to keep us moving forward.

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

In Council discussion, it was stated that the hope would be for future Councils to consider earlier cancelling a meeting in June and July. We will not be on recess and not doing work. If something happens and Council needs to be called into work, that would happen.

The motion carried by a 5-0 vote.

Mayor Gilbert called for a five-minute recess.

#### UPDATES BY TOWN MANAGER

TM1 Ralph Clark, Interim Town Manager

Updates on Town operations by Interim Town Manager Ralph Clark

Staff stated there was an effort to build a relationship with CSX. He spoke about CSX's regulations related to train horns and quiet zones. Talked about was the impact the number of crossings in Apex have on the horns seeming to blow more than they should. Quiet zones are cost prohibitive. Staff spoke about why trains are idling as much as they are. The goal was to get CSX to work with us since we are all neighbors. As for the air quality issue, staff spoke about EPA standards. Responding to Council, staff stated CSX had put in a work order to remove the graffiti.

Staff stated his last day would be June 17, and he expressed appreciation to the town and community for this opportunity. It had been a privilege and honor to be here. Staff stated Apex has such a competent work staff, they are as good as they come, and Council should be proud. Staff appreciated being allowed to be here. Mayor Gilbert complimented Mr. Clark for a job well done.

#### WORK SESSION

WS1 Dianne Khin, Director of Planning and Community Development

Possible changes to Special Use Permit procedures and site plan requirements and procedures to remove the need for quasi-judicial public hearings (QJPH) at Town Council.

Council stated thought has been given to not doing quasi-judicial hearings at all, looking at what other municipalities are doing, and the legal rules. This has been discussed in a Planning Committee meeting, and Council committee members thought it best to take these types of votes away from Council and leave them to the Board of Adjustment, the Planning Committee being in agreement.

Staff stated that Councils used to have more quasi-judicial involvement but have moved away from this. Holly Springs is in the middle of a rewrite of their UDO and thought was that they would be taking away quasi-judicial from council for site plans. Council stated he'd spoken with Garner and believed they, too, would be removing quasi-judicial site plans. They are also doing a big rewrite of their UDO.

Council stated the Planning Committee recommended we follow the model of Raleigh where staff would review major site plans and the Board of Adjustment would do special use variances and appeals.

The Town Attorney stated that keeping or removing quasi-judicial from council would be legal. She spoke about the advantages of quasi-judicial not being at the elected body level. The Board of Adjustment is appointed, and their hearings are already quasi-judicial by nature. Talked about was why it is difficult to make decisions in this platform. The Town Attorney stated Council would still retain legislative process authority.

Conversation ensued about the town possibly being sued if something was voted down, the problem handling site plans in relation to schools, and the desire for a level playing field. It was questioned why Council was involved in the process if they have no say so.

There was concern expressed because of the timing of this and perceptions because of a pending project. Staff stated the named project has been voted on, so it would come back as a new project. The Town Attorney stated this would be a more holistic approach and consistent with what other municipalities are doing.

Council stated we would miss things if done fast and in a hurry. We need to bring in an equity tool; we can make mistakes if we don't. We don't want to give the perception that we are doing something just because of a project.

Staff spoke about major site plans that have come through since she's been employed. She also spoke about special uses.

#### CLOSED SESSION

Added CS1 To consult with the Town Attorney pursuant to G.S. 143-318.11(a)(3) to preserve the attorney-client privilege.

Mayor Gilbert called to go into Closed Session with no objection from Council.

Mayor Gilbert called for a motion to return to Open Session. Council Member Killingsworth made the motion; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

#### ADJOURNMENT

With no further business, Mayor Gilbert adjourned the meeting.

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Donna B. Hosch, MMC, Town Clerk

ATTEST:

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Jacques K. Gilbert, Mayor

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